

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr LUK Yau Hei Dannis (陸有喜醫生) (Reg. No.: M04726)

Date of hearing: 16 March 2020 (Monday)

Present at the hearing

Council Members/Assessors: Dr CHOI Kin, Gabriel
(Chairperson of the Inquiry Panel)
Dr LEE Wai-hung, Danny
Prof. WONG Wing-kin, Gary
Mrs BIRCH LEE Suk-ye, Sandra, GBS, JP
Ms CHUI Hoi-ye, Heidi

Legal Adviser: Mr Edward SHUM

Defence Solicitor representing the Defendant: Mr Warren SE-TO of
Messrs. Mayer Brown

Senior Government Counsel representing the Secretary: Miss Carmen POON

1. The amended charge against the Defendant, Dr LUK Yau Hei Dannis, is:

“That on or about 11 May 2016, he, being a registered medical practitioner, disregarded his professional responsibility to his patient [REDACTED] (“the Patient”), in that he prescribed Cefadroxil to the Patient when he knew or ought to have known that the Patient was allergic to Cefalexin.

In relation to the facts alleged, 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 26 July 1982 to present. His name has never been included in the Specialist Register.
3. The Defendant admits the factual particulars of the disciplinary charge against him.
4. Briefly stated, the Patient consulted the Defendant on 11 May 2016 for sore throat, cough and hoarseness of voice. During the consultation, the Defendant prescribed various drugs including Cefadroxil 500mg tablets to the Patient.
5. Cefadroxil and Cefalexin are antibiotic belonging to the same group and they should not be given to any patient who is allergic to Cephalosporin.
6. It is not disputed that the Defendant ought to have been aware that the Patient had a documented history of drug allergy to, amongst others, Cefalexin. The Patient's history of drug allergy was documented by the Defendant on the cover page of his clinical records for the Patient when she showed him during a previous consultation the Drug Allergy Card issued to her by the Hospital Authority.
7. According to the Patient, whose evidence is unchallenged by the Defendant, she developed rashes and shortness of breath after taking the drugs prescribed by the Defendant, including the Cefadroxil tablet.
8. The Patient returned to see the Defendant in the morning of 12 May 2016 complaining of allergic reactions after taking the drugs prescribed by the Defendant. The Defendant advised the Patient to discontinue the current medications. The Defendant also prescribed to the Patient Periacin 5mg, an antihistamine, for her rashes; and Ventolin 2 mg as required in case of dyspnoea.
9. The Patient subsequently attended the Accident & Emergency Department ("AED") of the Tuen Mun Hospital for treatment in the afternoon of 12 May 2016. According to the Patient, she brought along with her all the drugs prescribed by the Defendant and showed them to the AED medical officer. A diagnosis of drug allergy was made and the Patient was treated with anti-allergy medications.

10. Thereafter, the Patient lodged this complaint against the Defendant with the Medical Council.

Burden and Standard of Proof

11. 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.
12. 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 him carefully.

Findings of the Inquiry Panel

13. The Defendant admits the factual particulars of the disciplinary charge against him but it remains for us to consider and determine on the evidence whether he is guilty of misconduct in a professional respect.
14. It is not disputed that the Defendant ought to have known that the Patient was allergic to Cefalexin. Nonetheless, the Defendant still prescribed her with Cefadroxil tablets, which should not be taken by patients who are allergic to Cephalosporin.
15. 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.

16. Allergic reaction to drug is not necessarily dose-dependent, and can be triggered by even a small dose. Previous exposure without incident does not mean it is completely clear, a drug allergy can happen at any time. Moreover, allergic reaction to drug can be very serious and potentially life-threatening.
17. Prescription of Cefadroxil tablets to the Patient, whom the Defendant ought to have known was allergic to Cephalosporin, was inappropriate and unsafe.
18. Although not a charge that the Defendant is facing, he ought to have known that several other drugs, namely, Nofagma tablets, Hyphylline 50mg and Ofloxal Cap tablets, that he prescribed to the Patient were either of the same classes of drugs listed in the Drug Allergy Card or known to have caused rashes. This illustrated that the Defendant had ignored the Patient's history of drug allergy. In our view, if the Defendant had taken adequate note of the Patient's history of drug allergy, he ought to have considered whether there were safer alternatives.
19. For these reasons, 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.

Sentencing

20. The Defendant has a clear disciplinary record.
21. In line with published policy, we shall give him credit for his frank admission and full cooperation throughout this inquiry.
22. 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 public confidence in the medical profession by upholding its high standards and good reputation.
23. 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. In this connection, although not a charge that the Defendant is facing, we find his medical records had poor legibility and lack of essential details.

24. In this connection, we are told in mitigation that the Defendant has since the incident taken a number of remedial measures. In addition to instructing his clinic assistants to ask new patients and note down on their medical record cards in red details of allergy to any drugs or food, the Defendant would review any information on allergy entered by his clinic assistants and double check with the patients when he saw them. For returning patients, the Defendant would review details of any allergy at the beginning of every consultation and re-write such allergies next to the date stamp for that consultation to act as a reminder. The Defendant would check the prescriptions against the patient's drug allergy history and his clinic assistants would double check before dispensation.
25. Taking into consideration the nature and gravity of this 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 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 safe prescription of drugs and medical record keeping during the suspension period.

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