

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr CHAN Wai Ip (陳偉業醫生) (Reg. No.: M06470)

Date of hearing: 4 June 2021 (Friday)

Present at the hearing

Council Members/Assessors: Dr CHOI Kin, Gabriel
(Chairperson of the Inquiry Panel)
Prof. CHOW Yat-ngok, York, GBS, MBE
Dr NG Kwok-keung
Mr LAM Chi-yau
Mr TSANG Kin-ping

Legal Adviser: Mr Stanley NG

Defence Solicitor representing the Defendant: Ms Jennifer LEE of
Messrs. Mayer Brown

Senior Government Counsel (Acting) representing the Secretary: Ms Agnes FONG

The Defendant is not present.

1. The amended charge against the Defendant, Dr CHAN Wai Ip, is:

“That he, being a registered medical practitioner, was convicted at the Eastern Magistrates’ Courts on 23 January 2020 of the offence of selling drug not of the quality demanded by the purchaser, which is an offence punishable with imprisonment, contrary to sections 52(1) and 150 of the Public Health and Municipal Services Ordinance, Chapter 132, Laws of Hong Kong.”

Facts of the case

2. The name of the Defendant has been included in the General Register from 30 April 1987 to the present. His name had been included in the Specialist Register under the Specialty of Paediatrics from 7 July 1999 to 1 July 2009.
3. On 9 March 2019, a child patient (“the Patient”), accompanied by her father (“the Father”), consulted the Defendant for measles, mumps, rubella and varicella vaccine (“MMRV”) vaccination. The Father paid HK\$1,200 in advance of the consultation.
4. The Father and the Patient entered into the consultation room and met the Defendant. The Father saw an open box of MMRV vaccine. The Defendant then injected the vaccine on the Patient’s right upper arm. The Defendant recorded the relevant details on the Patient’s immunization card with the Defendant’s signature and clinic chop. After vaccination, the Father requested to see the empty outer box of MMRV to confirm the expiry date and the right vaccine was being administered. The Father then examined the outer box and saw that the batch number of the vaccine branded “Priorix Tetra” was “A71CB233A” and the expiry date was “01-2019” which was expired at the material time. The Father immediately asked the Defendant the reason to inject expired vaccine to the Patient as he would expect that medicine should be suitable for use and within the expiry date. The Defendant apologized to the Father and explained to him that there was no problem but he suggested that the vaccine fee could be refunded to him. The Father refused and left with the Patient’s immunization card and the said empty outer box of MMRV.
5. Later the Father received a signed and chopped letter from the Defendant dated 20 March 2019. The Defendant stated in the letter that he tried to contact the Father but in vain. He had arranged a pediatrician to follow up with the Patient as well as blood test for antibodies of the vaccine. The Defendant wished the Father to follow his instructions for the benefit of the Patient.
6. On 15 March 2019, two pharmacists from the Drug Office of the Department of Health visited the Defendant’s clinic and met the Defendant. Upon inquiry, the Defendant admitted that the Patient visited his clinic for MMRV vaccination on 9 March 2019. He said he was not aware of the expiry date before vaccination.

7. The Defendant was subsequently charged with the offence of “selling drug not of the quality demanded by the purchaser”, contrary to sections 52(1) and 150 of the Public Health and Municipal Services Ordinance, Chapter 132, Laws of Hong Kong.
8. On 23 January 2020, the Defendant pleaded guilty to the said offence in Case No. ESS 032372/2019 before the Eastern Magistrates’ Courts. The Defendant was convicted as charged and fined HK\$8,000.
9. The Defendant subsequently reported his conviction to the Medical Council through his solicitors by a letter dated 29 January 2020.

