

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr CHEN Yik Yan (曾一言醫生) (Reg. No.: M03131)

Date of hearing: 4 October 2021 (Monday)

Present at the hearing

Council Members/Assessors: Prof. TANG Wai-king, Grace, SBS, JP
(Chairperson of the Inquiry Panel)
Dr CHAN Tin-sang, Augustine
Dr HAU Kai-ching
Mr CHAN Wing-kai
Mr WOO King-hang

Legal Adviser: Mr Stanley NG

Defence Solicitor representing the Defendant: Dr David KAN of
Messrs. Howse Williams

Senior Government Counsel (Acting) representing the Secretary: Miss Cassandra FUNG

1. The amended charge against the Defendant, Dr CHEN Yik Yan, is:

“That on 25 March 2018, he, being a registered medical practitioner, disregarded his professional responsibility to his patient [REDACTED] [REDACTED] (“the Patient”) in that he prescribed “Augmentin” inappropriately to the Patient without proper and/or sufficient examination.

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

Facts of the case

2. The name of the Defendant was at all material times and still is included in the General Register. His name has never been included in the Specialist Register.
3. On 25 March 2018, the complainant Ms WONG [REDACTED] (“Ms WONG”) took her daughter, then 10 years old, to consult the Defendant at his clinic for high fever and upper respiratory tract infection symptoms, which included running nose, cough and sore throat.
4. A “flu rapid test” was performed and the result was negative. The Defendant asked Ms WONG some questions about the Patient’s conditions and assessed the Patient’s throat. The Defendant did not auscultate the Patient’s chest despite being told that the Patient had running nose, cough and sore throat. The Defendant also palpated the Patient’s neck and prescribed antibiotics treatment. During the consultation, the Defendant did not measure the Patient’s weight. The Defendant prescribed, amongst other medicines, Augmentin 375 mg tablet twice a day. Ms WONG showed concern that the dosage was not for children under 12 years old and body weight less than 40 Kg. The Defendant then amended the dosage to Augmentin 156 mg/5ml BD (5 ml per time).
5. After the consultation, Ms WONG still had concern and consulted her family physician who confirmed that Augmentin 156 mg/5ml is usually prescribed to children aged 1 to 2 years old. She therefore called the Defendant’s clinic. A nurse of the Defendant’s clinic told Ms WONG that the Defendant would amend the dosage again and asked her to go to the clinic to change the medicine. The amended dosage was Augmentin 457mg/5ml twice a day as reported in the Secretary expert’s report.
6. By way of a statutory declaration made on 30 April 2019, Ms WONG lodged a complaint against the Defendant with the Medical Council.

Burden and Standard of Proof

7. 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.

8. There is no doubt that the allegation against the Defendant here is a serious one. Indeed, it is always a serious matter to accuse a registered medical practitioner of misconduct in a professional respect. Therefore, we need to look at all the evidence and to consider and determine the amended disciplinary charge against him carefully.

Findings of the Inquiry Panel

9. The Defendant admits the factual particulars of the amended disciplinary charge against him but it remains for us to consider and determine on the evidence whether he has been guilty of misconduct in a professional respect.
10. A consultation consists of history taking, formulation of diagnostic hypotheses, physical examination, putting forward a problem list and a treatment plan. Medication is prescribed according to the treatment plan.
11. The Defendant did not perform chest auscultation despite the Patient had running nose and cough. In our view, if cough was one of the presenting symptoms, auscultation would be needed to exclude lower respiratory tract infection. This was in our view clearly inappropriate.
12. Augmentin was prescribed. According to the Secretary expert's opinion, the dosage for children is calculated based on body weight. An appropriate dosage would involve measurement of the body weight.
13. Regarding the prescription of Augmentin, based on the Secretary expert's opinion, one 375 (250/125) mg tablet consists of 250mg amoxicillin and 125mg clavulanic acid. For adults and children weighing over 40Kg, one tablet may be taken three times a day. For children weighing less than 40Kg, Augmentin 250/125 mg tablet is not recommended. The recommended dosage is 20/5mg/Kg/day to 60/15mg/Kg/day.

14. The Defendant did not measure the weight of the Patient. It was mentioned in the Secretary expert's report that there was no record of the weight and height of the Patient. The Defendant mentioned that he estimated the weight of the Patient to be 50-55Kg. In our view, it was clearly improper for the Defendant not to take exact measurement of the weight in order to prescribe Augmentin to the Patient. The physical examination of the Patient, without measuring the weight, was insufficient.
15. It is stated in section 9.1 of the Code of Professional Conduct (Revised in January 2016) ("the Code") that:

"A doctor may prescribe medicine to a patient only after proper consultation ..."
16. By prescribing Augmentin to the Patient without auscultating her chest and measuring the weight, the Defendant had clearly breached section 9.1 of the Code.
17. In our view, 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

18. The Defendant has two previous disciplinary records back in 1981 and 1986. The first disciplinary record related to the issuance of a post-dated certificate of illness without taking appropriate steps to verify. This record was in our view clinically related. The second disciplinary record related to criminal convictions for possession of certain forged documents and a certain forged die. This record was different in nature to the misconduct in a professional respect in the present case.
19. In line with published policy, we shall give credit to the Defendant for his frank admission and full cooperation throughout these disciplinary proceedings.
20. 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.

21. In the present case, the consultation as a whole, from history taking, physical examination and prescription of medicine, was not up to standard of general practitioners in Hong Kong. Although the Defendant was informed by Ms WONG of her concerns about the dosage of Augmentin, he had not taken adequate steps to provide the right dosage. We have serious concerns about the Defendant's management of the Patient.

22. Having considered the serious nature and gravity of the amended disciplinary charge for which the Defendant was found guilty and what we have heard and read in mitigation, we order that the Defendant 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 on condition that the Defendant shall complete courses, to be pre-approved by the Council Chairman and to the equivalent of 10 CME points, on therapeutics during the suspension period.

Prof. TANG Wai-king, Grace, SBS, JP
Chairperson of the Inquiry Panel
The Medical Council of Hong Kong