香 港 醫 務 委 員 會

The Medical Council of Hong Kong

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr DAY Weida (賴偉達醫生) (Reg. No.: M11949)

Date of hearing: 29 May 2025 (Thursday)

Present at the hearing

Council Members/Assessors: Prof. TANG Wai-king, Grace, SBS, JP
(Chairperson of the Inquiry Panel)
Prof. LUI Cho-ze, Joseph
Dr LAU Ho-lim
Mr LAM Chi-yau
Ms Asha Rani SHARMA

Legal Adviser: Mr Edward SHUM

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

Legal Officer representing the Secretary: Mr Micky YIP as instructed by Department of Justice

The Charges

1. The amended charges against the Defendant, Dr DAY Weida, are:

> *"That he, being a registered medical practitioner, disregarded his professional responsibility to his patient* [redacted] *("the Patient"), in that he:*
>
> *(a) in or about January 2019 to March 2019, failed to properly discuss the nature of spindle cell lesion and/or offer other treatment*

option(s) to the Patient before performing excision of the abdominal wall mass ("the Operation") on 21 March 2019;

(b) *on 21 March 2019, failed to perform a wider excision of the abdominal wall mass during the Operation to achieve complete tumour eradication;*

(c) *after the Operation and in or about March 2019 to April 2019, failed to inform the Patient of the presence of positive resection margins and offer other treatment option(s) (including but not limited to re-excision) to the Patient;*

(d) *after the Operation and in or about March 2019 to October 2019, failed to arrange active post-operative surveillance on the Patient's condition;*

(e) *in or about December 2019 to August 2020 failed to correctly interpret and appreciate the ultrasound guided FNA findings and assured the Patient that everything was alright; and/or*

(f) *in or about December 2019 to August 2020, failed to timely arrange appropriate examination(s) (including but not limited to MRI and ultrasound scan with needle biopsy) for the Patient to exclude the possibility of tumour recurrence.*

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 13 July 1998 to the present. His name has been included in the Specialist Register under the specialty of General Surgery since 3 December 2008.

3. Briefly stated, on 31 January 2019, the Patient consulted the outpatient department of the Hong Kong Baptist Hospital ("HKBH") for a painful mass at the left upper quadrant of her abdomen. Physical examination by the attending doctor then revealed a 2cm subcutaneous mass with tenderness; and the Patient

was referred to consult the Defendant, a resident specialist in General Surgery at the Specialist Clinic of HKBH, for further assessment.

4. The Defendant saw the Patient later in the day on 31 January 2019 and arranged for a CT scan of her abdomen.

5. The material parts of the CT Scan Report issued by the Consultant Radiologist of HKBH on 31 January 2019 read as follows:-

"…

IMPRESSION:

At the left abdominal wall, just below the subcutaneous level and lateral to the left rectus femoris muscle, a 1.19cm soft tissue lesion is noted. Feature may suggest a haematoma. Suggest follow up.
…"

6. On 1 February 2019, the Patient returned to see the Defendant and was told that the mass was likely to be a haematoma, which might resolve on its own. The Patient took the Defendant's advice of expectant management and to return for a further assessment in a month.

7. On 6 March 2019, the Patient returned to see the Defendant. According to the Defendant, the mass remained palpable upon physical examination. The Defendant advised the Patient to undergo Ultrasound-guided ("USG") tru-cut biopsy in order to further investigate the nature of the mass. The Patient agreed.

8. On 8 March 2019, a USG tru-cut biopsy of the Patient's left abdominal wall mass was performed under local anaesthesia by the Consultant Radiologist of HKBH. A specimen was sent for histopathology reporting with the result that a diagnosis of "*Spindle cell lesion, consistent with fibromatosis*" was made.

9. On 13 March 2019, the Patient returned to see the Defendant and was advised to undergo excision of the mass, frozen section examination and possibly abdominoplasty. The Patient agreed.

