

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr CHAU Wing (Reg. No.: M00785)

Date of hearing: 23 November 2023 (Thursday)

Present at the hearing

Council Members/Assessors: Prof. LAU Wan-ye, Joseph, SBS
(Chairperson of the Inquiry Panel)
Dr LING Siu-chi, Tony
Dr CHOW Wing-sun
Ms LIU Lai-yun, Amanda
Mr LAI Hing-kwan

Legal Adviser: Mr Stanley NG

Legal Officer representing the Secretary: Miss Sanyi SHUM, Senior Government Counsel

Defence Solicitor representing the Defendant: Mr Chris Howse of
Messrs. Howse Williams

1. The charges against the Defendant, Dr CHAU Wing, were:

“That in or about 2015 to 2016, he, being a registered medical practitioner, disregarded his professional responsibility to his patient (“the Patient”) in that he:

- (a) offered improper treatment(s) and/or advice to the Patient in representing to her that such treatment(s) and/or advice would enable her to conceive a male child; and
- (b) solicited the Patient to terminate her pregnancy if the gender and/or number of the fetus(es) were not desirable.

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 21 June 1965 to the present. His name has been included in the Specialist Register under the specialty of Obstetrics & Gynaecology since 4 March 1998.
3. The Patient said she consulted the Defendant at his clinic with her husband for the first time on 11 November 2015. However, the Defendant's version is that the date of the first consultation was 5 December 2015. The Legal Officer representing the Secretary submitted that the date of the first consultation is immaterial for the purpose of proving the charges. Irrespective of the exact date, at this first consultation, the Patient informed the Defendant that she would like to conceive a male baby in her next pregnancy. She had a 17-month old daughter delivered vaginally. Her menstrual cycles had been regular and her last menstrual period ("LMP") was on 29 November 2015. Her husband's sperm analysis had been done 3 years earlier. The Defendant discussed and explained to the Patient regarding how to improve the chance of conceiving a male baby, such as (i) improving sperm numbers and motility; (ii) improving the egg quality using Fertilan (clomiphene); (iii) the ideal timing of sexual intercourse; (iv) loosening the cervix mucus; and (v) douching the vagina with Ham's solution plus sodium bicarbonate. The explanation and discussion took around 45 to 60 minutes. The Defendant told the Patient, if she wanted to proceed, to record her basal body temperature ("BBT") to assess the quality of her ovarian function, and to come back for follow-up. The Defendant arranged a seminal analysis ("SA") for the husband.
4. On 16 December 2015, the SA showed semen volume of 5.5mL and sperm count of 85 million. The motility was 80% at first assessment, 60% after 2 hours, 40% after 6 hours, 20% after 8 hours and 0% after 24 hours.
5. On 17 December 2015, to improve sperm quality, the Defendant advised the husband to take vitamin E 400 IU, zinc 50mg and vitamin C 300mg once daily for 90 days.
6. On 16 January 2016, the Patient's LMP was on 24 December 2015. The Defendant prescribed the Patient two courses of Fertilan to be taken once daily for 5 days for the months of January and February, and repeated the husband's prescription of vitamin C, vitamin E and zinc for a further 30 days.
7. On 11 March 2016, the Defendant performed an ultrasound scan for the Patient and the result was normal. The Defendant prescribed two further courses of Fertilan to the Patient to be taken once daily for 5 days for the months of March and April.

8. On 22 April 2016, the Patient's LMP was on 19 April 2016. The Defendant performed an ultrasound scan for the Patient and nothing abnormal was detected. The Defendant prescribed the Patient bromhexine (Unihexine), 1 tablet 3 times a day for 7 days and Fertilan 1 tablet once daily for 5 days. The Defendant also prescribed the Patient Ham's solution for douching at the time of ovulation. Two sets of syringes and catheters were also given to the Patient to collect urine for a luteinising hormone test using the Ovustick.
9. On 30 April 2016, the Patient reported that the Ovustick test at 9:15 a.m. gave a result of 3 and her BBT was 36.4°C, indicating a luteinizing hormone surge ("LHS"). The Defendant advised her to have intercourse once between 33 to 57 hours later (i.e. on day 14).
10. On 19 May 2016, the Defendant prescribed the Patient Fertilan for 5 days and bromhexine (Unihexine) 3 times a day for 4 days, and vitamin C, vitamin E and zinc for the husband for 30 days. The Defendant instructed the Patient to test her urine for LHS at around day 14. The Defendant provided the Patient Ham's solution for douching and an Ovustick for ovulation testing.
11. On 22 June 2016, the Patient's LMP was on 18 June 2016. She informed the Defendant that she had been coughing and therefore intercourse had not taken place. The Defendant prescribed 100 tablets of folic acid and another 5 tablets of Fertilan, and vitamin C, vitamin E and zinc for the husband for 15 days. The Defendant instructed the Patient to use the Ham's solution for douching, and the syringe and catheter for urine testing at home.
12. On 29 June 2016, the Patient reported that the Ovustick test at 11 a.m. gave a result of 3 and BBT of 36.6°C.
13. On 30 June 2016, the Patient reported that the Ovustick test at 10:17 a.m. gave a result of 4 and BBT of 36.7°C, which indicated a LHS. The Defendant advised the Patient to have intercourse between 7:17 p.m. on 1 July 2016 and 7:17 p.m. on 2 July 2016. The Defendant gave the Patient more Ham's solution for douching and another set of syringe and catheter for testing if needed.
14. On 27 July 2016, the Patient's pregnancy test was positive, and the ultrasound scan showed a small amniotic sac with maturity of 4 weeks and 2 days.
15. On 4 August 2016, the Patient was 6 weeks and 5 days into her pregnancy. A multiple pregnancy was evidenced by the presence of two foetal hearts. Maternal blood Y-DNA ("MBY") test was performed to ascertain the gender of the two foeti.
16. On 5 August 2016, the MBY test result showed that Y-chromosomes were not detected. It was suggested that the Patient was carrying twin girls.

