

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

---

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

Defendant: Dr TSUI Hing Sing Robert (徐興盛醫生) (Reg. No.: M05533)

Date of hearing: 14 July 2020 (Tuesday)

Present at the hearing

Council Members/Assessors: Prof. LAU Wan-ye, Joseph, SBS  
(Chairperson of the Inquiry Panel)  
Dr HO Hung-kwong, Duncan  
Dr CHIU Chi-fai  
Mr LAM Chi-yau  
Mr WONG Hin-wing

Legal Adviser: Mr Stanley NG

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 TSUI Hing Sing Robert, is:

*“That on divers dates from August 2012 to November 2013, he, being a registered medical practitioner, disregarded his professional responsibility to his patient (“the Patient”) in that he prescribed Synbetamine tablets to the Patient without advising her on the nature and the possible side effects (other than drowsiness) of the said tablets.*

*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 1 November 1984 to the present. His name has never been included in the Specialist Register.
3. The Patient consulted the Defendant at his clinic from 3 February 2012 to 18 November 2013. The Patient had a history of allergic rhinitis and taking Trittico for anxiety disorder and she had no known history of drug allergy.
4. On 15 occasions from 14 August 2012 to 18 November 2013, the Defendant prescribed Synbetamine tablets to the Patient. The Defendant had diagnosed the Patient to have upper respiratory infection, rhinitis, bronchitis or acute on chronic rhinosinusitis.
5. The Patient had developed headache, swollen face and serious skin problems after taking the Synbetamine tablets.
6. By a letter dated 10 December 2013, the Patient lodged this complaint against the Defendant to the Medical Council.

### **Burden and Standard of Proof**

7. 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.
8. There is no doubt that the allegation made against the Defendant here is a serious one. 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 the amended disciplinary charge against him carefully.

## **Findings of the Inquiry Panel**

9. We gratefully adopt as our guiding principles the following statements of the law as expounded in *Montgomery v Lanarkshire Health Board* [2015] UKSC 11:

*“87. ... An adult person of sound mind is entitled to decide which, if any, of the available forms of treatment to undergo, and her consent must be obtained before treatment interfering with her bodily integrity is undertaken. The doctor is therefore under a duty to take reasonable care to ensure that the patient is aware of any material risks involved in any recommended treatment, and of any reasonable alternative or variant treatments. The test of materiality is whether, in the circumstances of the particular case, a reasonable person in the patient's position would be likely to attach significance to the risk, or the doctor is or should reasonably be aware that the particular patient would be likely to attach significance to it.*

...

*90. ... the doctor's advisory role involves dialogue, the aim of which is to ensure that the patient understands the seriousness of her condition, and the anticipated benefits and risks of the proposed treatment and any reasonable alternatives, so that she is then in a position to make an informed decision. This role will only be performed effectively if the information provided is comprehensible ...”*

10. Although the judgment in *Montgomery v Lanarkshire Health Board* was handed down on 11 March 2015, the UK Supreme Court was in our view stating what the law has always been.
11. Further, paragraph 9.6 of the Code of Professional Conduct of the Medical Council reads “[w]here a drug is commonly known to have serious side effects, the doctor has the responsibility to properly explain the side effects to the patient before prescribing the drug.”
12. We accept that the development of side effects such as headache, swollen face and skin problems are material risks in consequence of taking the Synbetamine tablets which contain steroid. These side effects are serious. In our view, when deciding whether to take Synbetamine tablets, a reasonable person in the position of the Patient would no doubt attach significance to these risks. It was therefore incumbent upon the Defendant to advise the Patient of these risks so that the latter could make an informed decision.

13. The Defendant admits that he did not explain to the Patient that the Synbetamine tablets contained steroid. He also accepts that he had only warned the Patient that the Synbetamine tablets had the potential risk of causing drowsiness.
14. We are therefore satisfied on the evidence that the Defendant had prescribed Synbetamine tablets to the Patient without advising her on the nature and the possible side effects (other than drowsiness) of the said tablets.
15. In our view, the Defendant's conduct had fallen below the standards expected of registered medical practitioners in Hong Kong. Accordingly, we find him guilty of misconduct in a professional respect as charged.

### **Sentencing**

16. The Defendant has a clear disciplinary record.
17. The Defendant admits the factual particulars of the disciplinary charge. In line with our published policy, we shall give him credit in sentencing for his admission and full cooperation before us today.
18. We bear in mind that the primary purpose of 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.
19. We are told in mitigation that the Defendant has taken various remedial measures to ensure that informed consent be obtained from patients whenever any drug containing steroid is prescribed.
20. The Defendant's solicitor submits that the Defendant at the time believed that the dosage of steroid prescribed to the Patient was low, and therefore he believed the risks of side effects were low. We must emphasize that a patient not knowing that he has been prescribed by a doctor of drugs containing steroid, albeit that the dosage is low, if he is being prescribed by subsequent doctors, not knowing that drugs containing steroid had previously been prescribed to the patient, of drugs containing steroid, the cumulative side effect might be very serious. We therefore do not accept the submission that just because the dosage of steroid is low, the patient needs not be informed.

21. This case involves a long period of prescription of steroid over 15 occasions. In view of the serious side effects, there was no reasonable explanation of not informing the Patient.
  
22. 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 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 containing steroid;
  - (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 the 12-months suspension period; and

- (g) in case of change of Practice Monitor at any time before the end of the 12-months 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-ye, Joseph, SBS  
Chairperson of the Inquiry Panel  
The Medical Council of Hong Kong