



Professional Codes versus External Enforcement: Chinese and Australian Norm-Setting in Pharmaceutical Ethics Compared

APPLICATION EXTERNE DES CODES PROFESSIONNELS COMPARATIVE: ETABLISSEMENT DES NORMES DE DEONTOLOGIE PHARMACEUTIQUE DES CHINOIS ET AUSTRALIENS

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Abstract

This paper examines how norms are introduced and implemented in the production and trade of medicines in China and Australia. Through a discussion of the status of the pharmaceutical profession in these two countries, it argues that in China the propagation of professional standards and the control over their implementation are exclusively a matter for external sanctions, while in Australia the validity of a pharmacists' professional code reduces the need for external supervision. The paper further investigates the systemic and institutional reasons for this difference.

Key words: Professional codes; Ethics; Pharmacists; Medicines

Résumé

Ce document examine comment les normes sont introduites et mises en œuvre dans la production et le commerce des médicaments en Chine et en Australie. Grâce à une discussion sur le statut de la profession pharmaceutique dans ces deux pays, il soutient que la propagation en Chine des normes professionnelles et le contrôle de leur mise en œuvre sont exclusivement l'affaire des sanctions externes, alors qu'en Australie, la validité d'un code des pharmaciens réduit le besoin de supervision externe. Le document examine davantage les raisons systémiques et institutionnels de cette différence.

Mots-clés: Codes professionnels, L'éthique, Pharmaciens, Médicaments

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The topic of this article is the way in which norms are introduced and implemented in the production and trade of medicines in China and Australia. The aim is to highlight differences. Thus the fact that in both cases similar norms can be shown to be at work is of less interest. The specific professional responsibility of the apothecary whose wares can cure or adversely affect a patient has always been self evident in both cultural environments. The question raised in this paper is not so much what these responsibilities are but how are they defined and by whom?

The starting point for this article is two sets of material. One consists of legal documents, administrative guidelines and other texts which reflect upon and regulate pharmaceutical practice from pre-modern and modern times as well as from the contemporary post-1949 period in China. The other is the Pharmaceutical Society of Australia's *Code of Professional Conduct* implemented in 1998 and *Code of Ethics for Pharmacists* endorsed by the Society's Board in 2011. There is no direct Chinese equivalent for these Australian codes. The difference in origin and approach between these two sets of material will shape much of the following discussion. For China, external forces including administrative rules or laws, and expectations from the wider public, must be seen as the main creator and guarantor of norms prevailing in the production and trade of pharmaceuticals. By contrast in Australia, the validity of a detailed professional code for pharmacists originating from within the industry, and backed up, of course, by general and specific governmental laws and regulations reduces the needs for such sanctions.

This contrast is the result of general systemic

differences between the two societies. The dominant role of the Chinese state, its strict monopoly in regard to social organisation and a certain institutional weakness that results from this are factors that necessarily curtail the self-determination of professional groups in China. So in this respect, despite the particular issues involved in the production and sale of pharmaceuticals, pharmacists do not differ much in regard to their professional sovereignty, or rather the lack of it, from any other professions in China.

Consequently, Chinese/Australian differences in the understanding and formulation of professional ethics result in the first place from a wide gap in the social status of the respective professional groups. The social status of a Chinese pharmacist does not resemble that of his/her Australian counterpart. This gap can be viewed from various angles. There is on the one hand an objective, historically-derived difference between China and Europe in the development of professions. On the other hand this objective difference is reflected as well as modified by representatives of both groups of professionals when they refer to or fail to refer to issues of professional responsibility. In order to clarify these issues, this article will first examine the status of the pharmaceutical profession in Australia and in China.

AUSTRALIA

Australian pharmacists, it can be argued, enjoy a particularly high status with a great amount of professional self-determination. This can be documented by the issue of pharmacy ownership and can be traced back to the late 1930s and early 1940s when several Australian states endorsed the banning of company or chain pharmacies. Since then, pharmacies have been owned by registered pharmacists as required by State and Territory pharmacy legislation (PSA, 1997). We find that pharmacies in other Western countries, as for instance in the United States and Canada, are often owned by corporations and run more on the lines of a supermarket (BIE, 1985, p.2). The restriction of ownership in countries such as Belgium, Ireland, Japan, and the United Kingdom also appears to be less severe than in Australia. In these countries as well as Canada and the United States, it is only required that a pharmacist is employed in the retailing of pharmaceutical products (BIE, 1985, p.42).

