香 港 醫 務 委 員 會

The Medical Council of Hong Kong

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr CHAN Raymond Tsz Tong (陳子棠醫生) (Reg. No.: M09073)

Date of hearing: 8 March 2023 (Wednesday)

Present at the hearing

Council Members/Assessors: Prof. TANG Wai-king, Grace, SBS, JP
(Chairperson of the Inquiry Panel)
Dr LING Siu-chi, Tony
Dr CHIU Shing-ping, James
Ms LIU Lai-yun, Amanda
Mr LUI Wing-cheung, Kenneth

Legal Adviser: Mr Stanley NG

Defence Solicitor representing the Defendant: Mr Michael CHAO of
Messrs. Mayer Brown

Senior Government Counsel representing the Secretary: Ms Elsie CHU

The Defendant is not present.

1. The charges against the Defendant, Dr CHAN Raymond Tsz Tong, are:

"That in or about April to August 2009, he, being a registered medical practitioner, disregarded his professional responsibility to his patient [redacted] ("the Patient"), in that he:

(a) failed to consider other possible diagnosis or differential diagnosis before commencing neoadjuvant chemotherapy on the Patient;

(b) failed to conduct adequate investigation and/or examination to ascertain the nature of the Patient's tumour before commencing neoadjuvant chemotherapy on the Patient;

(c) failed to adequately explain to the Patient or her family members the implication of "false negative" biopsies and the adverse effects of undergoing neoadjuvant chemotherapy before further biopsy procedures; and

(d) carried out unnecessary neoadjuvant chemotherapy on the Patient.

In relation to the facts alleged, either singularly or cumulatively, he has been guilty of misconduct in a professional respect."

Facts of the case

2. The name of the Defendant has been included in the General Register from 12 July 1993 to the present. His name has been included in the Specialist Register under the Specialty of Clinical Oncology since 7 July 2004.

3. At all material times, the Defendant was, and still is, a registered medical practitioner in Hong Kong.

4. On 19 April 2009, [redacted] ("the Patient") attended the Accident and Emergency Department of Pamela Youde Nethersole Eastern Hospital ("PYNEH") because of per-rectal bleeding. Per-rectal examination revealed a suspicious mass with contact bleeding.

5. On 20 April 2009, a rectum biopsy was done for the Patient at PYNEH. It was stated in the diagnosis of the pathology report dated 22 April 2009 that there was no evidence of malignancy.

6. On 23 April 2009, the Defendant first saw the Patient. Examination performed by the Defendant revealed a tumour mass with the lower border at 4 to 5 cm from the anal verge. The Defendant arranged a CT scan of the abdomen.

7. On 24 April 2009, the CT scan of the abdomen as arranged by the Defendant

was performed at Hong Kong Sanatorium & Hospital ("HKSH"). It was stated in the CT report "IMPRESSION: 1. Rectal tumour with local infiltration and possible involvement of uterus. Regional nodal metastasis cannot be excluded …".

8. On 27 April 2009, a second rectum biopsy was done for the Patient at PYNEH. It was stated in the pathology report dated 28 April 2009 that "… There is no acute cryptitis, crypt abscess, granuloma, dysplasia or malignancy. Advise repeat biopsy if clinically suspicious."

9. On 28 April 2009, the Defendant saw the Patient again with a referral letter from PYNEH dated 27 April 2009. It was stated therein that "*Colonoscopy done on 27/4/09: scope to caecum, non-obstructing tumor at 5 cm from anal verge, multiple biopsy taken and result pending…Imp: CA rectum (await histological confirmation)*". According to the medical notes of the Defendant, it was stated at the entry made on 28 April 2009 that "*Book planning, 3D [3 dimensional] CRT [conformal radiotherapy]*" and "*to arrange appointment QMH (for Bx)*".

10. On 29 April 2009, the Defendant saw the Patient again for radiation planning at HKSH.

11. On 5 May 2009, the Patient started undergoing neoadjuvant chemoradiotherapy at HKSH.

12. On 13 May 2009, the Defendant wrote a referral letter to Queen Mary Hospital ("QMH") to inform QMH of the period of chemoradiotherapy and suggested the time to repeat imaging and definitive surgery.

13. On 27 May 2009, the Patient was seen at QMH upon the referral of the Defendant. A third rectum biopsy was done for the Patient at QMH. It was stated in the diagnosis of the pathology report that there was no malignancy.

14. On 9 June 2009, the Patient completed the neoadjuvant chemoradiotherapy.

15. On 11 June 2009, a fourth rectum biopsy was done for the Patient at QMH. It was stated in the diagnosis of the pathology report that there was no malignancy.

16. On 11 August 2009, a laparoscopic low anterior resection with hysterectomy with bilateral salpingo-oophorectomy was performed on the Patient at QMH. The pathology showed endometriosis without malignancy.

17. On 24 April 2014, the patient's ex-husband lodged a complaint with the Medical Council against the Defendant.

Burden and Standard of Proof

18. We bear in mind that the burden of proof is always on the Secretary 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.

19. There is no doubt that each of the allegations 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 each of the disciplinary charges against him separately and carefully.

Findings of the Inquiry Panel

20. At the beginning of this inquiry, the Legal Officer informed us that the Secretary is offering no evidence against the Defendant in respect of disciplinary charge (c). Since the burden of proof is always on the Secretary, we have to find the Defendant not guilty of disciplinary charge (c).

