



香港牙醫管理委員會
The Dental Council of Hong Kong

Disciplinary Inquiry under s.18 of DRO

Defendant: Dr CHANG Kuen-kin 曾君健牙科醫生 (Reg. No. D03011)

Dates of hearing: 5 and 7 December 2023

Present at the hearing

Council Members: Dr CHEUNG Tat-leung (Temporary Chairman)
Prof LEUNG Wai-keung
Dr LIU Wai-ming, Haston
Dr TSANG Hin-kei, Century

Legal Adviser: Mr Stanley NG

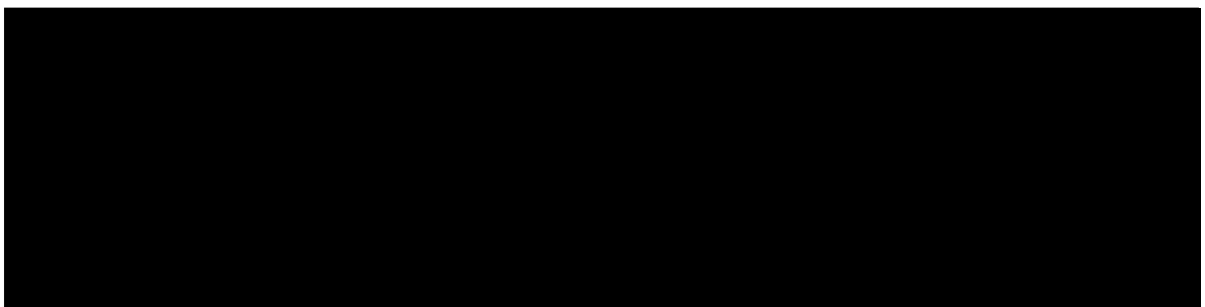
Defendant: Act in person

Legal Officer representing the Secretary: Ms Esther CHAN, Senior Government Counsel

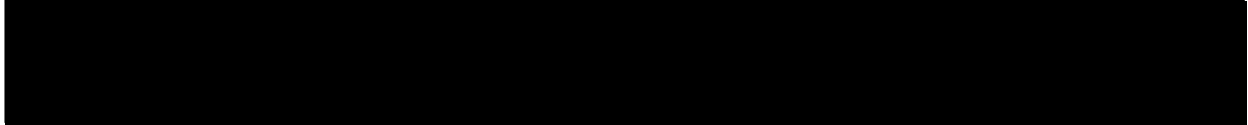
The Charges

1. There are two cases against the Defendant, Dr CHANG Kuen-kin, which are heard together at the inquiry.

2.



3.



4. In the second case (Case No. DC 8/911/9/H), the amended charges against the Defendant are as follows:

“On 17 February 2022, you, being a registered dentist, disregarded your professional responsibilities in that, you –

- (i) failed to ensure due inspection by public officer(s) of your practice of dentistry in that, you –
 - (a) refused to let the public officer(s) take photos during the inspection;
 - (b) failed to provide information to the public officer(s) about bone allograft material (or 俗稱「骨粉」) when questioned by the public officer(s);
- (ii) failed to ensure proper supervision and/or practice of sterilization in your practice of dentistry;
- (iii) failed to ensure proper carrying of “expiry date” on the drugs/ materials, or alternatively to keep proper record of expiry dates of the drugs/ materials, in your storage;
- (iv) improperly kept long-expired drugs in your drug storage;
- (v) failed to exhibit in a conspicuous place in your clinic the Certificate of Registration, Irradiating Apparatus Licence and/or Business Registration; and/or
- (vi) failed to have obtained the Exemption Certificate and/or examination report issued by the appointed inspector under the Boilers and Pressure Vessels Ordinance;

and that in relation to the facts alleged, either singularly or cumulatively, you have been guilty of unprofessional conduct.”

Burden and Standard of Proof

- 5. We bear in mind that the burden of proof is always on the Legal Officer and the Defendant does not have to prove her 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.
- 6. There is no doubt that the allegations against the Defendant here are serious. Indeed, it is always a serious matter to accuse a registered dentist of unprofessional conduct. Therefore, we need to look at all the evidence and to consider and determine each of the disciplinary charges against her separately and carefully.

