

臺灣臺北地方法院刑事判決

108年度易字第797號

公 訴 人 臺灣臺北地方檢察署檢察官
被 告 林雨新

選任辯護人 蔡世祺律師
賴彥杰律師

上列被告因妨害名譽案件，經檢察官提起公訴（108年度調偵字第38號），本院判決如下：

主 文

本件公訴不受理。

理 由

一、公訴意旨略以：被告林雨新現為仁新醫藥股份有限公司（興櫃交易代號：6696，址設臺北市○○區○○○路0段00號12樓）董事長，前係台灣浩鼎生技股份有限公司（設臺北市○○區○○街0號19樓，上櫃交易代號：4174，英文名稱：OBI Pharma Inc.，下稱浩鼎公司）臨床醫學處處長，負責臨床試驗與研發工作，且為乳癌疫苗OPT-822（後更名為OBI-822）研究計畫最高主持人之一，其於民國103年1月13日離職後，因對浩鼎公司之若干作為不滿，竟意圖公然侮辱、散布流言損害浩鼎公司之信用之犯意，（一）於104年11月13日前某時許，在不詳地點連結上www.inspire.com網站，在該網站網址為www.inspire.com/groups/advanced-breast-cancer/discussion/opt-821-822留言板上，以帳號「08I」登錄後，撰寫張貼文章：「I would like to warn and alert you all of the deliberate cover-ups that this sponsor company, OBI Pharma, has not been truthful about its drug(OPT-822) and the clinical trial. The vaccine or immunotherapy does not work, and in fact, It is a dir

ty vaccine that generates none specific antibodies that may target normal cells rather than the cancer cell. There already has been several cases of severe adverse effects and severe autoimmune reactions which the company has failed to report to the regulatory authorities such as FDA. The drug manufacturing process has also failed its internal control and specifications and the company has chosen to fake the data in order to pass FDA for clinical trial use. If you are one of the club's all trial patients please consult your clinical trial site or investigator or seek legal and medical advice in regards to this. (譯：我想警告並提醒你，這家公司OBI Pharma對其藥物《OPT-822》和臨床試驗並未被真實呈現。疫苗或免疫療法沒有發揮作用，事實上它是一種無法產生特定抗體的骯髒疫苗，造成攻擊正常細胞更勝於癌細胞。已有幾例嚴重不良反應和嚴重的自身免疫反應，而該公司並未向FDA等監管機構報告。藥品生產過程也未能通過其內部控制和規範，公司選擇偽造可以通過FDA進行臨床試驗使用的數據。如果您是所有試驗患者的團體成員之一，請諮詢您的臨床試驗站或研究者，或就此尋求法律和醫療建議。)」、「When you joined the OPT-822 trial, the informed consent tells you that you will be receiving the Globo H vaccine which will only elicit tumor specific anti-Globo H antibodies that targets the Globo H on breast tumors. This is not true as the Globo H-KLH vaccine is nothing more than a "dirty" non-specific vaccine that generates all kinds of antibodies that may target normal cells. This could be in acute or chronic form. They are already cases of severe autoimmune reactions and lung inflammations that is suspected to be caused by this vaccine

e. However, due to financial benefits from the high skyrocketing share prices, the sponsor company has intentionally covered this up and not disclosing this to all regulatory authorities, including FDA and institutional review boards and clinical investigators. Furthermore, the company has also been supplying inferior vaccines that did not meet specification and you could have been either wasting time on this trial since this may not have any therapeutic effect, or may be you are receiving God know what harm this "fake" vaccine may cause you. I urge you to seek medical advice and check your autoantibodies levels, chronic inflammations, etc, you may also seek legal advice to in order to seek compensation for keeping you in the dark and exposing you to an "unknown substance" that may have cause you some harm. (譯：當您加入OPT-822試驗時，同意書告訴您將接受Globo H疫苗，該疫苗僅引發針對乳腺腫瘤上Globo H的腫瘤特異性抗Gtobo H抗體。事實並非如此，因為Globo H-KLH疫苗只不過是一種“骯髒的”疫苗，可以產生可能針對正常細胞的各種抗體。這可以是急性或慢性形式。它們已被懷疑是由這種疫苗引起嚴重自身免疫反應和肺部炎症的病例。然而，由於股價暴漲帶來的經濟利益，公司已刻意將此問題掩飾，並未向所有監管機構披露此信息，包括FDA和機構審查委員會以及臨床調查員。此外，該公司還提供不符合規格的劣質疫苗，你也許會在這次試驗上浪費時間，因為這可能沒有任何治療效果，或者你可能正在接受只有上帝才知道會造成你什麼危害的這種“假”疫苗。我懇請您尋求醫療建議，檢查您的自身抗體水準、慢性炎症等。您也可以尋求法律建議，以便讓您暴露於因“未知物質”導致傷害時尋求賠償。)」、「Most whistleblowers usually are insiders that has a conscience and do

not want to play along with greedy unethical executives who stands to gain a lot of money at the expense of innocent and naive patients who entrust their lives and hopes in drug companies who abuses people's hopes in the name of science. To have a better idea of how people are capable of such crime, you can search for Michael Chang, Chairman of OBI Pharma 《sponsor company of OPT-822 trial》 and previously Chairman and CEO of Optimer Pharmaceuticals 《previously the parent company of OBI Pharma》. Michael Chang is currently being investigated by the SEC and US Department of Justice for financial fraud. (譯：大多數舉報人通常都是有良心的內部人士，不想與貪婪的不道德高層一般，這些高層們會以犧牲無辜和天真的病人為代價獲得大量資金，他們將自己的生命和希望寄託在那些濫用人們希望、以科學為名義的藥物公司身上。為了更好地讓人們了解如何能夠應對此類犯罪，您可以搜索OBI Pharma 《OPT-822試驗的贊助公司》主席Michael Chang以及Optimer Pharmaceuticals之前的董事長兼首席執行官 《之前是OBI Pharma的母公司》。Michael Chang目前正在接受美國證券交易委員會和美國司法部的財務詐欺調查。）」、「For personal safety reasons, I cannot disclose how I know or came about this knowledge or information. This company has the backing of some very ruthless and power people and corporations in Taiwan .They have also bribed several government officials and that is why Michael Chang is now been investigated by the U.S. SEC and Department of Justice of fraudulent and corrupt practices (please search this on the Internet in regards to Michael Chang and Optimer). If you require further infomation, please give me your email and we can take this offli