10. On 21 March 2019, the Defendant excised the mass from the Patient's left abdominal wall under general anaesthesia at HKBH. The handwritten operation record was very brief. It described the lesion as a 3 x 3cm mass arising from the external oblique muscle. Through a transverse incision, the external oblique muscle and the mass were excised. Abdominoplasty was performed with an Ultrapro mesh. There was however no mention of the thickness of the mass or the width and the depth of the excision. After excision,

a specimen was sent after the surgery for histopathology reporting with the result that a diagnosis of "*Spindle-cell tumour, consistent with desmoid-type fibromatosis*" was made.

11. According to the Patient, when the Defendant saw her during the ward round later in the day on 21 March 2019, the Defendant told her that the surgery was "*very successful*" and "*the mass was entirely excised*".

12. On 22 March 2019, the Patient was discharged home with arrangement for a follow up consultation with the Defendant on 27 March 2019.

13. On 27 March 2019, the Patient returned to see the Defendant. According to the Patient, the Defendant reiterated to her during this consultation that "*the mass was eradicated completely (切得好乾淨)*".

14. On 23 October 2019, the Patient returned to see the Defendant complaining of pain and discomfort at the area around the place where the mass was removed. The Defendant then advised the Patient to undergo another ultrasound examination. The Patient agreed.

15. On 31 October 2019, the Patient underwent an ultrasound examination of her abdomen at HKBH with the result that apart from "*a linear hypoechoic structure below the scar [at left side of the abdomen] … Ultrasound… show[ed] no definite mass lesion within or deep to subcutaneous layer*".

16. On 4 November 2019, the Patient attended another follow-up consultation during which the Defendant explained to her the result of the ultrasound examination done on 31 October 2019. The Defendant also advised the Patient to undergo another ultrasound scan +/- FNA cytology later in December 2019.

17. The Patient returned to HKBH on 9 December 2019 and underwent Ultrasound guided FNA cytology, which showed no presence of overt malignant cells. Ultrasound examination on the same day however showed an increase in size of the linear hypoechoic structure, when compared with the ultrasound examination done on 31 October 2019.

18. According to the Patient, she returned to Hong Kong from overseas on or around 19 July 2020 and underwent quarantine. Owing to "*persistent swelling and the presence of a mass at the original surgical site*", the Patient contacted the Defendant, who then arranged for her to undergo another ultrasound examination (which was done on 5 August 2020); and a tru-cut biopsy (which was done on 7 August 2020).

19. On 10 August 2020, the Patient returned to see the Defendant. During this

consultation, the Defendant explained to the Patient the result of the biopsy, which showed recurrence of the Desmoid-type fibromatosis. The Defendant advised the Patient to undergo, amongst others, re-surgery. However, the Patient decided to seek a second opinion from another doctor as the Defendant "*never advised [her] about the possibility of recurrence… and had at various stages assured [her] that everything was fine*".

20. The Patient did not return to see the Defendant and she later underwent two operations by another doctor for complete extirpation of the recurrent left abdominal wall tumour at St Paul's Hospital in August 2020.

21. The Patient subsequently lodged this complaint against the Defendant with the Secretary of the Medical Council (the "Council").

Burden and Standard of Proof

22. 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.

23. 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

24. Before he opened the Secretary's case, the Legal Officer told us that the Secretary would offer no evidence against the Defendant in respect of disciplinary charges (d) and (e). Since the burden of proof is on the Secretary, we find the Defendant not guilty of these two charges.

25. Through his solicitor, the Defendant then indicated that he would admit the factual particulars of the rest of the disciplinary charges (as amended).

26. It remains for us to consider all the evidence and determine whether the Defendant has by his conduct in this case fallen below the standards expected of registered medical practitioners in Hong Kong.

27. We agree with the Secretary's expert witness, Dr MOK, that it was improper for the Defendant to tell the Patient that the spindle cell lesion could be considered as benign. This is because although "*[i]t does not metastasize... [,it] is locally invasive and may infiltrate adjacent important structures*". We also agree with Dr MOK that "*[r]esection is often incomplete and accompanied by recurrence in a substantial proportion of patients*".

