

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr LAM Yik Tsz (林亦子醫生) (Reg. No.: M14844)

Date of hearing: 28 May 2019 (Tuesday)

Present at the hearing

Council Members/Assessors: Prof. LAU Wan-ye, Joseph, SBS
(Chairperson of the Inquiry Panel)
Dr HO Hung-kwong, Duncan
Prof. CHAN Anthony Tak-cheung
Mr MUI Cheuk-nang, Kenny
Mr WONG Hin-wing

Legal Adviser: Mr Edward SHUM

Defence Solicitor representing the Defendant: Mr HO Chun Yan Albert of
Messrs. Ho Tse Wai & Partners

Senior Government Counsel representing the Secretary: Miss Vienne LUK

1. The charge against the Defendant, Dr LAM Yik Tsz, is:

“That, on or about 17 February 2014, she, being a registered medical practitioner, disregarded her professional responsibility to her patient [REDACTED] (“the Patient”), an infant of about one year old, in that she injected to the Patient the “Priorix-Tetra” vaccine when she knew or ought to have known that the expiry date of the said vaccine on the medicine box had been tampered with and/or was originally marked as “01-2014”.

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

Facts of the case

2. The name of the Defendant has been included in the General Register from 7 July 2005 to present. Her name has never been included in the Specialist Register.
3. Briefly stated, the Patient was brought by her mother to the Defendant's clinic on 17 February 2014 to receive immunization. There is no dispute that the Defendant gave the Patient an injection of "Priorix-Tetra" vaccine. Priorix-Tetra is the trade name of a multiple vaccine for measles, mumps, rubella and varicella ("4-in-1 vaccine") manufactured by GlaxoSmithKline ("GSK"). The Defendant also wrote down on the Patient's immunization record the lot number of the subject 4-in-1 vaccine before giving the medicine box to the Patient's mother.
4. According to the Patient's mother, whose evidence on this point is not challenged by the Defendant, after she and the Patient returned home, she noticed that the expiry date printed on the medicine box of the subject 4-in-1 vaccine had been tampered with. A handwritten mark was added on top of the first numeral "1" in the printed expiry date of "01-2014" to make it look like "07-2014". Concerned that the subject 4-in-1 vaccine might have expired, the Patient's mother made an enquiry with GSK on 18 February 2014 and was told that the correct expiry date of the subject 4-in-1 vaccine should be 01-2014.
5. The Patient's mother also reported the matter to the Department of Health. With the consent of the Patient's mother, the Department of Health then reported the matter to the Police for investigation. Subsequently, the Defendant's clinic assistant, one Ms TO [REDACTED] ("Ms TO"), was brought back to Tuen Mun Police Station for investigation in the evening of 4 April 2014.
6. In her cautioned statement to the Police, Ms TO admitted that she had swop the medicine box of the subject 4-in-1 vaccine with the one from a different lot. However, Ms TO had no idea as to how and who added the handwritten mark on top of the first numeral "1" in the printed expiry date of the subject 4-in-1 vaccine.

7. According to the cautioned statement of Ms TO, the Defendant's clinic had 2 different lots of 4-in-1 vaccine. The lot with the expiry date of 01-2014 was directly supplied by GSK to the Defendant. The other lot with the expiry date of 09-2014 actually belonged to another company and a label of that company was put on every medicine box. And the Defendant would give the medicine box to every patient referred by that company after administering the 4-in-1 vaccine.
8. Ms TO also told the Police in her cautioned statement that sometime in early November 2013, she noticed that 3 doses of the 4-in-1 vaccine with expiry date of 01-2014 were left unused. Initially, Ms TO tried to exchange them for ones with a later expiry date but in vain because GSK was running out of stock. To avoid wastage and without telling the Defendant, Ms TO swop them with the ones belonging to another company so that they could be used up first. And the subject 4-in-1 vaccine was the last one from the lot with the expiry date of 09-2014.
9. Eventually, no one was charged after police investigation. Meanwhile, the Patient's mother 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 her 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 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 disciplinary charge against her carefully.

