

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr SZETO King Ho (司徒敬豪醫生) (Reg. No.: M11217)

Date of hearing: 25 July 2022 (Monday)

Present at the hearing

Council Members/Assessors: Prof. TANG Wai-king, Grace, SBS, JP
(Chairperson of the Inquiry Panel)
Dr LEUNG Chi-chiu
Prof. KONG Pik-shan, Alice
Mr WONG Hin-wing, Simon, MH
Ms NG Ka-man, Rendy

Legal Adviser: Mr Edward SHUM

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

Government Counsel representing the Secretary: Miss Katrina CHAN

1. The amended charges against the Defendant, Dr SZETO King Ho, are:

“That, he, being a registered medical practitioner -

(a) in or about November 2017, he imported, or caused to be imported, 50 syringes of Gardasil 9 vaccine to Hong Kong without having obtained proper import licence(s); and/or

(b) in or about August 2019, he sanctioned, acquiesced in, or failed to take adequate steps to prevent, the possession of 6 syringes of

unregistered Gardasil 9 vaccine at the premises of a medical centre, known as “Hong Kong Emergency Medicine Centre Limited (香港急症中心有限公司)”.

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 31 August 1996 to the present. His name has been included in the Specialist Register under the Specialty of Emergency Medicine since 30 August 2010.
3. Briefly stated, the Secretary of the Medical Council (the “Council”) received on 24 December 2020 a letter from the Customs & Excise Department (“C&ED”) informing the Council that their investigation revealed that the Defendant was involved in importation of pharmaceutical products without import licence.
4. According to C&ED, on 1 November 2017, C&ED Officers examined a consignment of 50 syringes of Gardasil 9 vaccine (the “Gardasil 9 Vaccine”), which now forms the subject of the disciplinary charge (a) against the Defendant, and they found out that the consignment was delivered from Lithuania to Hong Kong by air without proper import licence. The consignee stated in the airway bill and the buyer shown on the attached invoice was one “Doctor Szeto”.
5. There is no dispute that the said consignee / buyer was in fact the Defendant. It is also undisputed that Gardasil 9 Vaccine was at material times registered as a pharmaceutical product in Hong Kong under the name of Merck Sharp & Dohme (Asia) Ltd.
6. After the said 50 syringes of Gardasil 9 Vaccine were seized, the Defendant provided explanation letters to C&ED claiming that their importation was for demonstration purpose and they were shipped before an import licence was obtained. Subsequent investigation by C&ED further revealed that the Defendant had via a company submitted to the Department of Health (“DH”) an application of import licence for 200 boxes of Gardasil 9 Vaccine on 18 October 2017.

7. Eventually, no criminal charge was laid against the Defendant but the said 50 syringes of Gardasil 9 Vaccine were forfeited by C&ED.
8. Then on 22 August 2019, officers from C&ED and DH conducted a joint operation at a medical centre known as Hong Kong Emergency Medicine Centre Limited (香港急症中心有限公司)” and they found 6 syringes of Gardasil 9 Vaccine on the premises. Representative from Merck Sharp & Dohme (Asia) Ltd. confirmed on the spot that the said 6 syringes of Gardasil 9 Vaccine were not for Hong Kong market. Officers from DH also confirmed that they were unregistered pharmaceutical products.
9. There is no dispute that the Defendant was at all material times the sole director of Hong Kong Emergency Medicine Centre Limited.
10. Eventually, no criminal charge was laid against the Defendant but the said 6 syringes of Gardasil 9 Vaccine were forfeited by C&ED.

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 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 the disciplinary charges against him separately and carefully.

Findings of the Inquiry Panel

13. The Defendant admits the factual particulars of disciplinary charges (a) and (b) against him. It remains however for us to consider all the evidence and determine whether the Defendant has been guilty of misconduct in a professional respect.

14. Importation of pharmaceutical products without proper import licence(s) is a serious matter. This is particularly true when the importation was done by a registered medical practitioner.
15. Regardless of the purpose for which the said 50 syringes of Gardasil 9 Vaccine were imported into Hong Kong, this should never be done without import licence. In our view, the Defendant ought to make sure that the consignor would not deliver the consignment from Lithuania to Hong Kong before proper import licence had been obtained from DH.
16. By sanctioning, acquiescing in and/or failing to take adequate steps to prevent the said importation of the 50 syringes of Gardasil 9 Vaccine, the Defendant had in our view by his conduct fallen below the standards expected of registered medical practitioners in Hong Kong. Accordingly, we find the Defendant guilty of professional misconduct as per disciplinary charge (a).
17. Registered medical practitioners in Hong Kong have the privilege of possessing pharmaceutical products. Coupled with this privilege is the personal responsibility to take all reasonable care and exercise all due diligence in ensuring that none of the pharmaceutical products that they possess would be unregistered.
18. We agree with the Legal Officer that registration of pharmaceutical products under the Pharmacy & Poisons Regulations is specific for the holder of a valid certificate of registration. It follows that parallel import of the said Gardasil 9 Vaccine (which were not manufactured for the Hong Kong market) would still be regarded as importation of unregistered pharmaceutical products under the law.
19. We acknowledge that there is nothing in the evidence about the quality and condition of the seized Gardasil 9 Vaccine. But then again, the real point is that failure to obtain proper licence from DH before importation would jeopardize the monitoring system of pharmaceutical products by public officers in Hong Kong.
20. By sanctioning, acquiescing in and/or failing to take adequate steps to prevent the possession of the said 6 syringes of unregistered Gardasil 9 Vaccine at the premises of Hong Kong Emergency Medicine Centre Limited, the Defendant had in our view by his conduct fallen below the standards expected of registered

medical practitioners in Hong Kong. Accordingly, we also find the Defendant guilty of professional misconduct as per disciplinary charge (b).

Sentencing

21. The Defendant has a clear disciplinary record.
22. In accordance with our published policy, we shall give the Defendant credit in sentencing for his frank admission and full cooperation throughout these disciplinary proceedings.
23. 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.
24. Taking into consideration the nature and gravity of this case and what we have heard and read in mitigation, we order that:
 - (1) in respect of disciplinary charge (a), the name of the Defendant be removed from the General Register for a period of 1 month;
 - (2) in respect of disciplinary charge (b), the name of the Defendant be removed from the General Register for a period of 1 month; and
 - (3) operation of the said removal orders be suspended for a period of 12 months.

Remark

25. The name of the Defendant is included in the Specialist Register under the Specialty of Emergency Medicine. It is for the Education and Accreditation Committee to consider whether any action should be taken in respect of his specialist registration.

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