17. On 8 August 2016, the Patient's husband came to the Defendant's clinic to pick up the MBY report. The Defendant did not see him on that day. The Defendant had not seen the Patient or her husband since 5 August 2016.
18. On 28 February 2017, the Patient gave birth to her twin girls. The Patient said it was totally unexpected in her family planning and created heavy financial burden to them.
19. By a statutory declaration made on 21 December 2018, the Patient lodged a complaint against the Defendant with the Medical Council of Hong Kong ("the Council").

Burden and Standard of Proof

20. 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.
21. There is no doubt that the allegations against the Defendant here are serious. 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 carefully.

Findings of the Inquiry Panel

22. The Defendant admits the factual particulars of the disciplinary charges against him but it remains for us to consider and determine on the evidence whether the Defendant had by his conduct fallen below the standards expected of registered medical practitioners in Hong Kong.
23. It is stated in paragraph 36.6 of the Code of Professional Conduct (2009 and 2016 editions) that:

"36.6 Sex selection for social, cultural or other non-medical reasons should not be performed."

24. There is no dispute that on the "first consultation", the Defendant offered the Patient treatment and/or advice regarding how to improve the chance of conceiving

a male baby, such as (i) improving sperm numbers and motility; (ii) improving the egg quality using Fertilan (clomiphene); (iii) the ideal timing of sexual intercourse; (iv) loosening the cervix mucus; and (v) douching the vagina with Ham's solution plus sodium bicarbonate.

25. On increasing sperm numbers and motility, the Defendant prescribed the Patient's husband with vitamin C, vitamin E and zinc periodically. Vitamin C, vitamin E and zinc so prescribed are antioxidants. According to the Secretary's expert, there is lack of evidence to show any improvement in sperm quantity, quality and pregnancy rate both in natural and assisted reproduction after the use of antioxidants. Further, the SA report of the husband dated 16 December 2015 was in fact normal. There was no evidence that any medication could further improve the sperm quality when it was already within normal range. More importantly, there was no evidence that improvement in the overall motility of one's sperm could result in conception of a male baby as alleged by the Defendant.

26. On improving the ovum or egg quality, the Defendant in his submission to the Preliminary Investigation Committee dated 20 November 2020 ("PIC Submission") stated that the purpose of prescribing clomiphene citrate (Fertilan) was to correct the "luteal phase defect (LPD) of the Patient" and "to improve the egg (ovum) quality". The Defendant proposed that "an ovum with a defective luteal phase may have a thicker wall, thus sperm needs a longer period to penetrate, which is unfavourable to short lifespan sperm, which is presumably male." According to the Secretary's expert, this is merely speculation rather than of evidence-based. LPD as an independent entity causing infertility has not been proven. There has been no study showing the association of LPD with egg quality or its wall. There is also no evidence that medical treatment of LPD would improve pregnancy rates. Further, the diagnosis of LPD in the Patient is questionable. The Defendant based merely on a single cycle (29 November 2015 to 23 December 2015) of rising BBT of "less than 14 days" to diagnose LPD. Classically, clinically detected LPD refers only to a luteal phase of ≤ 10 days. From the Patient's BBT record, the luteal phase actually started from 10 December 2015 to 23 December 2015 (for 13 days), which was more than 10 days. Therefore, there was no clinical evidence that the Patient did suffer from LPD. In case there was any suspicion of LPD in the Patient, BBT should be repeated or other investigations should be performed to confirm the diagnosis before considering any treatment. Therefore, there was no indication for prescription of clomiphene citrate as there was no LPD to correct in the Patient. More importantly, there is no evidence to associate LPD with egg quality or its wall or to show that eggs of better quality could be more easily penetrated by a male sperm. In any case, the ultimate question is whether prescribing clomiphene citrate to the Patient would actually enable her to conceive a male child. Clomiphene citrate seems to have little clinical effect on sex selection because their influence on sex ratio (i.e. the ratio of male to female births) was only minimal, if any. Moreover, the possibility of multiple pregnancy was significantly increased with clomiphene citrate compared to the background rate in

natural pregnancies.

