

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

---

**DISCIPLINARY INQUIRY**  
**MEDICAL REGISTRATION ORDINANCE, CAP. 161**

Defendant: Dr LEUNG Wai Ki Kenneth (梁偉基醫生) (Reg. No.: M08008)

Date of hearing: 26 August 2020 (Wednesday)

Present at the hearing

Council Members/Assessors: Dr CHOI Kin, Gabriel  
(Chairperson of the Inquiry Panel)  
Dr YEUNG Hip-wo, Victor  
Dr MOK Pik-tim, Francis  
Mrs BIRCH LEE Suk-yee, Sandra, GBS, JP  
Ms LEE Hong-yee, Connie

Legal Adviser: Mr Edward SHUM

Defence Solicitor representing the Defendant: Mr Chris HOWSE of  
Messrs. Howse Williams

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

1. The charges against the Defendant, Dr LEUNG Wai Ki Kenneth, are:

*“That on or about 10 March 2016, he, being a registered medical practitioner, disregarded his professional responsibility to his patient (“the neonate Patient”), a 21-day old male neonate, in that, he:*

- (i) failed to perform adequate assessment before committing on the diagnosis of “mild flu”;*
- (ii) failed to properly and/or adequately advise the parents about the possible quick deterioration in neonatal diseases;*

- (iii) *inappropriately and/or improperly prescribe Dextromethorphan to the neonate Patient;*
- (iv) *prescribed antihistamines, nasal decongestants, cough suppressants and/or expectorants in the treatment of cough in the neonate Patient when the efficacy of these medications, individually or cumulatively, were not established;*
- (v) *inappropriately and/or improperly gave multiple medications of the same class to the neonate Patient.*

*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 has been included in the General Register from 24 January 1991 to the present. His name has never been included in the Specialist Register.
3. Briefly stated, on 10 March 2016, the Patient, who was then 21 days old, was brought by his parents to consult the Defendant for cough and stuffy nose.
4. According to the Defendant’s statement to the Preliminary Investigation Committee dated 5 March 2019:
  - “5. *On 10 March 2016, the neonate Patient was brought to me for the symptoms of cough and stuffy nose. He had no fever. There was no feeding difficulty. He had no G-6-P-D deficiency. He was well all along until 2-3 days before consultation.*
  - 6. *On clinical examination, he was afebrile... He was well nourished, alert and not dehydrated. There was no cyanosis or respiratory distress. He had stuffy blocked nose and the nasal secretion was clear. On nostril inspection, the anterior nostrils were normal. His tympanic membranes were not red or bulging. The throat was not congested and there was no exudate. On auscultation of his chest, air-entry was satisfactory and breath sounds were clear except some nasal sound transmitted due to his stuffy nose...*

7. *The clinical picture was that of upper respiratory tract infection (URTI). Influenza was less likely since there was no fever and the baby was alert and playful. There was no sign of bacterial pharyngitis, tonsillitis or otitis: the eardrums were not red, retracted or bulging, his throat was normal. Clinically he did not have any sign of chest infection or pneumonia, as the chest was clear with good air-entry and no crepitation. My diagnosis at that moment was Mild Cold, meaning a URTI (Upper respiratory tract infection). I found no indications to give antibiotics. Microbiology tests, virology tests and Chest X-ray were not indicated at that moment yet.”*
5. There is no dispute that the Defendant then prescribed and dispensed 2 bottles of medications to the Patient. One of the medications, namely, a cough syrup containing Dextromethorphan 2.5mg per dose of 2.5 ml.
6. There is also no dispute that accompanied by his parents, the Patient returned to the Defendant’s clinic on 14 March 2016 but left later without seeing the Defendant.
7. According to the Patient’s father (“the Complainant”), the Patient had persistent cough, decrease in appetite and 2 episodes of cyanosis after coughing following the consultation with the Defendant on 10 March 2016. The Complainant took the Patient to see another paediatric specialist and was told that the cough syrup prescribed by the Defendant should not be given to the Patient. The Complainant was further advised to take the Patient to the Accident & Emergency Department in case his condition got worse.
8. The Patient was admitted through the Accident & Emergency Department to the Paediatric Ward of Prince of Wales Hospital (“PWH”) in the early hours of 15 March 2016. According to the medical records obtained from PWH, the Patient was subsequently diagnosed with “*whooping cough due to Bordetella pertussis*”. The Patient was treated and eventually discharged home on 26 March 2016.
9. Thereafter, the Complainant 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 Secretary 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 allegations made against the Defendant here are serious ones. 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 each of the disciplinary charges against him separately and carefully.