28. The Defendant also admitted that he failed to offer other treatment option(s) to the Patient.

29. In failing to properly discuss with the Patient the said nature of spindle cell lesion and offer other treatment option(s) to the Patient before performing excision of the abdominal wall mass on 21 March 2019, the Defendant had in our view by his conduct in this 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 disciplinary charge (a).

30. And we agree with Dr MOK that "*[i]n spite of a lack of consensus with regard to resection margins, the primary goal of excision is still complete removal of the lesion with a microscopically negative margin if this can be achieved with minimal functional impairment… In the instant case, the lesion was noted to be arising from the external oblique [muscle] in the [left upper quadrant] of the abdomen as stated in the operation record. Judging from the CT images, there should be sufficient areas of soft tissue around the tumour for a wider excision without compromising vital structures or jeopardizing essential functions.*"

31. The Patient had clearly expressed to the Defendant her wish to eradicate the mass. Regardless of whether this goal could ultimately be achieved, the Defendant ought in our view to have made a sufficiently wide excision of the abdominal wall mass during the Operation.

32. In failing to perform a wider excision of the abdominal wall mass during the operation on 21 March 2019 to achieve complete tumour eradication, the Defendant has in our view by his conduct in this 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 disciplinary charge (b) (as amended).

33. Our attention was drawn by Dr MOK to studies which showed that "*patients with microscopically involved margins might not fare worse than those with negative margins*" and "*recurrence rates may not be significantly affected*" by positive microscopic margins.

34. But then again, the Defendant's failure to inform the Patient after the Operation of the presence of positive resection margins and to offer suitable treatment option(s) to the Patient is unacceptable. Not only did the Defendant deprive the Patient of her right to know about the true result of the Operation but also gave her a false sense of security about her prognosis.

35. In failing to inform the Patient after the Operation the presence of positive resection margins and offer other treatment option(s), including but not limited to re-excision, to the Patient, the Defendant has in our view by his conduct in this 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 disciplinary charge (c).

36. We agree with Dr MOK that given the nature of the spindle cell lesion, the Defendant should be "*vigilant in closely monitoring the [P]atient for possible post-operative recurrence and arrange clinical review and imaging at regular frequent intervals.*" Our attention was drawn by Dr MOK to the National Comprehensive Cancer Network (NCCN) Guidelines Version 2.2019 on Soft Tissue Sarcoma which recommended follow-up for Desmoid-type Fibromatosis with "*Imaging with CT or MRI every 3-6 months for 2-3 years, then every 6-12 months thereafter*".

37. In failing to timely arrange appropriate examination(s), including but not limited to MRI and ultrasound scan with needle biopsy, for the Patient in or about December 2019 to August 2020 to exclude the possibility of tumour recurrence, the Defendant has in our view by his conduct in this 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 amended disciplinary charge (f).

Sentencing

38. The Defendant has a clear disciplinary record.

39. In line with our published policy, we shall give the credit in sentencing for

admitting the factual particulars of the disciplinary charges for which we find him guilty.

40. We bear in mind the primary purpose of a disciplinary order is not to punish the Defendant but to protect the public from persons who are unfit to practice medicine and to maintain public confidence in the medical profession by upholding its high standards and good reputation.

41. We accept that the Defendant has learned his lesson. However, we are particularly concerned about the failure to inform the Patient of the true result of the Operation.

42. Taking into consideration the nature and gravity of the disciplinary charges for which we have found the Defendant guilty and what we have heard and read in mitigation, we order that:-

(i) in respect of disciplinary charges (a), (b) and (f) that the Defendant be reprimanded;

(ii) in respect of disciplinary charge (c) that the name of the Defendant be removed from the General Register for a period of 3 months; and

(iii) the operation of the removal order be suspended for a period of 12 months.

Remark

43. The name of the Defendant is included in the Specialist Register under the Specialty of General Surgery. We shall leave it to the Education and Accreditation Committee to decide whether anything needs to be done in respect of his specialist registration.

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