Unprofessional Conduct

7. According to section 18(2) of the Dentists Registration Ordinance, Cap. 156 (“DRO”), “unprofessional conduct” means an act or omission of a registered dentist which would be reasonably regarded as disgraceful or dishonourable by registered dentists of good repute and competency.

Facts of the Second Case

8. The name of the Defendant has been included in the General Register (“GR”) since 5 August 1995. Her name has never been included in the Specialist Register.
9. On 17 February 2022, Mr Chung Kin Shing, Dental Inspector (“Mr Chung”), Dr But Yu Tin, Senior Dental Officer (Dental Regulatory and Law Enforcement) 3 (“Dr But”), and Ms Ho Fung Ling, Senior Dental Surgery Assistant (Dental Regulatory and Law Enforcement) 2 (“Ms Ho”) carried out a dental inspection at the Defendant’s clinic at 6B Hang Seng Causeway Bay Building, 28 Yee Wo Street, Causeway Bay, Hong Kong (“the Clinic”). At the time of the inspection, the Defendant and her Dental Surgery Assistant (“DSA”) were present.
10. By a memo dated 22 February 2022, Mr Chung reported to the Secretary to the Dental Council their findings of the said inspection, which form the basis of all the charges in the second case.

Findings of Council in the Second Case

11. There is no dispute that Mr Chung, Dr But and Ms Ho had presented to the Defendant their work passes when they arrived the Clinic. Mr Chung told us that their work passes are in fact the written authority issued by the Council pursuant to section 16 of the DRO, authorizing them to enter and inspect the Clinic.
12. After they presented their work passes, Mr Chung asked the Defendant if they could take photographs during the inspection, but was refused by the Defendant. Mr Chung never told the Defendant the purpose and scope of taking the photographs. Mr Chung, Dr But and Ms Ho simply did not proceed to taking photographs during the entire inspection.
13. Without further and clearly explaining to the Defendant the purpose and the scope of the taking of photographs, it is not unreasonable for the Defendant to refuse the taking of photographs.
14. We are not satisfied that the Defendant’s refusal in the circumstances would amount to unprofessional conduct. We therefore acquit the Defendant of Charge (i)(a).
15. Dr But and Ms Ho inspected the content of the three-decker single-door fridge in the Clinic. On the middle deck, two sterilization pouches each containing one small glass bottle of powder were found. A small piece of paper with “expiry date: 2026/2/15” printed was stapled to one of the pouches. Dr But enquired the meaning of this date but the Defendant did not respond. Regarding the two glass bottles, the brand name “MinerOss Cortical and Cancellous” was displayed on each of them. The Defendant told Dr But and Ms Ho that these bottles contained bone allograft material, which was used for training purpose but not for patient care. Dr But said he tried to turn the bottle inside the sealed pouch to look for the

expiry date, but had difficulty as the pouch was sealed. Dr But said before he could finish turning the bottle one round, he accidentally broke the seal of the pouch. Dr But reported the breaking of the pouch to the Defendant. The Defendant then resealed the pouch with autoclave tape. Later, Dr But and Ms Ho requested the Defendant to supplement the use of the bone allograft, for instance how it was applied to training. The Defendant did not provide further information on the use of it.

