



香港牙醫管理委員會
The Dental Council of Hong Kong

Disciplinary Inquiry under s.21 of DRO

Defendants: Dr SIN Chung-yin, Ronald 冼仲彥牙科醫生 (Reg. No. D02907)
Dr CHU Kai-yu 朱啟裕牙科醫生 (Reg. No. D03017)
Dr CHOW Kar-wah 周家華牙科醫生 (Reg. No. D03013)
Dr SO Wing-tong, Jacky 蘇永棠牙科醫生 (Reg. No. D03187)

Dates of hearing: 16 May 2013 (Day 1), 22 May 2013 (Day 2), 6 June 2013 (Day 3)

Judgment (22 May 2013)

1. Each of the Defendants, Dr SIN Chung-yin, Ronald, Dr CHU Kai-yu, Dr CHOW Kar-wah and Dr SO Wing-tong, Jacky is charged that -

“He, being a registered dentist, during the period from 17 July 2008 to 16 April 2010 -,

- (i) and being a director of Health & Care Dental Clinic Limited (恒健牙科醫務所有限公司), employed Mr Jeremy TUNG (董啟堯) (“Mr Tung”) to perform dental service when he was no longer a registered dentist after his name had been removed from the General Register on 17 July 2008; and/or

(ii) failed to take adequate steps to ensure that there was no unregistered person practising dentistry in the premises in which he practised dentistry;

and that in relation to the facts alleged he has been guilty of unprofessional conduct.”

Submission of no case to answer on Charge (ii)

2. After the Secretary’s case has been closed, Defence Solicitor makes a submission of “no case to answer” on Charge (ii) in respect of 3 of the Defendants, i.e. Dr SIN, Dr CHOW and Dr SO. The submission is made on the ground that there is no evidence to show that they practised dentistry in the 2 premises in which the unregistered person (i.e. Mr Jeremy TUNG) practised dentistry. The submission is not opposed by the Legal Officer.
3. In fact, during the Secretary’s case, the Legal Officer pointed out that there was no evidence to prove Charge (ii) against Dr SIN, Dr CHOW and Dr SO.
4. We have examined all the evidence. There is absolutely no evidence which can show that the 3 Defendants practised dentistry in any of the 2 premises in question. Charge (ii) should not have been laid against the 3 Defendants in the first place.
5. We uphold the submission and hold that there is no case for the 3 Defendants to answer on Charge (ii).
6. In the circumstances, we shall proceed with Charge (i) against all 4 Defendants and Charge (ii) against Dr CHU only.

Facts of the case

7. The case involves the illegal practice of dentistry by an unregistered person. Mr Jeremy TUNG was originally a registered dentist. He practised under the employment of a dental company since August 2005.
8. Mr TUNG applied for the practising certificate in 2005, 2006 and 2007. However, he did not do so in 2008. Various staff of the dental company repeatedly asked him on many occasions to renew and submit the practising certificate for 2008, but each time he said that he would do it later.
9. On 17 July 2008, he was removed from the General Register for the reason that he failed to obtain the practising certificate. Upon removal from the General Register, he ceased to be a registered dentist.
10. However, he continued to practise dentistry illegally under the employment of the dental company until 16 April 2010.
11. All 4 Defendants were directors of the dental company during the period from 17 July 2008 to 16 April 2010.
12. Dr CHU also practised dentistry in the same clinic in which Mr TUNG practised dentistry illegally after he had ceased to be a registered dentist.

Findings of the Council

13. All 4 Defendants accept the facts. In any case, the facts are indisputable in light of the evidence.

Charge (i)

14. Section 12 of the Dentists Registration Ordinance requires that a body corporate carrying on the business of dentistry must have a majority of its directors being registered dentists. The requirement guarantees that the

business of a dental company is under the control of registered dentists who are subject to the disciplinary control of the Dental Council, so as to protect the public from substandard dental services.