In Australia, the provisions of the legislation on pharmacy ownership have attracted public debate and have been challenged from time to time by the large retail chains. Nowadays, despite the availability from supermarkets of certain medicines that were formerly exclusively sold by chemists, it is clear that the perception of a pharmacy as an entity that is owned and run by an individual pharmacist still remains largely in place. This was reinforced during the 1996 Federal election when

Mr. Howard, the Prime Minister at the time, pledged his support for the continuation of pharmacy ownership provisions and reaffirmed his view in May 1997.

There can be little doubt that these provisions were based on a concern for protecting the interests of independent pharmacists and that their continuing public acceptance reflects the strength and influence of the key professional body within the industry, the Pharmaceutical Society of Australia (PSA). With striking self-confidence, representatives of the profession argued that their own interests were, in fact, the public interest. Their arguments were couched in ethical terms—as if the professional code adhered to by the individual pharmacist would be the public's main guarantee for the responsible handling of medicine. The PSA argued for instance, that the increased commercialisation that would accompany a relaxation of ownership provisions would be detrimental to the community at large (PSA, 1997). The Federal Health and Family Services Minister at the time, Dr Wooldridge, also frequently supported the existing arrangements as being in the public interest (PSA, 1997). In other words, in the Australian case, a professional association has taken its authority from a proven record of ethical conduct based on adherence to a professional code. Their own commercial interests were not mentioned, and their profession was represented as one that was not dominated by business considerations, but guided by concepts of service and public responsibility. Such ideas continue to underpin mainstream attitudes in Australia towards pharmacists.

CHINA

The Chinese case is more complex, and shall here be dealt with only for the limited purposes of this article. In order to get a picture of the present-day status of pharmacists we must keep in mind that the China of today is in all respects closer to pre-modern conditions than present-day Australia. It is therefore permissible to search for answers not only in contemporary material, but also in historical sources. The problem starts with the question of who can be termed a 'pharmacist.' Although the famous essayist LIU Zongyuan (773-819) gives an account of being cheated by a merchant selling medicines at a market in the area of Yongzhou (currently Lingling in Hunan province) (LIU, 1964, p.325) which might suggest the existence of a kind of individual medicine sellers during Tang times (618-907), it has been generally believed that privately-run pharmacies began to develop in the Ming dynasty (1368-1644). By the beginning of the 19th century, individually owned pharmacies were already established widely in Chinese major cities. This profession is mainly what we here call 'pharmacists'.

With the establishment of the People's Republic of China (PRC) in 1949 privately-owned pharmaceutical stores came into the hands of the state. During the first three decades of the People's Republic, the domination

of the state was particularly beyond challenge and a state-run hierarchical wholesaling network for medicines was established across the whole country. Government agencies operated and controlled this network largely along the lines of a state administrative system. Overpowering state domination in the post-1949 pharmacy industry in China thus meant that pharmacists, as a professional group, were excluded from the management of the industry. There is not, for example, a Chinese professional association of pharmacists which operates in the Australian way. Instead, there is the Chinese Association of Pharmacy which, apart from its role of political control, operates as an academic organisation with the aim of promoting scientific research into pharmaceutical products (ZHANG, 1999, p.519).

Since the economic reforms launched at the end of the 1970s in the PRC, the trade in pharmaceutical products has gradually opened to private ownership and market forces. Chinese official regulations now stipulate that all pharmaceutical stores must employ a professionally trained pharmacist and those owners of businesses which do not must study for and pass a test organised by the medicine management section of the local government (SBMM&SBICM, 1989, p.980). The growth in private ownership however has not brought any fundamental change to the position of pharmacists within the industry. The role of pharmacists in pharmaceutical stores has been regularised only to ensure the quality of medicines, and they have not become more involved in the general management of the industry. The environment which produced the Chinese Association of Pharmacy has therefore remained largely unchanged. In order to understand the current status of Chinese pharmacists, it will help to take a brief look at what it was in the past.

