香 港 醫 務 委 員 會

The Medical Council of Hong Kong

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr KWOK Shu Ming Daniel (郭樹明醫生) (Reg. No.: M07859)

Date of hearing: 26 March 2019 (Tuesday)

Present at the hearing

Council Members/Assessors:
Prof. LAU Wan-yee, Joseph, SBS
(Chairperson of the Inquiry Panel)
Dr LEE Wai-hung, Danny
Dr YEUNG Chiu-fat, Henry
Mr MUI Cheuk-nang, Kenny
Mr WOO King-hang

Legal Adviser: Mr Edward SHUM

Defence Counsel representing the Defendant: Miss Ann LUI instructed by Messrs. Kennedys

Senior Government Counsel (Acting) representing the Secretary: Ms Carmen SIU

1. The amended charges against the Defendant, Dr KWOK Shu Ming Daniel, are:

First Case (MC13/139)

(a) "That, on or about 15 April 2013, he, being a registered medical practitioner, disregarded his professional responsibility to his patient [redacted] ("the Patient") in that he prescribed Amoxycillin to the Patient when he knew or ought to have known that the Patient was allergic to Penicillin.

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

Second Case (MC13/394)

(b) "That, on or about 5 October 2013, he, being a registered medical practitioner, disregarded his professional responsibility to his patient [redacted] ("the Patient") in that he prescribed Amoxycillin to the Patient when he knew or ought to have known that the Patient was allergic to Amoxycillin.

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

Facts of the case

2. The Defendant's name has been included in the General Register from 19 September 1990 to present. His name had never been included in the Specialist Register.

3. Upon the direction of the Chairperson of the Inquiry Panel, inquiry into the above-mentioned disciplinary charges against the Defendant was consolidated into one pursuant to section 16 of the Medical Practitioners (Registration and Disciplinary Procedure) Regulation.

First Case

4. Briefly stated, [redacted] ("Patient [redacted]") consulted the Defendant at his clinic on 15 April 2013 complaining of sore throat, running nose, cough and rashes on her face and neck. The Defendant made a diagnosis of Upper Respiratory Tract Infection and prescribed Patient [redacted] with, amongst other medicines, Amoxycillin 500 mg qid. for 4 days.

5. There is no dispute that Patient [redacted] had consulted the Defendant on and off since May 2007 and her allergy to penicillin was made known to the Defendant at the first consultation.

6. Amoxycillin is an antibiotic belonging to the penicillin group and it should not be given to any patient who is allergic to penicillin.

7. According to the medical record obtained from Union Hospital, Patient developed skin rashes over her limbs after taking Amoxycillin on 15 April 2013. She first attended the Out-Patient Department of Union Hospital for treatment on 16 April 2013. She was subsequently referred to see a specialist in Rheumatology and she was treated conservatively with medication. Her skin rashes were noted to have subsided by the time when she returned to Union Hospital for follow up on 18 May 2013.

8. Meanwhile, Patient lodged her complaint against the Defendant with the Medical Council.

Second Case

9. Briefly stated, ("Patient ") consulted the Defendant at his clinic on 5 October 2013 complaining of sore throat, stuffy nose and chills. The Defendant made a diagnosis of Upper Respiratory Tract Infection and prescribed Patient with, amongst other medicines, Amoxycillin 500 mg qid. for 4 days.

10. There is no dispute that Patient had consulted the Defendant on and off since May 2007 and her allergy to Amoxycillin was made known to the Defendant during these consultations.

11. According to the A&E Attendance Record kept by Alice Ho Miu Ling Nethersole Hospital, Patient developed skin rashes over her body after taking Amoxycillin on 5 October 2013. She was admitted through the A&E Department for inpatient treatment of allergy with medication. Eventually, her skin rashes subsided and she was discharged home on 7 October 2013.

12. Thereafter, Patient lodged her complaint against the Defendant via a District Councillor with the Medical Council.

Burden and Standard of Proof

13. 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.

