

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr HAU Kwun Cheung (formerly registered as Dr HAU Ka Lam)
侯鈞翔醫生(先前註冊為侯嘉林醫生) (Registration no : M09291)

Date of hearing: 23 February 2016

Present at the hearing

Council Members/Assessors: Prof. LAU Wan-ye, Joseph, SBS (Chairman)

Dr CHOW Pak-chin, JP

Dr HO Pak-leung

Miss CHAU Man-ki, Mabel, MH

Prof. CHAN Tak-cheung, Anthony

Dr TUNG Yuk, Stewart, JP

Legal Adviser: Mr Edward SHUM

Defence Solicitor representing the Defendant: Ms Catherine YEUNG of Messrs. Mayer
Brown JSM

Government Counsel representing the Secretary: Miss Vienne LUK

1. The charge(s) against the Defendant, Dr HAU Kwun Cheung (formerly registered as Dr HAU Ka Lam), is :

“That in or about March and April 2012, he, being a registered medical practitioner, disregarded his professional responsibility to his patient [REDACTED] (“the Patient”) in that he injected and/or tried to inject into the Patient the medicines “Enbrel 50 mg” and/or “Enbrel 25 mg” which have expired since October 2010 and October 2009 respectively.

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

Facts of the case

2. The Defendant was at all material times a registered medical practitioner. His name has been included in the General Register from 14 January 1994 to the present and in the Specialist Register under the specialty of Dermatology & Venereology since 7 March 2007.
3. The Defendant admitted the factual particulars of the above disciplinary charge against him.
4. It is the unchallenged evidence of the Patient that he first attended the Defendant's clinic on 6 March 2012 for medical consultation concerning his psoriasis. After physical examination, the Defendant then advised the Patient to receive a biological treatment involving a series of injection of a medicine. According to the Patient, the Defendant did not tell him the name of the medicine at the time but the Defendant assured him that the medicine was completely safe.
5. There is no dispute that the Defendant subsequently administered 4 injections to the Patient during the period from 7 March 2012 to 17 March 2012.
6. On 27 March 2012, the Patient returned to the Defendant's clinic for the fifth injection. Whilst the Patient was waiting for the injection in the waiting room of the Defendant's clinic, he saw a nurse as usual bringing in a pre-filled syringe with medicine inside. Out of curiosity, the Patient took a photograph of the pre-filled syringe package. As the Patient was only interested in knowing what medicine was inside the pre-filled syringe, he did not notice at the time that the expiry date printed on the pre-filled syringe package was October 2010. The Defendant later came in and tore open the pre-filled syringe package and administered the injection to the Patient.
7. On 3 April 2012, the Patient attended the Defendant's clinic again for another injection. Whilst the Patient was waiting for the injection in the waiting room of the Defendant's clinic, he saw a nurse as usual bringing in a pre-filled syringe with medicine inside. The Patient then noticed the expiry date printed on the syringe package was October 2009 and he took a photograph of the same. The Defendant later came in. Without checking the expiry date printed on the pre-filled syringe package, the Defendant tore open the pre-filled syringe package and proceeded to administer the injection to the Patient. At that point, the Patient immediately told the Defendant that the medicine that he was trying to inject had long expired.

8. Feeling worried about the possible adverse effects of being injected with expired medicine, the Patient asked the Defendant to check the record of all his previous injections to ascertain whether he had been injected with other expired medicine and to check with the drug manufacturer whether there would be any long term effect of the same.
9. However, the Defendant did not provide him with the requested injection record or the answer from the drug manufacturer. The Patient then lodged this complaint with the Medical Council through his solicitors on 17 April 2012.

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 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 allegation made 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 above disciplinary charge against him carefully.

Findings of the Council

12. Although the Defendant does not challenge the factual particulars of the above disciplinary charge against him, it remains our duty to consider and determine whether he is guilty of misconduct in a professional respect.
13. In our view, the Defendant had the personal responsibility to ensure the medicine that he injected or tried to inject into the Patient was safe and proper in all material aspects.
14. The significance of the expiry date on any medicine lies in that its efficacy and safety cannot be guaranteed beyond that date. It may well be that the efficacy and safety of a medicine do not fall off rapidly after its expiry date but the real point is that the efficacy and safety of the medicine are no longer guaranteed. Also, the anxiety or

distress that patients may develop after realizing that they have been injected expired medicines must not be overlooked.

15. It is clearly stated in the Good Dispensing Practice Manual (2nd edition) issued by the Hong Kong Medical Association that doctors should “ensure that a dispensed product will still be within the expiry date at the end of the treatment period”; and “[t]he expiry dates of medicines should be regularly monitored”. We are firmly of the view that such good dispensing practice is equally apposite to administration of injection and medicine in the form of pre-filled syringe.
16. The Defendant’s repeated failures to notice that the medicine that he injected or tried to inject into the Patient had already expired clearly fell below the standard expected amongst registered medical practitioners in Hong Kong. We therefore find him guilty as charged.

Sentencing

17. The Defendant has a clear record.
18. In accordance with our published policy, we shall give him credit in sentencing for admitting the factual particulars of the above disciplinary charge against him and his cooperation throughout these disciplinary proceedings.
19. 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 the public confidence in the medical profession by maintaining its professionalism and upholding its good reputation.
20. We accept that there was no evidence that physical harm has been caused to the Patient. We also accept that the Defendant has learnt his lesson. We are told in mitigation that the Defendant has taken a number of remedial measures to prevent this mishap from happening again. These include amongst others monthly stock checks to ensure that the medicines are not expired; inputting the expiry dates of all the medicines in stock in a computer file with alarm to remind him of medicines which are about to expire; and checking with his nurse the expiry date on the medicines before administering or dispensing to his patients. We are also told that the Defendant has since attended courses on clinic management and drug dispensation to improve his knowledge and awareness in safe dispensation.

21. Taking into consideration the nature and gravity of the case, in particular, the Defendant's repeated failures to notice that the two different batches of medicine had long expired; and what we have heard and read in mitigation, we are of the view that the issue of a warning letter would be appropriate and we so order. We further order that the order for issue of a warning letter to the Defendant be published in the Gazette.

Prof. LAU Wan-yee, Joseph, SBS
Chairman, Medical Council