Historical records show that official sanctions against wrong doing in pharmaceutical supply date back to at least the Tang dynasty and the Tang legal code. This stipulated punishments for those who made mistakes in the supply of medicines, and was probably the first Chinese legal code to regulate pharmaceutical service. Furthermore, as Ute Engelhardt has argued, it was under the Tang when the first Chinese official handbook of drugs, the *Xinxiu bencao* (*Newly Revised Materia Medica*), was published; and this clearly reflected the heightened control of the state over medicines in that period (Engelhardt, 2001, p.178). The legal sanctions against misconduct in pharmaceutical supplies were then followed in succeeding dynasties. An officially regularised penalty, one might argue, contributed to Chinese pharmacists' pursuit of a high quality service, however there is ample evidence to show that pharmacists often provided services which were motivated by considerations beyond just escaping from legal punishment.

In Republican era (1912-1949) Beijing, for example, it was common for pharmacies to wrap different kinds of prepared herbal medicines separately with relevant

information sheets placed in each sack of medicine. Each information sheet would provide the name, production area, smell, function, and even a picture of the herb so that the buyers could judge the trueness and purity of the medicine themselves (AN et al., 1993, p.3; JIN, 1938-1945, p.341). Another example from the same period is that of Zhanglida Tang, a pharmaceutical store in Anqing, Anhui province. It was the rule at Zhanglida Tang that medicines could only be sold to those who had a doctor's written prescription. The concern behind this rule was that profit-making must give way to the safety of patients (AN et al., 1993, p.320). The store also stipulated that apprentices who studied pharmacy were not allowed to read medicine books. This regulation was intended to prevent apprentices from writing prescriptions themselves in order to make more money if, after the apprenticeship, they wanted to run their own stores. The owner of Zhanglida Tang made it clear that apprentices should not create any potential risk to patients (AN et al., 1993: 320).

While these examples can be viewed from quite different angles, including the motive of increasing business, there are also cases of 'pure' altruism. The story behind the Chinese saying of '*Song Qing mai yao*' (Song Qing Selling Medicines) seems to be a good example. Song Qing lived during the Tang dynasty. It is reported that he always purchased quality medicines at a high price and supplied them to all those who were in need regardless of whether they were able to pay or not. From those who were not able to pay, he would request a written pledge. At the end of each year, he burnt the pledges written by those whom he considered unable to pay. Over the 40 years of his trading, he is said to have burnt innumerable pledges (FU and HE, 1993, p.319).

In view of the above, we can also assume that the practices and motivations of Chinese pharmacists went beyond both the concern for avoiding legal sanctions and the pursuit of commercial interests. All this suggests that a form of "professional ethics" of pharmacy existed in imperial China and was generally followed by pharmacists. We also know that Chinese medicine was, in varying degrees, connected to religious practice from its early development onwards. The establishment of such ethics therefore could result, to a large extent, from pharmacies' worship of medical deities. This view may be supported by the fact that medical deities were enshrined not only in the temples established near traditional medicine markets such as the Anguo Medicine Market in Hebei and Zhangshu Medicine Market in Jiangxi, but also in the guild halls of pharmacists' own professional guilds. In the Beijing Pharmaceutical Guild (established in 1817), for instance, three medical deities, Shennong, Sun Simiao, and Wei Cizang, were enshrined in a room named the Three Deities Pavilion (HU and BAI, 1994, p.300). As such pharmaceutical guilds existed primarily to deal with internal issues among the profession, it can be argued that the deities enshrined by the guilds were expected, in

addition to protecting the profession as a whole from a religious perspective, to provide a spiritual guide for the profession's self-discipline.

Pharmacists' devotion to medical deities can be further seen from the fact that many pharmaceutical stores also had their "own altar to one of the gods of medicines" (Jewell, 1983, p.5). Sherman Cochran records that a well-known traditional pharmaceutical store, Daren Tang in Tianjin, staged Beijing operas and hosted banquets for local dignitaries on the birthday of Sun Simiao, one of most important deities of medicine (Cochran, 2006, p.34). Whilst this cultural event and banquets may have been organised largely for promoting the store's business, it is undeniable that these activities were also used to show the store's devotion to the deified medical tradition. Besides observing and performing religious ceremonies and rituals, traditional pharmacists also demonstrated their dedication to medical deities through their business operations. Jewell describes, for example, the tradition of pharmaceutical stores selling their medicines at half price or setting aside several medicines to be given away to customers, on "the birthday of the King of Medicine" (the twenty-eight day of the fourth month in the lunar calendar) (Jewell, 1983, p.7).

