香 港 醫 務 委 員 會
The Medical Council of Hong Kong

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr LAW Hing Fai (羅慶輝醫生) (Reg. No.: M05788)

Date of hearing: 21 August 2023 (Monday)

Present at the hearing

Council Members/Assessors: Prof. TANG Wai-king, Grace, SBS, JP
(Chairperson of the Inquiry Panel)
Dr HO Pak-leung, JP
Dr KWOK Kam-hung
Mr WONG Hin-wing, Simon, MH
Mr LAI Hing-kwan

Legal Adviser: Mr Edward SHUM

The Defendant, who is not legally represented, is present.

Legal Officer representing the Secretary: Ms Dorothy LIN, Senior Government Counsel

1. The charges against the Defendant, Dr LAW Hing Fai, are:

"From July 2020 to April 2021, he, being a registered medical practitioner, disregarded his professional responsibility to his patient ("the Patient"), in that he :

(a) failed to keep proper and/or adequate medical records in respect of the Patient;

(b) failed to consult a psychiatrist on the Patient's mental condition as to her suitability for the operation(s) before performing operation(s) on the Patient's eyelid;

(c) failed to properly explain the risk(s) and/or advise alternative treatment option(s) to the Patient before performing operation(s) on the Patient's eyelid on 10 July 2020 and 13 August 2020; and/or

(d) prematurely performed a revision operation of the Patient's upper eyelid on 12 October 2020.

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 24 July 1985 to the present. His name has never been included in the Specialist Register.

3. Briefly stated, the Patient first consulted the Defendant on 10 July 2020 for advice on improvement of her eyelid contour.

4. It is not disputed that the Patient told the Defendant during this consultation that although her depressive illness was well managed by medication, a side effect of taking psychiatric drug(s) for a long period of time was that she became obese and hence losing her eyelid contour.

5. In addition to the Patient's request for double upper eyelid formation by stitching, the Defendant suggested to the Patient after physical examination that she might undergo upper eyelid fat removal so that her eyelid contour would look more prominent.

6. According to the Defendant's statement to the Preliminary Investigation Committee ("PIC") of the Medical Council ("the Council"), apart from explaining to the Patient "*in detail how the stitching was performed and how the fat was removed through a 6mm stitch incision, also emphasizing that the desirable result might not be achieved until the swelling subsided completely which might take a few months and therefore correction would only be performed at least after 2 months should the crease height be higher than that desired*", he verbally explained to the Patient in broad terms "*about the surgical risk and the anticipated look after the procedures*."

7. Also, consent forms in Chinese had been signed by the Patient for double upper eyelid formation by stitching and upper eyelid fat removal respectively.

8. Copies of these consent forms were placed before us by the Legal Officer for our consideration.

9. Apart from setting out common surgical risks and complications like bruising, swelling, allergic reaction and inflammation, the consent form for double upper eyelid formation by stitching specifically mentioned that there was no guarantee of upper eyelid symmetry and further operation might be necessary.

10. The consent form for upper eyelid fat removal did not mention about common surgical risks and complications like bruising, swelling, allergic reaction and inflammation. Instead, it was specifically mentioned that (1) there was a risk of eyelid asymmetry after the operation and further operation might be necessary; (2) some patients might develop skin pigmentation and/or prominent scars, which might last forever or take a long time to disappear; and (3) incisional operation might cause regional nerve palsy, which would take a few months to recover.

11. The Patient returned to see the Defendant on 13 August 2020 and again on 12 October 2020 complaining of upper eyelid asymmetry.

12. According to the Defendant's PIC statement, he "*persuaded [the Patient] to observe for a few more weeks because when the swelling subsided completely, the crease height would be lower as expected. However, she insisted on removal by saying repeatedly that she did not like the current appearance at that moment. Her husband further added that she was of a character that she would not give up until her request was fulfilled. Under such circumstances, [he] yielded to her urging and cut one of the stitches.*"

13. However that may be, the Secretary of the Council received the present complaint against the Defendant from the Patient by email on 14 May 2021.

Burden and Standard of Proof

14. 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.

15. 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 the disciplinary charges against him separately and carefully.

Findings of the Inquiry Panel

16. At the beginning of this inquiry, the Legal Officer told us that she is not going to call the Patient to give oral evidence because of the worsening of the Patient's mental condition in relation to stresses. Accordingly, the Secretary will offer no evidence against the Defendant in respect of disciplinary charge (c). Since the burden of proof is always on the Secretary, we find the Defendant not guilty of disciplinary charge (c).

17. It is clearly stated in section 1 of the 2016 edition of the Code of Professional Conduct (the "Code") that:-

1.1.1 The medical record is the formal documentation maintained by a doctor on his patients' history, physical findings, investigations, treatment and clinical progress…

1.1.2 A medical record documents the basis for the clinical management of a patient. It reflects on the quality of care and is necessary for continuity of care…

1.1.3 All doctors have the responsibility to maintain systematic, true, adequate, clear, and contemporaneous medical records…"

18. It is however evident to us from reading the medical records kept by the Defendant on the Patient that essential particulars like medical history of the Patient; her known drug allergy, if any; details of medication and/or nutrient supplement that she was taking, which might affect her blood clotting; physical findings; details of surgical procedures performed; details of anaesthetics administered; post-operative condition and clinical progress of the Patient were all missing.

