

MEDICAL LABORATORY TECHNOLOGISTS BOARD

醫務化驗師管理委員會

紀律研訊

輔助醫療業條例 (第 359 章)

研訊日期及時間：2023 年 12 月 11 日
上午 9 時 30 分

答辯人：陳冠忠 (第 II 部分註冊醫務化驗師)
(註冊編號：MT203546)

針對答辯人的控罪

針對答辯人的控罪已詳列於 2023 年 8 月 25 日致答辯人的研訊通知書內，現節錄如下：

「你身為名列註冊名冊第 II 部分的註冊醫務化驗師，曾於 2017 年 12 月 12 日，在香港原訟法庭被裁定「誤殺」罪名成立，而該可判處監禁的罪行違反普通法及香港法例第 212 章《侵害人身罪條例》第 7 條。上訴法庭亦於 2021 年 11 月 4 日就該定罪維持原判。」

委員會的裁定

答辯人現時是一位名列註冊名冊第 II 部分的註冊醫務化驗師。在是次研訊中，委員會秘書由律政人員代表，而答辯人則沒有出席。律政人員提交文件(包括一份秘書處職員作出的誓章)，證明研訊通知書已用掛號郵遞方式寄往答辯人的地址，而答辯人亦在電話確認他已收到研訊通知書。本委員會接納該等證據，決定在答辯人缺席的情況下進行研訊。律政人員沒有傳召證人，選擇依賴文件冊內的文件以證明對答辯人的提案。

律政人員呈堂的文件中，包括一份答辯人向委員會提交的「申請週年執業證明書的聲明」及由高等法院發出的「定罪及判刑證明書」。答辯人在其「申請週年執業證明書的聲明」中，承認他曾在香港或其他地方被裁定犯可判處監禁的罪行。根據高等法院發出日期為 2018 年 8 月 17 日的「定罪及判刑證明書」，答辯人於 2017 年 12 月 12 日被裁定犯了「誤殺」罪名，違反普通法及香港法例第 212 章《侵害人身罪條例》第 7 條。答辯人隨後就定罪及刑期作出上訴，上訴法庭於 2021

年 11 月 4 日就定罪維持原判，但批准答辯人就刑期的上訴，將刑期由 10 年減至 8 年。

根據香港法例第 359 章《輔助醫療業條例》第 22(1)(a)條，本委員會可就曾被裁定犯可判處監禁的罪行的註冊醫務化驗師作出紀律研訊及處分。

本委員會經考慮所有呈交委員會的文件及律政人員的陳詞後，信納答辯人曾於 2017 年 12 月 12 日被裁定犯了「誤殺」罪名，而該罪行為可判處監禁的罪行，本委員會因此裁定在研訊通知書上針對答辯人的控罪成立。

判處

本委員會留意到本案有一個非常特殊的情況，答辯人所犯的刑事行為是發生在 2012 年，而當時答辯人並非是一位註冊醫務化驗師。答辯人是在 2016 年或之後才取得註冊醫務化驗師資格。若涉案的定罪是在答辯人申請註冊前作出，本委員會需要考慮的問題會是應否拒絕其註冊申請。然而，涉案的定罪是在答辯人申請註冊獲批後才作出，在此情況下，本委員會需要考慮是否須根據香港法例第 359 章《輔助醫療業條例》第 22(1)(a)條向答辯人作出一項紀律處分的命令。本委員會認為第 22(1)(ii)、(iii)及(iv)條的命令，即命令答辯人除牌一段指定時間、譴責答辯人及向答辯人發警告信在本案可能並不適合。本委員會認為今天需要考慮的是應否讓答辯人繼續作為一位註冊醫務化驗師。

根據原審法官的判詞，涉案的罪行發生情況如下：

“86. In the case of D2, he was an employee of the DR Group and on the evidence, a high flyer within the group. It was he who had brought to the attention of DI the idea of using NK cells for healthcare, suggesting that it would have a “selling point” after certain technical issues were resolved. It was also D2 who suggested that with the number of customers of the DR Group such a therapy would bring in a steady income.

87. Whilst there is nothing wrong to be innovative, there is a difference between experimenting on something new and actually delivering something which one is not competent to do. It is clear from the evidence that D2 was still experimenting with CIK processing and he did not even have a properly validated protocol by April 2012. There was also no SOP for the processing, so there was no system of check and balance, so that D2 was allowed or permitted to do whatever he wished without anyone pulling him up.

88. It would appear that the jury might have given D2 the benefit of the doubt, even though D2 elected not to give evidence, that he might have dispensed with the sterility test on the instruction of D1. Even if that be the case, the jury clearly has found, and rightly so, that under the circumstances, the act of D2 following orders from his boss does not distract from the fact that D2 was in total disregard of the life and safety of Chan Yuen Lam, thus warranting criminal sanction.

89. I do not accept the failure by D2 to ensure sterility test was being carried out amount to an “error of judgment” as submitted by his counsel. D2 took a deliberate and conscious decision not to have sterility test conducted when he was aware of the serious and obvious risk of death posed by any bacterial contamination. Though there might not be any immediate tangible benefit to D2, his desire to remain in the good books of his boss D1; to continue to have steady increase of salary; and to do well in the company might well have been some of the reasons why he had decided to take such a course of action.

90. As a result of his failure to ensure there was properly validated protocol, his failure to ensure sterility tests were conducted on the blood product of Chan Yuen Lam before it left APSC; his failure to have a safe system to ensure sterility test was done and documented; his conscious decision not to conduct any sterility test on the blood product of Chan Yuen Lam, including the bacterial test, the heavily contaminated blood product remained undetected and was injected directly into the blood stream of Chan Yuen Lam, causing her death.

91. D2 must be punished severely to show the shock and disgust felt by the society.”

從以上可見，答辯人罔顧涉案死者的生命和安全。本委員會認為若要作為一個註冊醫務化驗師，關注病人或市民的健康及安全是相當重要。答辯人今天缺席研訊，只提供了一份日期為 2023 年 8 月 7 日的電郵文件就本案作出簡短的解釋。答辯人選擇放棄向委員會作出親身申述的機會、選擇放棄說服委員會他是適合繼續作為註冊醫務化驗師。

本委員會經考慮所有呈交委員會的文件及所有相關情況後，認為並沒有足夠證據令委員會信納答辯人是適合繼續作為註冊醫務化驗師。因此，委員會決定命令將答辯人的姓名從註冊名冊除去。

醫務化驗師管理委員會主席
梁雪兒教授