Such religiously-based practices were clearly important in traditional Chinese pharmacy, but to what extent did purely religious motivations contribute to pharmacists' good conduct and professional ethics? Trading professions, including medicine traders, were obviously well aware of and responsive to the cultural context in which they operated. In consideration of this as well as the fact that some degree of deification of medicine had long been accepted in traditional Chinese popular culture, the religious motivations behind the good conduct of pharmacists, it could be argued, resulted largely from pharmacists' understanding of the public acceptance of the religious connotations of medicine. In other words, pharmacists were responding to wider public expectations and perceptions of the linkages between the trade in medicines, religion and moral conduct. The fact that the story of "Song Qing Selling Medicines", referred to earlier, became commemorated in a well-known saying in Chinese illustrates the existence of such social expectations. Put simply, through holding up the prototypical pharmacist, Song Qing as a paragon of virtue, the public sent a clear message to pharmacists that their good conduct was also expected.

As the result of the deification of medicine in traditional China, and in the context where an essentially rational medical system was combined "with a strong superstitious medical subculture" (Jewell, 1983, p.8), expectations of ethical conduct for at least some pharmacists would have been reinforced by the fear that improper conduct would bring bad luck to their spiritual lives or even their afterlives. In an inscription on a tablet in the Shanghai Medical Deity Temple (where

the Shanghai Pharmaceutical Guild was located) dated 1819 for example, we find these words: "all people in our trading area need to exhort each other that those who have good conduct will be rewarded with good" (PENG, 1997, p.82). Meanwhile, an inscription on a tablet in the Suzhou Medical Deities Temple (where the Suzhou Pharmaceutical Guild was located for a time) from 1892 goes even further to admonish that bad conduct (within the profession) meant to commit a sin (PENG, 1997, p.175). While no words in these records relate specifically to people's spiritual lives or afterlives, the sacred nature of the sites where these tablets were placed illustrates the religious and spiritual significance of these injunctions.

It is true that such sentiments could often be expressed. It is worth noting, however, that such sayings as "good is rewarded with good" were more often used to express the imperatives of professional conduct for pharmacists than for other professions and trades. By way of comparison, inscriptions on a tablet for the Suzhou Timber Trading Guild from the same period, while stating that bad conduct would be disciplined, make no connections between good conduct and reward or bad conduct and sin (PENG, 1997, p.177). The pharmacists' greater emphasis on the relationship between professional conduct and the more ultimate sanctions of the world of gods and spiritual life is probably because medicine and pharmaceutical practice related most directly to the fundamental issues of human life and death.

As the above shows, pharmacists in traditional China were subject to a range of external influences in shaping notions of proper practice, from social expectations of exemplary conduct to legal sanctions and religiously-derived injunctions against engaging in bad conduct as well as the commercial imperative to provide good service to customers. It was the combination of such external factors which led to a sense of a "professional ethics" in traditional Chinese pharmacy. The power of such external forces on pharmaceutical practice may explain how, in an atmosphere of the increasing corruption and deterioration of commercial morality in 1930s and 40s Beijing, pharmacies could still be regarded as offering good services to their customers (JIN, 1938-1945, p.348). Most importantly, however, and unlike in the modern Australian case, there was no expectation that an enforcement of a code of good practice by proper administrative rewards and sanctions was to originate from within the profession.

The victory of the communist revolution in 1949 brought many changes to Chinese society and culture; however, notions of pharmaceutical ethics and proper conduct for pharmacists in the early decades of the PRC presented important similarities with the pre-1949 period. The communists re-deified medicine in political terms. One can see that even a popular morally-oriented slogan from the period, such as 'curing the sickness to save the patient', was a product of the government. All this suggests that, once again, the setting of professional norms

for pharmacists was largely a matter of external force—this time with the PRC state playing the leading role. By imposing comprehensive control over the profession, the government sent a strong message to the public that health care was an important political issue and thus it must be managed by the state (ZHANG, 1999, pp.20-21). This is probably the key reason for the absence of a professional association for pharmacists in post-1949 China.