27. On establishing the ideal time of sexual intercourse, the Secretary's expert's opinion is that there was no association between the sex of the baby and the timing of intercourse. The deliberate control over the timing of intercourse in relation to the day of ovulation has no practical value in sex selection.
28. On loosening the secretion inside the cervix and uterus, the Defendant prescribed the Patient bromhexine (Unihexine). According to the Secretary's expert, no human study on the use of bromhexine to improve cervical mucus is found in the literature, let alone on the alteration of sex ratio.
29. On vaginal douching with Ham's solution plus bicarbonate, the Defendant instructed the Patient to douche the vagina before intercourse claiming that such practice would improve the longevity and motility of the sperm, especially the shorter-lived male sperm. However, according to the Secretary's expert, instead of improving longevity and motility, it was reported in a study that sperm incubated in Ham's F-10 medium exhibited a marked loss of motility in association with a significant increase in peroxidative damage. In fact, the study cited by the Defendant actually showed that women inseminated by sperm prepared with Ham's F-10 solution and bicarbonate medium had a lower pregnancy rate than the other women using other medium. There was no mention on the sex ratio of the pregnancies in that study. Also, the use of bicarbonate solution may increase the pH of the vagina. There was no scientific study to show that altering the pH value of the vagina would skew the sex ratio. On the other hand, changing the pH of the vagina which is slightly acidic may increase the risk of genital tract infection.
30. In conclusion, the Secretary's expert could not find any proven indications in the medical record to justify the treatment and/or advice offered by the Defendant to the Patient regarding how to improve the chance of conceiving a male baby. The Patient did not have any problem in getting pregnant. She had regular cycles and did not have ovulatory problem as evident by the biphasic BBT chart in December 2015. The luteal phase was not short. Taking clomiphene citrate would not improve the Patient's chance of natural conception but might increase her possibility of having multiple pregnancy. The husband in fact had no abnormality in his semen analysis. There was apparently no difficulty for natural conception in her first pregnancy and therefore she did not need close monitoring of ovulation to time intercourse for the purpose of getting pregnant. Bromhexine and vaginal douching both have no proven value in improving her chance of conception. There is no evidence to support that such treatments and/or advice offered by the Defendant would skew the male-to-female sex ratio. Such treatments and/or advice would not enable the Patient to have a higher chance of having a male baby.
31. The Defendant does not challenge any of the Secretary's expert opinion. We accept the Secretary's expert's opinion in the entirety.

32. We are satisfied that the Defendant had offered improper treatments and/or advice to the Patient in representing to her that such treatments and/or advice would enable her to conceive a male child. The Defendant had by his conduct in the present case fallen below the standards expected of registered medical practitioners in Hong Kong. Accordingly, we find the Defendant guilty of misconduct in a professional respect as per charge (a).
33. The Patient said that at the consultation on 4 August 2016, the Defendant performed a blood test for checking of the fetal sex. The Patient said that the Defendant told her that if it was twin girls, she could undergo abortion; if it was a boy and a girl, the girl could be aborted; and if it was twin boys, one of which could be aborted. The Defendant admitted the facts of charge (b).
34. Termination of pregnancy carried out for reasons based not on statutory medical grounds is a criminal offence under the Offences Against the Person Ordinance, Cap. 212. Soliciting patients to undergo unlawful termination of pregnancy is strictly prohibited.
35. We are satisfied that the Defendant solicited the Patient to terminate her pregnancy if the gender and/or number of the fetus(es) were not desirable. The Defendant had by his conduct in the present case fallen below the standards expected of registered medical practitioners in Hong Kong. Accordingly, we find the Defendant guilty of misconduct in a professional respect as per charge (b).

Sentencing

36. The Defendant has a clear disciplinary record.
37. In line with our published policy, we shall give the Defendant credit in sentencing for his admission and cooperation throughout these disciplinary proceedings.
38. We bear in mind that the primary 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.
39. We have considered all the WhatsApp messages as submitted and the CME courses undertaken by the Defendant.
40. We were told by the Defendant's solicitor that the Defendant has now retired.
41. We must emphasize that the nature and gravity of both charges are very serious, in particular, charge (b), which justify an order of removal without suspension. In

any case, we do not see the mitigation as advanced carries sufficient weight to persuade us to order any suspension.

42. Taking into consideration the nature and gravity of the Defendant's case and what we have heard and read in mitigation, we make a global order in respect of charges (a) and (b) that the Defendant be removed from the General Register for a period of 6 months.

Remark

43. At the beginning of the inquiry today, we have specifically asked the Defendant's Solicitor if he had already properly advised the Defendant that his guilty plea to charge (b) may also amount to the criminal offence of soliciting or inciting an unlawful termination of pregnancy, and we may after the conclusion of this inquiry refer the matter to the police for further investigation. The Defendant's Solicitor told us that he had already so advised the Defendant, and the Defendant is prepared of such a referral. We see fit that a referral to the police is necessary. We will therefore ask the Secretariat of the Council to make a referral to the police for further investigation.

Prof. LAU Wan-yee, Joseph, SBS
Chairperson of the Inquiry Panel
The Medical Council of Hong Kong