14. There is no doubt that each of the allegations 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 each of the disciplinary charges against him separately and carefully.

Findings of the Inquiry Panel

15. The Defendant admits the factual particulars of the amended disciplinary charges against him but it remains for us to consider and determine on the evidence whether he is guilty of misconduct in a professional respect.

First Case

16. The Defendant was fully aware that Patient [redacted] was allergic to penicillin. And yet, the Defendant still prescribed her with Amoxycillin, which should not be taken by patients who are allergic to penicillin.

17. 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.

18. Allergic reaction to drug is not dose-dependent, and can be triggered by even a small dose. Moreover, allergic reaction to drug can be very serious and potentially life-threatening. In a patient with a reported allergy to a particular drug, the risk of having an allergic reaction after taking the same drug again would be high.

19. Prescription of Amoxycillin to Patient ████, whom the Defendant well knew was allergic to penicillin, was inappropriate and unsafe. In our view, if the Defendant had taken adequate note of the Patient ████'s history of allergy, he ought to have considered whether there were safer alternatives than Amoxycillin.

20. 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.

Second Case

21. Likewise, although the Defendant was fully aware that Patient ████ was allergic to Amoxycillin, he still prescribed her with this medicine. Such prescription was not only inappropriate but also unsafe. In our view, if the Defendant had taken adequate note of the Patient ████'s history of allergy, he ought to have considered whether there were safer alternatives than Amoxycillin.

22. For the same reasons that we have stated in respect of the First Case, we are of the view that 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

23. The Defendant has a clear disciplinary record.

24. In line with published policy, we shall give him credit for his frank admission and full cooperation throughout this inquiry.

25. 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.

26. This was a classic case of lack of prudence. We are particularly concerned that the Defendant had failed to take note of his patients' history of drug allergy on two occasions within 6 months.

27. We appreciate that the Defendant is a conscientious and compassionate doctor. We accept that the Defendant had learnt his lesson. However, we need to ensure that he would not commit the same or similar misconduct in the future.

28. In this connection, we are told in mitigation that the Defendant had since the incident taken additional precautionary measures to avoid similar mishap from happening again. New patients would be asked both at the reception desk and during consultation for any known drug allergy. In addition to using a different colour consultation card, a red chop bearing the words "Drug Allergy" would be stamped on the top of every page of the consultation record for any patient who has a history of drug allergy. The Defendant also inputs patient's drug allergy into the computer system of his clinic to further avoid omission of such data in the patient's hard copy records. Furthermore, all medicines ready to be dispensed would be cross-checked by the Defendant and another clinical assistant before being handed to the patient.

29. Taking into consideration the nature and gravity of these two cases and what we have heard and read in mitigation, we shall make a global order that the Defendant's name be removed from the General Register for a period of 2 months. We further order that the removal order be suspended for 12 months, subject to the condition that the Defendant shall complete during the suspension period satisfactory peer audit by a Practice Monitor to be appointed by the Council with the following terms:

(a) the Practice Monitor shall conduct random audit of the Defendant's practice with particular regard to the prescription and dispensation of drugs;

(b) the peer audit should be conducted without prior notice to the Defendant;

(c) the peer audit should be conducted at least once every 6 months during the suspension period;

(d) during the peer audit, the Practice Monitor should be given unrestricted access to all parts of the Defendant's clinic and the relevant records which in the Practice Monitor's opinion is necessary for proper discharge of his duty;

(e) the Practice Monitor shall report directly to the Chairman of the Council the finding of his peer audit. Where any defects are detected, such defects should be reported to the Chairman of the Council as soon as practicable;

(f) in the event that the Defendant does not engage in active practice at any time during the suspension period, unless otherwise ordered by the Council, the peer audit shall automatically extend until the completion of 12-month suspension period; and

(g) in case of change of Practice Monitor at any time before the end of the 12-month suspension period, unless otherwise ordered by the Council, the peer audit shall automatically extend until another Practice Monitor is appointed to complete the remaining period of peer audit.

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