What we may conclude from the above for the issue of professional ethics is perhaps not too much. Traditional Chinese pharmacists were expected to behave both as morally-conscious human beings and as customer-oriented businessmen. They were also obliged to show respect to other members of their guild. We may also argue that similar expectations are still in place in China. All this however does not amount to a clearly-defined professional code, which once accepted and enforced, has in itself an impact on the status of the profession as viewed by the wider public. The fact that the growing amount of privatisation and market orientation over the past decades in China has in turn led to an increasing amount of fake medicines and corrupt pharmaceutical practices does not help to improve the profession's image. It signifies that the slackening in official control has not been matched by any growth in profession-derived or industry-centred supervision and norm setting. Here the difference from Australia could hardly be greater. The formulation of the 1999 Professional Practice Standards in Australia, for example, was funded by the Commonwealth Government but undertaken mainly by the Pharmaceutical Society of Australia (Tambling, 1999).

Comparisons to the situation in Australia are too obvious to need much further explanation. The Australian pharmacist's professional status is well established and supports his work. He resembles his contemporary Chinese counterpart in being an individual who wants to do the right thing and a businessman who must make a profit. But beyond all this, he subscribes to a specific professional code for guidance and orientation. In the Chinese examples that have been surveyed above, we have seen some traces of professional behaviour and general outlook that look familiar, for instance, the need for customer information and the demand that dispensing occurs in line with the prescriber's intentions (PSA, 2010). The link between public health and welfare on the one hand and the pharmaceutical industry on the other is also clearly acknowledged in both environments. The involvement of the PSA in the state-funded Pharmaceutical Benefits Scheme makes this obvious for the Australian side. For China, such ideals are emphasised as well. Pharmacies are, for instance, required to provide 24 hour service to customers. The Chinese context also recognises the importance of a division between medical practitioners and pharmacists. In a similar manner, Principle 9.2 of the Australian *Code of Ethics for Pharmacists* stipulates that a pharmacist must "respect and understand the expertise

of other health professionals" (PSA, 2011). In the Chinese environment, pharmacists who implemented such rules were considered to be particularly virtuous. However, they would remain pharmacists whether they adhered to a certain standard of practice or not. Those who did were entitled to claim moral excellence, but in the first place as individuals and not as member of a profession.

There are also very clear and distinct contrasts. Principle Five of the Australian *Code of Professional Conduct* strikes me as particularly 'Western': 'A pharmacist must neither agree to practice under conditions which compromise their professional independence, judgment or integrity, nor impose such conditions on other pharmacists'. The sophistication of Principle Nine is another example: 'A pharmacist shall ensure continuity of care for the patient in the event of labour disputes, pharmacy closure or conflict with personal moral beliefs' (PSA, 1998). In particular this principle's distinction between personal beliefs and professional practice is, from all we know about the professional conduct of Chinese pharmacists, an issue that has rarely been canvassed. Such a fine distinction in the Chinese context is perhaps the exclusive preserve of the high-minded public servant and the ethical considerations that attach to his or her professional conduct.

By way of a conclusion it can be argued that an understanding of professional ethics in Chinese pharmaceutical practice, unlike that in Australia, has never been free from a reliance on external enforcement: whether state-based or otherwise. It may also be argued that while, at times, having allowed the formation of a kind of commercially-driven occupational morality in pharmacy, external enforcement has, at the same time, seriously restricted the development of an internally-generated sense of an ethical code and professional authority within Chinese pharmacy. The long-term reliance on external enforcement has not only resulted in the Chinese pharmaceutical profession's inability to establish its own independent professional ethical code, but also challenged its ability to cope with the contemporary situation in China where external state control over the profession has loosened and diminished. The problem of fake medicines in China referred to above is one of the consequences of the increasingly symbolic and insubstantial role of state control in the Chinese pharmaceutical industry of today and the lack of a viable independent professional code of ethics to replace it.

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