Findings of the Inquiry Panel

12. We wish to emphasize at the outset that the Secretary is not trying to hold the Defendant responsible for the act of Ms TO, her clinic assistant, or indeed anybody else.
13. The Defendant admitted the factual particulars of the disciplinary charge against her. However, it still remains for us to decide on all the evidence whether she is guilty of misconduct in a professional respect.
14. There is no dispute that the lot number printed on the medicine box that the Defendant gave to the Patient's mother was the same as the one written by the Defendant on the Patient's immunization record. In response to the enquiry from the Secretary, GSK also confirmed that the expiry date of the subject 4-in-1 vaccine should be on 31 January 2014.
15. In her submission to the Preliminary Investigation Committee ("PIC") dated 29 December 2016, the Defendant admitted that:

"I did administer vaccine Priorix-tetra to a baby (name [REDACTED]) by myself on February 17, 2014. In all my occasions of administering vaccination, I check the expiry date and write down the lot number of that specific vaccine on vaccination record sheet issued by the government or on my clinical record (if the recipient did not bring his/her vaccination record sheet). For this occasion, I did the same. But unfortunately, I did check the expiry date on the packaging box and copy the lot number of the packaging box too. I did not notice any problem with the procedures at that time. I gave the original packing box of the vaccine to the recipient as usual..."
16. The Defendant also called Ms TO to give oral evidence. But, in our view, the evidence of Ms TO did not go to the real question in this case. Regardless of whether Ms TO was telling the truth, the real question still is whether the Defendant had failed to discharge her own professional responsibility to verify the expiry date of the subject 4-in-1 vaccine before administering it to the Patient.
17. But then again, we bear in mind that it is the unchallenged evidence of Ms TO that the actual expiry date of the subject 4-in-1 vaccine was 09-2014.

18. It is not entirely clear to us how and by whom a handwritten mark was added on top of the first numeral “1” in the printed expiry date of “01-2014” to make it look like “07-2014”. However, we accept the evidence of the Patient’s mother that she had never tampered with the medicine box after the Defendant gave it to her.
19. We reiterate that we are not holding the Defendant responsible for the act of Ms TO or indeed anybody else. In our view, the real point is that since the Defendant did not know on 17 February 2014 that Ms TO had swop the medicine box of the subject 4-in-1 vaccine with the one belonging to another company, if the handwritten mark was there before the Defendant gave it to the Patient, she ought not in our view have proceeded without first verifying its actual expiry date.
20. On the other hand, if the handwritten mark was not there before the Defendant gave the subject 4-in-1 vaccine to the Patient, it should be obvious to her from reading the expiry date printed on the medicine box that the subject 4-in-1 vaccine had already expired.
21. For these reasons, regardless of how and by whom the handwritten mark was added on top of the first numeral “1” in the printed expiry date of “01-2014” to make it look like “07-2014”, we are firmly of the view that the Defendant had failed to discharge her own responsibility to verify the expiry date of the 4-in-1 vaccine before administering it to the Patient. This was particularly true when according to Ms TO the medicine box had already been opened.
22. We are satisfied on the evidence before us that the Defendant’s conduct had fallen below the standards expected of registered medical practitioners in Hong Kong. Accordingly, we also find the Defendant guilty of misconduct in a professional respect as charged.

Sentencing

23. The Defendant has a clear disciplinary record.
24. In line with our published policy, we shall give the Defendant credit for her frank admission and full cooperation throughout these disciplinary proceedings.

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 maintaining its professionalism and upholding its good reputation.
26. We accept that there was no evidence that the Patient had suffered any harm after receiving the subject 4-in-1 vaccine. However, the anxiety that had been caused to the Patient's parents should not be overlooked.
27. We are told in mitigation that the Defendant has since the incident taken remedial measures to prevent the mishap from happening again. In addition to checking the expiry date of all vaccines regularly, no one besides registered medical practitioners in the Defendant's clinic would be allowed to open the medicine box of any vaccine. The Defendant also issued guidelines on safe handling and dispensation of medicine for her clinic assistants to follow.
28. We accept that the Defendant has learnt a hard lesson and we believe that the chance of her committing the same or similar breach in future is low.
29. Taking into consideration the nature and gravity of this case and what we have heard and read in mitigation, we order that a warning letter be issued to the Defendant. We further order that our order be gazetted.

Prof. LAU Wan-ye, Joseph, SBS
Chairperson of the Inquiry Panel
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