15. The 4 Defendants constitute a majority of the dental company in question, therefore they are in direct control of its dental business. As the directors are the brain and mind of the company, they are directly responsible for the affairs of the company.
16. In Hong Kong, only registered dentists can practise dentistry. Illegal practice of dentistry by an unregistered person is a criminal offence punishable by imprisonment for 5 years, and for 7 years if it results in personal injury. Any person who aids and abets an unregistered person to practise dentistry illegally is also guilty of the offence as an accessory.
17. Under section 12 of the Ordinance, a dental company is required to ensure that it employs only registered dentists to perform dental operations. It must not permit any unregistered person to perform dental operations under its employment.
18. Although the staff of the dental company had repeatedly urged Mr TUNG to renew his practising certificate, it was not sufficient for ensuring that its employee continued to be a registered dentist. The fact that they kept chasing repeatedly means that they knew that he was practising dentistry without a valid practising certificate. This situation continued for 28 months from January 2008 to April 2010. This is entirely unacceptable.
19. Furthermore, under section 12 of the Ordinance the dental company is required to make an annual return to the Registrar of Dentists setting out, inter alia, all persons who perform dental operations in connection with the business of the company, stating the status of each of such persons. The company must verify the registered status of each person who performs dental operations before making the annual return in the prescribed form (i.e. Form 5 in the First Schedule of the Dentists (Registration and Disciplinary Procedure) Regulations). This can easily be done by verifying from the

General Register which is published on the website of the Dental Council. Obviously, the company did not make such verification, or if it did, it turned a blind eye to the fact that Mr TUNG was no longer registered. In either case, the 4 Defendants as directors failed to fulfill their statutory duty to ensure that all persons employed to perform dental operations are registered dentists.

20. We must also point out that section 17 of the Code of Professional Discipline provides that a dental practitioner who becomes a director of a body corporate carrying on the business of dentistry accepts responsibility for any act or omission in the conduct of that business.
21. We are satisfied that each of the 4 Defendants has failed in his duty to ensure that all persons performing dental operations in the dental company are registered dentists. By employing Mr TUNG to perform dental operations when he was not a registered dentist, they have permitted an unregistered person to practise dentistry illegally, in premises under the control of the company. We are satisfied that such conduct would be reasonably regarded as disgraceful or dishonourable by registered dentists of good repute and competency.
22. We find each of the 4 Defendants guilty of unprofessional conduct. We find each of them guilty of Charge (i).

Charge (ii)

23. Dr CHU in his submission to the Preliminary Investigation Committee admitted that he practised dentistry in the clinic where Mr TUNG was also practising dentistry in the period from 17 July 2008 to 16 April 2010. However, he said that he practised there on Fridays whereas Mr TUNG practised there on Tuesdays and Thursdays.
24. Section 27 of the Ordinance provides that any registered dentist who practises dentistry in premises in which an unregistered dentist practises dentistry commits a criminal offence punishable with imprisonment for 6

months. This imposes a positive duty on every registered dentist to ensure that there is no unregistered person practising dentistry in the same premises with him.

25. Under section 2(2) of the Ordinance, practice of dentistry is defined widely as follows:-

“A person shall be deemed to practise dentistry within the meaning of this Ordinance, who, for the sake of gain or otherwise, holds himself out, whether directly or by implication, as practising or being prepared to practise dentistry, or treats or attempts to treat or professes to treat, cure, relieve or prevent lesions or pain of the human teeth or jaws; or performs or attempts to perform any operation thereon, or inserts or attempts to insert any artificial teeth or appliances for the restoration, regulation or improvement of the teeth or accessory structures.”

26. In other words, holding out as practising dentistry by itself already constitutes the practice of dentistry.
27. Under section 14 of the Ordinance, each registered dentist must exhibit his certificate of registration in a conspicuous place in any premises in which he practises dentistry. In other words, the certificates of registration of Dr CHU and Mr TUNG were exhibited in the same clinic in which they practised dentistry, although they were on duty on different days of the week.
28. These requirements, coupled with the fact that Dr CHU was a director of the dental company which employed Mr TUNG, make it an irresistible inference that Dr CHU was aware of the fact that Mr TUNG was practising in the same clinic.
29. Section 15.1 of the Code of Professional Discipline provides that a dental practitioner should in no way countenance, help, encourage or assist, either willfully or by neglect, the practice of dentistry by an unregistered person.

