

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Date of hearing: 9 March 2011
Defendant: Dr HIN Lin Yee

1. The Defendant, Dr HIN Lin Yee, is charged as follows:

“He, being a registered medical practitioner:

- (a) was convicted at the Tsuen Wan Magistrates’ Courts on 3 May 2008 of 4 counts of “selling drug intended for use by man but unfit for that purpose”, which is an offence punishable with imprisonment, contrary to section 54(1) and 150 of and the Ninth Schedule of Public Health and Municipal Services Ordinance, Chapter 132, Laws of Hong Kong;
- (b) was convicted at the Tsuen Wan Magistrates’ Courts on 3 May 2008 of 1 count of “illegal sale of unregistered pharmaceutical products”, which is an offence punishable with imprisonment, contrary to regulations 36(1) and 40 of the Pharmacy and Poisons Regulations made under the Pharmacy and Poisons Ordinance, Chapter 138, Laws of Hong Kong.”

Facts of the case

2. On 4 days in 2006 (i.e. 16 August, 18 August, 2 September and 4 September), 4 child patients respectively consulted the Defendant. The Defendant prescribed and dispensed Piriton to the patients. Piriton is the trade name for chlorpheniramine maleate. It was subsequently found that these dispensed medicines were unfit for human consumption, in that they contained varying concentrations of isopropyl alcohol (i.e. 11%, 43%, 1.1% and 43% v/v

respectively).

3. On 6 September 2006, staff of the Department of Health inspected the Defendant's clinic and found 4 bottles of 3.6 litres chlorpheniramine maleate 10mg/5ml. The Defendant was the only registered medical practitioner in that clinic. The medicine was not registered as a pharmaceutical product with the Pharmacy and Poisons Board.
4. In respect of the medicines dispensed to the 4 patients, the Defendant was summoned for 4 counts of the criminal offence of "selling drug intended for use by man but unfit for that purpose", contrary to section 54(1) and 150 of and the Ninth Schedule of the Public Health and Municipal Services Ordinance.
5. In respect of the 4 bottles of chlorpheniramine maleate found in the Defendant's clinic, the Defendant was summoned for 1 count of the criminal offence of "possession for sale a pharmaceutical product which had not been registered with the Pharmacy and Poisons Board", contrary to regulations 36(1) and 40 of the Pharmacy and Poisons Regulations.
6. On 3 May 2008, after a trial lasting for 9 days, the Defendant was convicted of all offences set out in the 5 summonses in the Tsuen Wan Magistrates' Courts. The Defendant appealed against the convictions and sentences to the Court of First Instance of the High Court. The convictions were upheld, on a different basis from that of the magistrate. The Defendant further appealed to the highest court of the land, i.e. the Court of Final Appeal. The convictions were again upheld, on a different basis from those of the magistrate and the Court of First Instance.

Findings of the Council

7. In the disciplinary inquiry, the Defence admits that the Defendant was convicted of the offences set out in the 5 summonses.
8. We note that the criminal offence in charge (b) of the Notice of Inquiry has been mistakenly described as "illegal sale of unregistered pharmaceutical products". This is merely a technical error. With the agreement of both parties, we rectify the description as "possession for sale a pharmaceutical product

which had not been registered with the Pharmacy and Poisons Board”, and proceed on that basis.

9. On the basis of the certificates of trial, the judgments of the Court of First Instance and the Court of Final Instance, and the admission of the Defence, we are satisfied that the Defendant was convicted of the criminal offences as set out in charges (a) and (b) of the Notice of Inquiry. We find him guilty of both charge (a) and charge (b) as rectified.

Sentencing

10. The Defendant has a clear record.
11. We also give credit to the Defendant for not contesting the disciplinary charges, in line with our published policy of giving credit for honest admission and cooperation in the inquiry. However, the extent of the credit must be commensurate with the fact that there is no realistic prospect for the Defendant to dispute the disciplinary charges, given that (i) the criminal convictions have been upheld by the Court of Final Appeal; (ii) evidence of the convictions is indisputable, and (iii) the disciplinary charges can be proved merely by proving that the criminal convictions were in respect of the Defendant.
12. Defence Counsel asked us to accept as mitigation that the contaminated drugs containing isopropyl alcohol could have come from the supplier, and that the Defendant had no reason to suspect that the drug was contaminated by isopropyl alcohol. For two reasons, we cannot accept such mitigation.
13. Firstly, in deciding whether a retrial should be ordered, the Court of Final Appeal has clearly ruled out such possibility. We are bound by, and must respect, such ruling. Constitutionally, no one has the authority to challenge the ruling of the Court of Final Appeal, or seek to reopen these issues through the back door by arguing before the Medical Council that the possibility exists.
14. Secondly, even assuming that the Court of Final Appeal had not made such ruling, a number of factors should have put the Defendant on question and to take further action to verify the propriety of the drugs. The factors include, but are not limited to, the discrepancy between the labels and the invoices, the

lack of a registration number on the labels, and the difference between the manufacturer's labels and the actual labels on the bottles.

