

香港醫務委員會
The Medical Council of Hong Kong

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr KAN Kwong Tin (耿光天醫生) (Reg. No.: M01890)

Date of hearing: 24 October 2019 (Thursday)

Present at the hearing

Council Members / Assessors: Prof. LAU Wan-ye, Joseph, SBS
(Chairperson of the Inquiry Panel)
Dr Hon Pierre CHAN
Prof. WONG Wing-kin, Gary
Mr CHAN Wing-kai
Mr CHAN Hiu-fung, Nicholas, MH

Legal Adviser: Mr Edward SHUM

Defence Solicitor representing the Defendant: Mr Warren SE-TO of
Messrs. Mayer Brown

Government Counsel representing the Secretary: Miss Karen NGAI

1. The charge against the Defendant, Dr KAN Kwong Tin, is :

“That on or about 18 May 2015, he, being a registered medical practitioner, disregarded his professional responsibility to his patient [REDACTED] (“the Patient”) in that, he prescribed Amoxycillin 250 mg to the Patient without enquiring the Patient whether he had drug allergy.

In relation to the facts alleged, he has been guilty of misconduct in a professional respect.”

Facts of the case

2. The Defendant was at all material times a registered medical practitioner. His name has been included in the General Register from 8 February 1972 to present.
3. The Defendant admits the factual particulars of the disciplinary charge against him.
4. Briefly stated, the Patient, who was then 75 years old, consulted the Defendant on 18 May 2015 complaining of, amongst other symptoms, left leg pain with walking difficulty.
5. According to the Defendant's submission to the Preliminary Investigation Committee ("PIC"), his diagnosis was acute cellulitis of left leg and he also explained that:-

"...Amoxicillin and Cloxacillin are the best think of medication I have at hand at the time with me for treating acute cellulitis, noting that patient had been on Keflex (Cephalexin, 1st generation cephaloridine, of penicillin class-sensitivity) without undue side effect, on the medical record dated May 4, 2001. I took this as penicillin tolerant and did not ask for penicillin sensitivity."
6. According to the Patient, whose evidence on this part is unchallenged by the Defendant, he developed giddiness, chest discomfort, tenesmus, vomiting and 4 limb weakness about 4 to 5 hours after taking the medicines prescribed by the Defendant.
7. There is no dispute that the Patient was admitted to the Accident & Emergency Department of the United Christian Hospital ("UCH") at 08:45 hours on 19 May 2015. The Patient was subsequently transferred to the Medical Ward for further management later in the morning.
8. According to the Discharge Summary issued by UCH on 20 May 2015, the Patient was noted to be allergic to benzyl penicillin.
9. The Patient subsequently lodged this complaint against the Defendant with the Medical Council.

Burden and Standard of Proof

10. We bear in mind that the burden of proof is always on the Legal Officer and the Defendant does not have to prove his innocence. We also bear in mind that the standard of proof for disciplinary proceedings is the preponderance of probability. However, the more serious the act or omission alleged, the more inherently improbable must it be regarded. Therefore, the more inherently improbable it is regarded, the more compelling the evidence is required to prove it on the balance of probabilities.
11. There is no doubt that the allegation made against the Defendant here is a serious one. Indeed, it is always a serious matter to accuse any registered medical practitioner of misconduct in a professional respect. We need to look at all the evidence and to consider and determine the disciplinary charge against him carefully.

Findings of the Inquiry Panel

12. The Defendant admits the factual particulars of the disciplinary charge against him but it remains for us to decide on the evidence whether he is guilty of misconduct in a professional respect.
13. In our view, the central issue is whether the Defendant's failure to ask the Patient whether he had drug allergy before prescribing Amoxycillin to him was in all the circumstances of this case below the standards expected of registered medical practitioners in Hong Kong.
14. There is no dispute that Amoxycillin is a drug which belongs to the penicillin group and should not be given to patients who are allergic to drugs belonging to the penicillin group.
15. We agree with the Secretary's expert, Dr PANG, whose expert evidence is unchallenged by the Defendant, that:-

“Nil reaction to Keflex which belongs to the Cephalosporin class, but not the Penicillin class of drug in past history, would not preclude allergic reactions to Amoxycillin, since the Cephalosporin cross-sensitivity rate in penicillin allergic patients is only around 0.17-6%... This substantiates that the Patient not allergic to past prescription of Keflex can still be allergic to Amoxycillin.”

16. According to the Patient, whose evidence on this part is unchallenged by the Defendant, he developed severe allergic reactions to penicillin when he was about 18 to 19 years old. Since then, the Patient would inform all doctors whom he consulted of his allergy to penicillin.
17. According to the Defendant's consultation records, the Patient had consulted the Defendant on 3 previous occasions i.e. 4 May 2001, 5 June 2001 and 22 January 2015.
18. It was illogical in our view for the Defendant to deduce from the lack of reported drug allergy reaction to Keflex prescribed to the Patient on 4 May 2001 that it would be safe to prescribe Amoxicillin to the Patient.
19. Given the Patient has a history of drug allergy, the Defendant ought to take an updated drug allergy history before prescribing the Patient with a new drug.
20. For these reasons, the Defendant's conduct had fallen below the standards expected of registered medical practitioners in Hong Kong. We therefore find him guilty of misconduct in a professional respect as charged.

Sentencing

21. The Defendant has a clear disciplinary record.
22. In line with published policy, we shall give him credit for his frank admission and full cooperation throughout this inquiry.
23. We need to bear in mind that the primary purpose of a disciplinary order is not to punish the Defendant but to protect the public from persons who are unfit to practise medicine and to maintain public confidence in the medical profession by upholding its high standards and good reputation.
24. Patients are entitled to, and they often do, rely on doctors to exercise reasonable care and competence in avoiding prescription of drug to which they have a known allergy or sensitivity.
25. We are told in mitigation that the Defendant would ask all his patients, new and returning, whether they have drug allergy history.

26. We accept that the Defendant has learnt his lesson. However, we need to ensure that he would not commit the same or similar misconduct in the future.

27. Taking into consideration the nature and gravity of the disciplinary charge and what we have heard and read in mitigation, we order that the Defendant's name be removed from the General Register for a period of 1 month. We further order that the removal order be suspended for 12 months, subject to the condition that the Defendant shall complete during the suspension course(s) on safe prescription of drugs to be approved by the Medical Council to the equivalent of 10 CME points and to be completed within the next 12 months.

Prof. LAU Wan-ye, Joseph, SBS
Chairperson of the Inquiry Panel
The Medical Council of Hong Kong