19. The Defendant mentioned in his statement to the PIC that "*for [his] own clinical record and documentation, a preoperative photograph of normal eyelid, which [the Patient] refused, and measurement of the tarsal height and prospective crease height are adequate… Therefore, the surgical procedure details are not regularly recorded in [his] own clinical record.*"

20. We need to emphasize that the medical records kept by the Defendant on the Patient were not solely for his own reference. In our view, proper and adequate medical record keeping is essential for the management and continuity of care of the Patient, be it by the Defendant or other professional colleagues.

21. In failing to keep proper and/or adequate medical records in respect of the Patient, the Defendant has in our view by his conduct in the present case fallen below the standard 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).

22. The Secretary sought to rely on the expert opinion of Dr YEU, a specialist in plastic surgery, and argued that "*[c]onsulting [the Patient's] psychiatrist is necessary to have information of nature of [her] psychiatric problem, the treatment received, fitness for consent and psychiatric feasibility of the patient for plastic surgery. The psychiatrist should also be involved in preoperative workup and postoperative care…*"

23. It is not the Secretary's case that the Patient lacked the mental capacity to give a valid consent to cosmetic treatment by the Defendant. We appreciate that early involvement of a psychiatrist might help to manage the expectation of the Patient better. This is particularly true when the Patient kept returning to see the Defendant and requested for revision operations. The Defendant is however not being charged for failing to refer the Patient to a psychiatrist for pre-operative assessment.

24. The Defendant accepted that he did not take a detailed history of the nature and severity of the Patient's depressive illness. Also, he did not ask the Patient about the name of the psychiatric medication that she had been taking.

25. But then again, the Patient's suitability for operation(s) for double upper eyelid formation by stitching; eyelid fat removal; and revision(s) of stitch(es) was in our view a clinical judgment. Since the Patient did not attend this inquiry to give oral evidence, we are unable to know the nature and severity of her depressive illness at the material times. Nor do we know whether the Patient would consent to the Defendant consulting a psychiatrist on her mental condition as to her suitability for the operation(s) before performing operation(s) on her eyelid.

26. Bearing in mind that the burden of proof is always on the Secretary, we are not satisfied on the evidence before us that her case against the Defendant in respect of disciplinary charge (b) has been made out. Accordingly, we find the Defendant not guilty of that charge. We wish to make it clear that but for the lacuna in the Secretary's case, our decision may not be the same.

27. The Defendant acknowledged that the cutting of one stitch on 12 October 2020 was premature but he was coerced by the Patient to do so.

28. Regardless of whether it was the Patient who initiated the request, there is no dispute that the Defendant performed a revision operation of her left upper eyelid during the consultation on 12 October 2020.

29. It is the unchallenged evidence of Dr YEU that "*[f]or the operation done in the [P]atient, the result would be stable 3 months after the operation if the [P]atient follows the preoperative management advice.*" We also agree with Dr YEU that "*[r]evision operation is usually done when the result of the operation is stable. Only if there is eminent risk to the [P]atient's health or the result will not improve with time, early revision operation will be done. The [defendant] should act for the best interest of the [P]atient rather than [her] request.*"

30. For these reasons, by performing a revision operation of the Patient's left upper eyelid prematurely, the Defendant has in our view by his conduct in the present case fallen below the standard expected of registered medical practitioners in Hong Kong. Accordingly, we also find the Defendant guilty of misconduct in a professional respect as per disciplinary charge (d).

Sentencing

31. The Defendant has a clear disciplinary record.

32. 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.

33. In support of his defence case, the Defendant showed us some extracts from medical records of his patients, who had asked for restoration of original eyelid status after previous upper eyelid stitching.

34. We are deeply concerned that all these medical records shared the same lack of essential particulars as in the present case.

35. The Defendant did not advance any mitigation and we doubt if he has insight into his wrongdoings. We need to make sure that the Defendant will not commit the same or similar breaches in the future.

36. Taking into consideration the nature and gravity of the disciplinary charges for which we find the Defendant guilty, we order that in respect of disciplinary charges (a) and (d) that the name of the Defendant be removed from the General Register for a period of 6 months. We further order that the operation of the removal order be suspended for a period of 18 months, subject to the conditions that the Defendant shall complete during the suspension period satisfactory peer audit by a Practice Monitor to be appointed by the Council with the following terms:

(a) the Practice Monitor shall conduct random audit of the Defendant's practice with particular regard to medical records keeping and management of patients;

(b) the peer audit shall be conducted without prior notice to the Defendant;

(c) the peer audit shall be conducted at least once every 6 months during the 18-month suspension period;

(d) during the peer audit, the Practice Monitor shall be given unrestricted access to all parts of the Defendant's clinic and the relevant medical records which in the Practice Monitor's opinion is necessary for proper discharge of his duty;

(e) the Practice Monitor shall report directly to the Chairman of the Council the finding(s) of his peer audit. Where any defects are detected, such defects shall be reported to the Chairman of the Council as soon as practicable;

(f) in the event that the Defendant does not engage in active practice at any time during the 18-month suspension period, unless otherwise ordered by the Council, the peer audit shall automatically extend until the completion of the 18-month suspension period; and

(g) in case of change of Practice Monitor at any time before the end of the 18-month suspension period, unless otherwise ordered by the Council, the peer audit shall automatically extend until another Practice Monitor is appointed to complete the remaining period of peer audit.

Prof. TANG Wai-king, Grace, SBS, JP
Chairperson of the Inquiry Panel
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