15. No other mitigation has been advanced.
16. Doctors in Hong Kong are given the legal right to dispense medicines. Corresponding to that right there is an onerous duty to ensure that the medicines are dispensed properly and safely. It is a professional duty of all doctors to take necessary measures to ensure that the medicines are dispensed strictly in accordance with the prescription, that the medicines are free from contaminants, and that only medicines registered with the Pharmacy and Poisons Board are dispensed. Failure to discharge this professional duty is a serious matter, as it can have potentially serious and sometimes fatal consequences to the patient. In any case, it is not difficult for a doctor exercising reasonable care to discharge this duty, as there are easy and reliable avenues for verifying whether a drug has been registered. On the other hand, if a doctor follows the 'Good Dispensing Practice Manual' issued by the Hong Kong Medical Association as early as July 2005, the risk of contamination of dispensed drugs is minimized.
17. We take note of the remarks of the Court of First Instance that there is no evidence that the Defendant deliberately adulterated the medicines, and that the adulteration did not cause serious symptoms to the 4 patients. We agree. How the contamination occurred remains a mystery, and we shall not speculate. The fact is that the contamination occurred at the Defendant's clinic.
18. The purpose of our disciplinary proceedings is not to punish the Defendant, but to protect the public who may come to him as patients and to maintain the high standards and good reputation of an honourable profession. Our concern is that the Defendant had not discharged his professional duty to ensure proper and safe dispensing of drugs.
19. As to the unregistered drug found in the possession of the Defendant, the Defendant simply had not taken the necessary efforts to verify the situation despite the factors putting him on alert.
20. We must have regard to the large quantity of unregistered drug which is intended to be dispensed to patients. If not discovered by the Department of

Health, a total of 14.4 litres of the unregistered drug could have been divided into many doses and dispensed to many patients.

21. The adulterated medicines were dispensed to the 4 patients over a period of 19 days. If it had not been discovered by the parent of one of the patients, in all likelihood further dispensing would have continued.
22. Having regard to the gravity of the case, the mitigation and the level of sentencing in similar previous cases, we make the following orders:-
 - (a) In respect of charge (a), the Defendant's name be removed from the General Register for a period of 4 months.
 - (b) In respect of charge (b), the Defendant's name be removed from the General Register for a period of 10 months.
 - (c) Having regard to the totality principle, we further order that 2 months of the removal order in respect of charge (a) be served concurrently with the removal order in respect of charge (b), making a total of removal for 12 months.
23. We have considered whether the removal orders should be suspended. We consider that it is not appropriate to suspend the removal orders.

Other remarks

24. While it is a matter for the future Council to consider the Defendant's application for restoration (if any) as and when it is made, we recommend that the Council should require convincing evidence that the Defendant will implement a proper system for ensuring proper and safe dispensing of drugs. The Council should also consider imposing a condition of peer audit and supervision of the Defendant's practice upon restoration for a period of 12 months by a supervising doctor to be appointed by the Council, in accordance with the following terms:-
 - (a) The supervising doctor shall conduct random audit and supervision of the Defendant's practice with particular regard to drug prescription, preparation and dispensing.

- (b) The audit and supervision should be conducted without prior notice to the Defendant.
- (c) The audit and supervision should be conducted at least once every 3 months.
- (d) The supervising doctor shall be given unrestricted access to all parts of the Defendant's clinic and the relevant records (including but not limited to medical records of the Defendant's patients, inventory and record of drugs) which in the supervising doctor's opinion is necessary for proper discharge of his duty.
- (e) The supervising doctor shall report directly to the Council the findings of the audit and supervision at the end of the 6th and 12th month from the date of restoration. If any irregularity is observed, the supervising doctor should report such irregularity as soon as possible.

Prof. Felice Lieh-Mak, CBE, JP
Chairman, Medical Council