Findings of the Inquiry Panel

10. It is not disputed that the Defendant was convicted on his own plea in Case No. ESS 032372/2019 on 23 January 2020 of the offence of “selling drug not of the quality demanded by the purchaser”, which is an offence punishable with imprisonment. Accordingly, our disciplinary powers under section 21(1)(a) of the Medical Registration Ordinance (“MRO”) are engaged.
11. Section 21(3) of the MRO expressly provides that:

“Nothing in this section shall be deemed to require an inquiry panel to inquire into the question whether the registered medical practitioner was properly convicted but the panel may consider any record of the case in which such conviction was recorded and any other evidence which may be available and is relevant as showing the nature and gravity of the offence.”
12. We are therefore entitled to take the said conviction as conclusively proven against the Defendant.
13. Accordingly, we find the Defendant guilty of the disciplinary offence as charged against him.

Sentencing

14. The Defendant has one previous disciplinary conviction on 11 November 2020 in respect of the issuance of an attendance record for insurance claim with

diagnosis of Upper Respiratory Tract Infection and consultation date of 1 February 2018 when the patient in that case did not consult him on 1 February 2018. The Defendant's name was ordered to be removed from the General Register for 1 month, to be suspended for a period of 12 months.

15. The offence in the present case was not committed within the suspension period of the 1-month removal order. We shall therefore not activate the suspended removal order. We also consider that the previous disciplinary conviction and today's conviction are two separate matters.
16. In line with our published policy, we shall give credit to the Defendant for his frank admission and full cooperation throughout the disciplinary proceedings. However, given that there is hardly any room for dispute in a disciplinary case involving criminal conviction, the credit to be given to him must necessarily be of a lesser extent than in other cases.
17. We bear in mind that the 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.
18. We are told in mitigation that before this incident, the Defendant's usual practice was, upon being informed by his clinic assistant that a patient had registered at the clinic for receiving injection, to take the vaccine out from the fridge, remove the packaging and prepare the injection before the patient entered the consultation room. When doing so, he would check the vaccine's expiry date. However, this incident happened because the Defendant said that the Father had made a special request to have the injection administered quickly as the Patient was afraid of seeing needles, and as a result the Defendant inadvertently forgot to check the expiry date of the vaccine. It was only when the Father found out from the packaging of the expiry that the Defendant first time realized that the vaccine had expired in January 2019 i.e. for around one to two months.
19. There is no evidence to suggest that the Defendant knew of the expiry of the vaccine yet nevertheless administered it on the Patient. We accept that it was administered inadvertently.
20. We are told that after the incident, the Defendant has taken a number of remedial steps in order to prevent similar mishaps in future. He has now established a

new system of checking the expiry dates of all injectable drugs at his clinic, which includes (a) preparing an Excel table to record the number of injectable drugs purchased and their expiry dates, and that he would double check this table before administering any injection to patients; (b) posting a table on his fridge (at which the injectable drugs are stored) with the details of the drugs and their expiry dates, and he would look at the table before taking a drug out of the fridge for administration on patients; (c) in addition to himself checking the expiry date of the drugs every time they were injected into patients, he would ask his clinic assistants to act as a safety net and check with him; and (d) looking at the packaging of all injections with patients/parents and showing them the expiry date stated on the package before preparing the injection.

21. We must stress that medical practitioners being given the legal authority to supply and/or administer any form of medication on patients must at all times diligently discharge their duties. The consequence of injection of expired medication can be very serious. The Defendant should have long ago put in place a safe system of checking expiry dates of the injectable drugs before administering on patients, which in fact is not something complicated. It is only fortunate that there is no suggestion that the Patient has developed any adverse reaction.
22. We accept that the Defendant has learnt his lesson but we need to ensure that the chance of his repeating the same or similar breach in the future would be low.
23. Taking into consideration the nature and gravity of the case 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 a period of 12 months.

Remarks

24. We are only told that the Defendant has now set up a system for checking injectable drugs. We wish to remind the Defendant that he should also set up a similar safe system for checking oral drugs, if he has not done so.

Dr CHOI Kin, Gabriel
Chairperson of the Inquiry Panel
The Medical Council of Hong Kong