## **Findings of the Inquiry Panel**

12. The Legal Officer informed us at the beginning of the inquiry that the Secretary would offer no evidence against the Defendant in respect of disciplinary charges (i), (iv) and (v). Bearing in mind that the burden of proof is always on the Secretary, we find the Defendant not guilty of disciplinary charges (i), (iv) and (v).
13. The Defendant admitted the factual particulars of disciplinary charges (ii) and (iii) and indicated through his solicitor that he was not going to contest the issue of professional misconduct. However, it remains for us to consider and determine on the evidence before us whether the Defendant has been guilty of misconduct in a professional respect.
14. Expert witnesses on both sides agreed and we accept that since the Patient was a neonate and his condition could change drastically, the Defendant should advise the Patient's parents to look out for "red flags" in the subsequent course of his illness. In particular, the Patient should be taken to see a doctor immediately if his condition deteriorated or his symptoms persisted.
15. By failing to give proper and adequate advice to the Patient's parents about the possible quick deterioration in neonatal diseases, the Defendant had by his conduct fallen below the standards expected of registered medical practitioners in Hong Kong. Accordingly, we find him guilty of professional misconduct as per disciplinary charge (ii).

16. Turning to disciplinary charge (iii), our attention was drawn by Dr LAM, the Secretary's expert witness, to a letter issued by the Pharmaceuticals Registration Section of the Department of Health on 21 July 2011. By this letter, healthcare professionals in Hong Kong was reminded of the decision of the Registration Committee of the Pharmacy and Poisons Board in April 2009 that *"pharmaceutical products for the treatment of cough and cold should no longer be indicated for the use of children under 6 years of age."*
17. Indeed, Dr TAM, the defence expert witness, also agreed that a doctor *"should exercise caution in prescribing a cough suppressant to children below 2 years of age, and especially to infants as such drugs may cause side effects easily."*
18. It is clearly stated in paragraph 9.1 of the Code of Professional Conduct (2016 edition) that:
- "A doctor may prescribe medicine to a patient only after proper consultation and only if drug treatment is appropriate."*
19. Through his solicitor, the Defendant admitted that he inappropriately and/or improperly prescribed Dextromethorphan to the neonate Patient because he failed to consider whether there were safer alternatives than Dextromethorphan. Indeed, the Legal Officer never challenged the Defendant's clinical judgment on the need for drug treatment of the Patient's cough symptom.
20. When being asked by us, Dr LAM accepted that the Defendant's prescription of Dextromethorphan was an "off-label" use of the drug. Although Dr LAM did not recommend such "off-label" use for treatment of symptom of cough, he acknowledged that there were some medical practitioners in private practice in Hong Kong who would prescribe Dextromethorphan to neonatal patients for treatment of symptom of cough.
21. We need to emphasize that we are not endorsing the practice of "off-label" use of Dextromethorphan in neonatal patients. Indeed, expert witnesses on both sides agreed and we accept that neither the efficacy nor dosage guide of Dextromethorphan on neonatal patients had been established in the medical literature. However, the real point is that the burden of proof is on the Secretary to prove on the evidence before us that "off-label" use of Dextromethorphan on the Patient was inappropriate and/or improper in the circumstances of this case.

22. Whilst “off-label” use of Dextromethorphan in neonatal patients might not be generally recommended by the medical profession, Dr LAM agreed and we accept that such “off-label” use is not uncommon. We are not satisfied on the evidence before us that the Defendant’s conduct in the circumstances of this case had fallen below the standards expected of registered medical practitioners in Hong Kong. Accordingly, we find him not guilty of disciplinary charge (iii).

### **Sentencing**

23. The Defendant has a clear disciplinary record.
24. In accordance with our published policy, we shall give him credit in sentencing for admitting the factual particulars of the disciplinary charges against him.
25. We 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 the public confidence in the medical profession by upholding its high standards and good reputation.
26. We accept that the Defendant has learnt his lesson. Through his solicitor, the Defendant also told us that realizing his limitation as a general practitioner, he had stopped seeing babies and young children below the age of 4 since March 2019; and he would refer this group of patients to see a paediatrician.
27. Having considered the nature and gravity of the disciplinary charge for which the Defendant was found guilty 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 published in the Gazette.

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