21. The Defendant admits the factual particulars of disciplinary charges (a), (b) and (d) against him. It however remains for us to consider and determine on all the evidence whether he has been guilty of misconduct in a professional respect.

22. We gratefully adopt the following observations in *Jackson & Powell on Professional Liability* (9th ed.) at [983-984]:

*"**Bolam test continues to apply** In relation to the roles of diagnosis ... the*

standard of care of skill and care required of a medical practitioner continues to be governed by the Bolam test. They are roles falling within the expertise of members of the medical professions…

Standard of skill and care determined by reference to the specialisation of the defendant *A practitioner who specializes in any particular area of medicine must be judged by the standard of skill and care of that speciality."*

23. According to the Secretary's expert, the presenting clinical picture of the Patient was typical of an adenocarcinoma of rectum. However, the first pathology report of PYNEH dated 22 April 2009 stated "…show pieces of rectal mucosa with no significant pathology. There is no dysplasia and no malignancy…". The second pathology report of PYNEH dated 28 April 2009 showed "… no acute cryptitis, crypt abscess, granuloma, dysplasia or malignancy…". Therefore, it was the opinion of the Secretary's expert that "The two biopsy results in PYNEH should have raised sufficient suspicion that this is not an usual case of adenocarcinoma of rectum … This makes the chance of having invasive adenocarcinoma arising from mucosa of rectum … exceedingly low". "There are a number of tumour types other than an adenocarcinoma of rectum that can give a similar clinical picture". "… Dr Chan still did not appear to have thought of possibilities other than adenocarcinoma of rectum". The Defendant wrote in his medical report dated 15 July 2010 that "… The issue of uncertainty regarding the diagnosis did not cross my mind then as the CT was confirmatory and consistent with her clinical presentation." In the Defendant's submission to the Preliminary Investigation Committee ("PIC") dated 5 December 2017, the Defendant said that rectal cancer was his only working diagnosis. In his statement dated 30 November 2017, the Defendant said "I, therefore, firmly believed that the Patient had rectal cancer notwithstanding the negative result of the biopsy performed on 20 April 2009", and "… there was no uncertainty on my part regarding the diagnosis in view of the clinical and CT findings…".

24. We agree with the Secretary's expert that "It is common sense that while CT can confirm the presence of a tumour, it can never confirm that the tumour is adenocarcinoma but not other tumour type".

25. We accept the opinion of the Secretary's expert that the Defendant should have considered other possible diagnoses or differential diagnoses. However, the Defendant had failed to do so, jumped to the diagnosis of adenocarcinoma of

rectum and commenced neoadjuvant chemoradiotherapy on the Patient without a positive histological diagnosis.

26. In our view, the Defendant's conduct had fallen below the standards expected of registered medical practitioners in Hong Kong. We therefore find him guilty of misconduct in a professional respect under charge (a).

27. Although the Defendant wrote in his medical record saying "to arrange appointment QMH (for Bx)", there was no further specific action on his part that could be seen.

28. We accept the opinion of the Secretary's expert that "… in view of the repeated negative biopsies showing no cancer cells at all, and to pay extra precautions and take additional measures to avoid misdiagnosis and unnecessary anticancer treatment" and "… He did not refer the patient to private sector for deeper biopsies eg image guided biopsy …"

29. We are satisfied that the Defendant had failed to conduct adequate investigation and/or examination to ascertain the nature of the Patient's tumour before commencing neoadjuvant chemotherapy on the Patient.

30. In our view, the Defendant's conduct had fallen below the standards expected of registered medical practitioners in Hong Kong. We therefore find him guilty of misconduct in a professional respect under charge (b).

31. As the diagnosis of adenocarcinoma of rectum was not ascertained, carrying out neoadjuvant chemoradiotherapy on the Patient was unnecessary.

32. In our view, the Defendant's conduct had fallen below the standards expected of registered medical practitioners in Hong Kong. We therefore find him guilty of misconduct in a professional respect under charge (d).

Sentencing

33. The Defendant has a clear disciplinary record.

34. In line with published policy, we shall give credit to the Defendant for his frank admission and full cooperation throughout these disciplinary proceedings.

35. 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 public confidence in the medical profession by upholding its high standards and good reputation.

36. In our view, the nature and gravity of the disciplinary offences in this case were serious, particularly neoadjuvant chemoradiotherapy was a kind of invasive treatment, the consequence of which cannot be ignored. This modality of treatment should not be given lightly without a positive histological diagnosis.

37. Having considered the serious nature and gravity of the disciplinary charges for which the Defendant was found guilty and what we have heard and read in mitigation, in respect of charges (a), (b) and (d), we make a global order that the Defendant be removed from the General Register for a period of 6 months.

38. We take note of the remedial steps done by the Defendant, which include the avoidance of all radiotherapy or chemotherapy treatment in the absence of histological results. We also take note of the CME courses attended by the Defendant and his assurance to us that he will continue to attend CME courses regularly to keep himself professionally updated. We have considered all the character reference letters written for the Defendant and his participation in community service and charitable work. We accept that the Defendant is remorseful and the risk of re-offending is low.

39. We therefore further order that the removal order be suspended for a period of 18 months.

Remark

40. The name of the Defendant is included in the Specialist Register under the Specialty of Clinical Oncology. It is for the Education and Accreditation Committee to consider whether any action should be taken in respect of his specialist registration.

Prof. TANG Wai-king, Grace, SBS, JP
Chairperson of the Inquiry Panel
The Medical Council of Hong Kong