16. At the inquiry, we asked Ms Ho if she considered their inspection smooth. Ms Ho answered us that the inspection was smooth. We also asked Ms Ho if she found the Defendant cooperative. Ms Ho said she did not know if the Defendant was cooperative or not cooperative with them. Given what Ms Ho said, we are not satisfied on the evidence that the Defendant was not cooperative with the inspection team. Further, the Secretary had provided no proof at all that the bone allograft found in the said two bottles was used on patients. The question from the inspection team as to how the Defendant would apply the bone allograft to training was therefore irrelevant.
17. We are not satisfied that the Defendant had failed to ensure due inspection by failing to provide information about bone allograft material when questioned. We will therefore acquit the Defendant of Charge (i)(b).
18. Making use of an autoclave for sterilization of dental instruments involves various steps, including monitoring sterilization procedures using mechanical, internal, and external indicators, steam penetration tests if applicable, biological tests, recording of test results. Infection control has always been of paramount importance in dental surgeries.
19. Throughout the inquiry, the Defendant demonstrated to us a lack of familiarity with basic operations of the autoclave, such as turning it on and off nor the understanding of messages displayed on the screen. The Defendant attributed this to the autoclave being new to her and believed that she needed more time to become acquainted with it. The Defendant chose not to give evidence. What the Defendant said to us was not tested on oath. We will not give any weight to what the Defendant said as to her reasons of being unfamiliar with the autoclave. Further, during the inspection, even after switching on the autoclave, the Defendant hesitated in deciding the appropriate temperature to use and whether to use a program with or without a pouch. The Defendant then intended to place a used sterilization pouch in the autoclave, and this raised serious concerns to us. During the testimonies of Ms Ho, she told us that the Defendant did not even have access to internal and biological indicators, which were crucial for monitoring the effectiveness of sterilization. Additionally, there was no record of sterilization process being kept in her clinic. All these factors led us to believe that the Defendant's practice of sterilization was not proper.
20. We are satisfied that the Defendant had failed to ensure proper practice of sterilization in her practice of dentistry. The Defendant's conduct had seriously fallen below the standard expected amongst registered dentists. It would be reasonably regarded as disgraceful and dishonourable by registered dentists of good repute and competency. We therefore find the Defendant guilty of charge (ii).
21. During the inspection, Dr But and Ms Ho inspected the drug storage in the Clinic. The Defendant told them that there were two places for drug storage, one at the drawer in the reception counter ("the Drawer"), and the other in a cabinet behind the reception counter ("the Cabinet").
22. Dr But and Ms Ho found the following drugs stored in the Drawer:

- (a) Labeled as “Amoxicillin” – 18 or 30 capsules per sealed bag with no expiry date shown;
 - (b) Labeled as “Metronidazole” – 15 tablets per sealed bag in aluminum packs with no expiry date shown;
 - (c) Labeled as “Ponstan” – One sealed bag of tablets in aluminum packs with expiry date “4 March 2021” shown;
 - (d) Labeled as “Famotidine” – 12 or 20 tablets per sealed bag with no expiry date shown;
 - (e) Labeled as “Acroxia” – Pre-packed in paper boxes with expiry date “2024” shown; and
 - (f) Labeled as “Panadol” – 12 or 20 tablets per sealed bag with no expiry date shown
23. Dr But and Ms Ho found the following drugs in the Cabinet:
- (a) 1 bottle labeled “Alfoxan” with expiry date “December 2025”;
 - (b) 1 bottle labeled “Amoxil” with expiry date “August 2023”;
 - (c) 1 bottle labeled “Panadol” with expiry date “June 2023”; and
 - (d) 1 bottle of labeled “clindamycin” 150mg capsules with expiry date “April 2023”
24. We note that the drugs found in the Cabinet all have expiry dates shown. We have considered if it could be the case that the drugs found in the Drawer with no expiry dates shown (i.e. “Amoxicillin”, “Metronidazole”, “Famotidine” and “Panadol”) could be the same as those drugs with expiry dates shown as found in the Cabinet. In this connection, we can match up “Amoxicillin” from the Drawer with “Amoxil” from the Cabinet, and “Panadol” from the Drawer with “Panadol” from the Cabinet. We however cannot match up “Metronidazole” and “Famotidine” from the Drawer with anything with expiry dates from the Cabinet.
25. We must emphasize that ensuring proper carrying of expiry dates on drugs is of paramount importance so as to avoid the risk of prescribing patients with expired drugs. The Defendant had failed to ensure the proper carrying of “expiry date” on “Metronidazole” and “Famotidine”. The Defendant’s conduct had seriously fallen below the standard expected amongst registered dentists. It would be reasonably regarded as disgraceful and dishonourable by registered dentists of good repute and competency. We therefore find the Defendant guilty of charge (iii).
26. As to the drug “Ponstan” in aluminum packs found in the Drawer, it carried the expiry date of “4 March 2021”. This drug was long expired at the date of the inspection.
27. The Drawer was a dispensary drawer. The drugs contained inside were for dispensation to patients. According to Dr But and Ms Ho, the Drawer appeared to be a single drawer with no compartmentalization. The drug “Ponstan” was placed in the same dispensary drawer. The Defendant chose not to give evidence on oath. What the Defendant told us was not tested under examination. We will not give any weight to what the Defendant said that this drug could be one of her assistants who left her own medicine in the Drawer as she remembered one of them had talked about frequent intake of strong painkillers. We also find what the

Defendant said unreasonable because the drug "Ponstan" found in the Drawer was long expired on the day of inspection and it could not possibly be drug taken by her assistant at the time.