01 ne. Serenity, Your doctor at MD ANDERSON(Dr. Murray
02 or Ibrahim) wouldn't know about this as the company
03 has deliberately kept them in the dark. Without the
04 voices of the patients involved in this trial, no one
05 would ask questions and launch an investigation into
06 how this company and the people running this company
07 has been unethically using this clinical trial to
08 hype the company and amass a big fortune using "fake"
09 drugs, and falsified data by robbing the opportunity
10 and lives of stage 4 Breast cancer subjects who
11 could have benefited from proven or newer and more
12 scientifically sound treatments. Furthermore, not only
13 has the company robbed you of the opportunity, OPT-8
14 22 also has potential severe or chronic side effects
15 that the company is keeping a lid on and exposing the
16 patients to further harm. I urge you to ask questions
17 and investigate into this as this is your life and
18 health that is at stake, while a bunch of people on
19 the other side of the world is racking in huge amounts
20 of cash. (譯：出於個人安全原因，我無法透露我如何
21 了解獲得此知識或信息。該公司得到台灣一些非常無情和
22 有權勢的人和企業的支持。他們還賄賂了幾位政府官員，這
23 就是為什麼Michael Chang現在被美國證券交易委員會和司
24 法部調查詐欺和貪腐行為《請在網路上搜索Michael Chang
25 和Optimer》。如果您需要進一步信息，請給我你的電子郵件，
26 我們可以提供。德州大學安德森癌症中心《Murray博士
27 或Ibrahim博士》的醫生不會知道這一點，因為該公司故意
28 不讓他們知悉。沒有參與此試驗的患者的聲音，沒有人會提出
29 問題並開始調查該公司和經營該公司的人，是如何不道德地
30 使用這個臨床試驗來炒作公司，並使用“假”藥物累積大
31 筆財富，透過篡改和偽造數據，剝奪第4期乳腺癌受試者的

01 機會和生命，這些受試者本來可以透過經驗證的或更新的及
02 更科學合理的治療中獲益。此外，公司不僅剝奪了您的機
03 會，OPT-822還具有潛在的嚴重或慢性副作用，此部分公司
04 是保密的所以會使患者受到更進一步的傷害。我敦促你提出
05 問題並對此進行調查，因為這是你生命和健康的危險，而世
06 界另一端的一群人正在投入巨額現金。）」等內容，其中
07 「It is a dirty vaccine.(譯：這是個骯髒疫苗)」、「the
08 Globo H-KLH vaccine is nothing more than a "dirty" n
09 on-specific vaccine.(譯：Globo H-KLH疫苗只不過是一種
10 “骯髒的”疫苗)」、「inferior vaccines(譯：劣質疫
11 苗)」、「"fake" vaccine(譯：假疫苗)」、「"fake" dru
12 gs(譯：“假”藥物)」、「The drug manufacturing proc
13 ess has also failed its internal control and specifi
14 cations and the company has chosen to fake the data
15 I order to pass FDA for clinical trial use.」、「The
16 y have also bribed several government officials and
17 that is why Michael Chang is now been investigated b
18 y the U.S. SEC and Department of Justice of fraudule
19 nt and corrupt practices.」等語，足以貶損浩鼎公司之
20 名譽及信用。因認被告涉犯刑法第309條第1項公然侮辱罪、
21 第310條第2項加重誹謗罪、第313條妨害信用罪等語。

22 二、按告訴乃論之罪，告訴人於第一審辯論終結前得撤回其告訴
23 ，又告訴經撤回者，得不經言詞辯論，逕諭知不受理之判決
24 ，刑事訴訟法第238條第1項、第303條第3款、第307條分別
25 定有明文。

26 三、本件告訴人告訴被告妨害名譽案件，公訴人認被告涉犯刑法
27 第309條第1項公然侮辱罪、第310條第2項加重誹謗罪、第31
28 3條妨害信用罪，依刑法第314條之規定，須告訴乃論。茲因
29 被告業於本案言詞辯論終結前之110年4月6日達成和解，告
30 訴人並於同日具狀撤回本件告訴一節，此有和解筆錄、刑事
31 撤回告訴狀附卷可稽（見本院卷三第153至157頁），揆諸前

01 揭規定，爰不經言詞辯論，逕為不受理判決之諭知。

02 四、據上論斷，應依刑事訴訟法第303條第3款、第307條，判決
03 如主文。

04 中 華 民 國 110 年 4 月 12 日
05 刑事第三庭 法 官 許峻彬

06 上正本證明與原本無異。

07 如不服本判決應於收受送達後20日內向本院提出上訴書狀，並應
08 敘述具體理由；其未敘述上訴理由者，應於上訴期間屆滿後20日
09 內向本院補提理由書（均須按他造當事人之人數附繕本）「切勿
10 逕送上級法院」。告訴人或被害人如對於本判決不服者，應具備
11 理由請求檢察官上訴，其上訴期間之計算係以檢察官收受判決正
12 本之日期為準。

13 書記官 許雅玲

14 中 華 民 國 110 年 4 月 15 日