This imposes a professional duty on every dentist to ensure that every person practising dentistry in the same premises with him is a registered dentist.

30. We are satisfied that Dr CHU has failed his professional duty to ensure that all persons practising dentistry in the same premises with him are registered dentists. Such conduct would be reasonably regarded as disgraceful or dishonourable by registered dentists of good repute and competency, thus constituting unprofessional conduct. We find him guilty of Charge (ii).

Sentencing (6 June 2013)

31. All 4 Defendants have previous disciplinary convictions as follows:-

(a) Dr SIN, Dr CHU, Dr CHOW: 8 charges in May 2001,
3 charges in July 2002;

(b) Dr SO: 4 charges in May 2001.

32. All the previous convictions were in respect of irregularities of the operation of the same dental company, i.e. Health & Care Dental Clinic Limited. Dr SIN, Dr CHU and Dr CHOW were convicted in the capacity of directors of the dental company. Dr SO was convicted in the capacity of a dentist practising in that dental company. After the previous convictions, all Defendants had been warned that any further conviction would be regarded by the Dental Council very seriously.

33. Although the previous convictions were dissimilar to the present case, we must have regard to the fact that they were aware that there were irregularities in the operation of the dental company, and that they should have exercised particular care to ensure the proper operation of the company after the previous convictions.

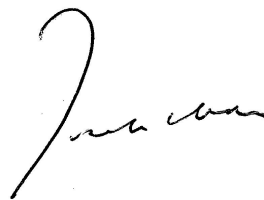
34. Dr SIN, Dr CHU and Dr CHOW were the founders of the dental company when it was set up in 1998. They were shareholders and directors. In 2001,

Dr SO also became a director. Dr SIN was the Chief Executive Officer and was responsible for the day-to-day administration and operation of the dental company. At the relevant time, the dental company was running 18 clinics with about 30 dentists.

35. The present case concerns the employment by the same dental company of an unregistered person to perform dental services. This is a serious matter, as the 4 Defendants, being directors of the dental company, were under statutory duties to ensure that the company carried on the business of dentistry in compliance with the statutory requirements governing dental companies.
36. The seriousness of employing Mr Jeremy TUNG while he was not a registered dentist to perform dental services on patients is further aggravated by the following factors:-
 - (a) by providing facilities, premises and staff for the unregistered person to perform dental services, the dental company was in effect assisting him in his illegal practice of dentistry;
 - (b) patients would have been given a false sense of security that the dental company would ensure that all persons performing dental services under its employment were properly registered dentists;
 - (c) since 17 July 2008 after he had ceased to be a registered dentist, he could not have been a licensee under the Radiation Ordinance for operating dental irradiating apparatuses;
 - (d) despite the fact that he was not on the General Register, the company signed new contracts with him on 8 August 2008 and 6 July 2009.
37. We shall give credit to the Defendants in sentencing for their honest admissions during preliminary investigation and in this inquiry, although that credit has to be tempered with their last minute decision to contest the

charges on Day 1 of the inquiry leading to an adjournment. Nevertheless, we have not lost sight of the principle that honest admissions, even at a late stage, should be encouraged by the incentive of a lenient sentence.

38. We bear in mind that the purpose of a disciplinary order is not to punish the Defendants, but to protect the public and to maintain public confidence in the dental profession.
39. Having regard to the gravity of the case and the mitigating factors, we make the following orders:-
 - (a) In respect of Charge (i), the name of Dr SIN be removed from the General Register for a period of 3 months, and the names of the other 3 Defendants be removed from the General Register for a period of 2 months.
 - (b) In respect of Charge (ii), the name of Dr CHU be removed from the General Register for a period of 1 month. Given that the matter arose from the same incident in Charge (i), the removal period shall run concurrently with the order in Charge (i).
40. We have considered whether the operation of the orders can be suspended. We are of the view that this is not a suitable case for suspension, given the gravity of the case and the previous convictions involving the operation of the same dental company.



Dr CHAN Cho-yee Joseph, JP
Temporary Chairman,
Dental Council of Hong Kong