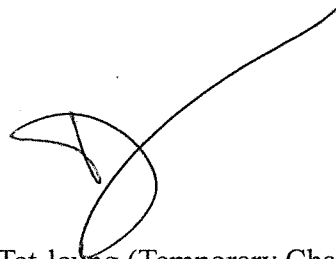
28. We are satisfied that the Defendant had improperly kept long-expired drugs in her drug storage. The Defendant's conduct had seriously fallen below the standard expected amongst registered dentists. It would be reasonably regarded as disgraceful and dishonourable by registered dentists of good repute and competency. We therefore find the Defendant guilty of charge (iv).
29. The Certificate of Registration and Irradiating Apparatus Licence are required by law to be exhibited at a conspicuous place in the Clinic. The Business Registration Certificate is required by law to be displayed. On the day of inspection, there is no dispute that all these certificates/licence are neither exhibited nor displayed. They were all kept in a folder instead. The Defendant told us that she always displayed these certificates/licence, just that on the day of inspection, she had something to do with these certificates/licence, thus placing them in the folder. The Defendant chose not to give evidence on oath. What she told us was not tested. We find it hard to believe that she had something to do with all these certificates/licence on the day of inspection. In particular, the Defendant never told us what exactly she had to do with all the certificates/licence on the day of inspection.
30. We are satisfied that the Defendant had failed to exhibit these certificates/licence in the Clinic. The Defendant's conduct had seriously fallen below the standard expected amongst registered dentists. It would be reasonably regarded as disgraceful and dishonourable by registered dentists of good repute and competency. We therefore find the Defendant guilty of Charge (v).
31. On the day of inspection, the autoclave was newly bought. According to the Defendant, the Exemption Certification application was under progress. In our view, this does not constitute unprofessional conduct. We will acquit the Defendant of Charge (vi).

Sentencing

32. The Defendant has no previous disciplinary record.
33. We bear in mind that the purpose of a disciplinary order is not to punish the Defendant, but to protect the public and maintain public confidence in the dental profession.
34. We must emphasize that the gravamen of the offences under Charges (ii), (iii) and (iv) are very serious. Ensuring proper practice of sterilization, proper carrying of “expiry date” on drugs, and proper handling of expired drugs are of paramount importance so as to ensure patient’s safety and public confidence in the dental profession.
35. In mitigation, the Defendant simply told us that in future she would make improvements on sterilization and on the handling of drugs. However, the Defendant had not provided us with any concrete plan at all as to how she would make improvement in the future. The Defendant had not shown us that any remedial measures had been put in place since the inspection. The Defendant had also not provided us with any CPD record relating to sterilization and drug handling. We are not satisfied that the risk of re-offending is low.
36. Having regard to the gravity of the case and the mitigation submitted by the Defendant, the Council makes the following orders:-
- (a) In respect of charges (ii), (iii) and (iv), that the name of the Defendant be removed from the General Register for a period of two months;
 - (b) In respect of charge (v), a warning letter be issued to the Defendant; and
 - (c) The orders in paragraphs (a) to (b) above shall be published in the Gazette.
37. We have considered whether we should order a suspended sentence. However, given our reasons above, a suspended sentence is not appropriate.

Remarks

38. While it is for the Council to consider the Defendant’s application for restoration to the General Register when it is made, we recommend that for reason for protecting the public, the application should not be approved unless the Defendant satisfies the Council that she has improved her knowledge and competence up to the standard required for registration, by concrete and cogent evidence including continuing professional development on core CPDs.



Dr CHEUNG Tat-leung (Temporary Chairman)
The Dental Council of Hong Kong



香港牙醫管理委員會
The Dental Council of Hong Kong

**Footnote to the Judgment of the Disciplinary Inquiry against
Dr CHANG Kuen-kin 曾君健牙科醫生 (Reg. No. D03011)**

Dr CHANG Kuen-kin subsequently appealed to the Court of Appeal under Civil Appeal No. CACV 411/2023 against the decision of the Dental Council's decision dated 7 December 2023. The outcome of the appeal is now pending.