

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

1st Defendant: Dr LEUNG Wai Shun Wilson (梁偉遜醫生) (Reg. no.: M13767)

2nd Defendant: Dr WONG Wai On (黃煒安醫生) (Reg. no.: M17228))

Date of hearing: 24 November 2023 (Friday)

Present at the hearing

Council Members/Assessors: Dr CHOI Kin, Gabriel
(Chairperson of the Inquiry Panel)
Dr HO Hung-kwong, Duncan
Dr HAU Kai-ching
Mr WONG Hin-wing, Simon, MH
Mr LAI Kwan-ho, Raymond

Legal Adviser: Mr Edward SHUM

The 1st Defendant is absent and the 2nd Defendant is present.

Defence Counsel representing the 1st and 2nd Defendants: Mr Richard MAN as
instructed by
Messrs. Kennedys

Senior Government Counsel (Ag.) representing the Secretary: Mr Ryan LEE

Preliminary Issues

1. Before the Notice of Inquiry was read out, the Secretary applied through the Legal Officer for an anonymity order in respect of the Complainant, who was the Patient involved in the incident. Defence Counsel acting for the 1st and 2nd Defendants did not object to the Secretary's application. Having considered

the written submissions of the Legal Officer, we agreed with the Secretary that the special circumstances of this case could justify the making of an anonymity order; and the Complainant would be known as “X” and/or “the Patient” in this inquiry.

Disciplinary charges against the 1st and 2nd Defendants

2. The charges against the 1st Defendant, Dr LEUNG Wai Shun Wilson, are:

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

- (a) on 7 December 2019, failed to arrange and/or order a HIV test as requested by the Patient and/or inappropriately arranged and/or ordered a HTLV test for the Patient; and/or*
- (b) on or about 16 December 2019, informed the Patient, through nursing staff, that the Patient was tested HIV negative when in fact the test undertaken by the Patient was not a HIV test.*

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

3. The charges against the 2nd Defendant, Dr WONG Wai On, are:

“That on 21 December 2019, he, being a registered medical practitioner, disregarded his professional responsibility to his patient X (“the Patient”), in that he:

- (a) failed to observe that the test undertaken by the Patient was not a HIV test despite the Patient was consulting him for his HIV test result; and/or*
- (b) informed the Patient that he was tested HIV negative when in fact the test undertaken by the Patient was not a HIV test.*

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

Facts of the case

4. The name of the 1st Defendant has been included in the General Register from 3 January 2003 to the present. His name has never been included in the Specialist Register.
5. The name of the 2nd Defendant has been included in the General Register from 2 January 2014 to the present. His name has never been included in the Specialist Register.
6. Briefly stated, the Patient conducted a self-test by using a rapid HIV test kit at home and found the result to be positive.
7. On 7 December 2019, the Patient and his friend attended the Outpatient Department of the Canossa Hospital and were seen by the 1st Defendant. The Patient specifically told the 1st Defendant that he and his friend wished to confirm the result of the rapid HIV test that he got by means of a laboratory HIV test.
8. According to the medical records kept by the Canossa Hospital on the Patient, although the 1st Defendant had put down in the Consultation Summary that the purpose of the consultation on 7 December 2019 was “*For HIV tests*”, the laboratory test ordered by the 1st Defendant was for “*HTLV-I/II*”.
9. Report of the laboratory test on HTLV-I/II was subsequently issued on 12 December 2019 with negative finding.
10. According to the 1st Defendant’s submission to the Preliminary Investigation Committee (“PIC”), he reviewed the laboratory test result on 14 December 2019. And yet he failed to notice that a wrong test had been ordered. He then instructed the nursing staff of the Canossa Hospital to contact the Patient and informed him that “*the test result came back to be negative*”.
11. On 16 December 2019, the nursing staff of the Canossa Hospital was able to contact the Patient and informed him of the laboratory test result as per the 1st Defendant’s instruction.
12. On 21 December 2019, the Patient returned to the Outpatient Department of the Canossa Hospital for follow-up on the laboratory test result and was seen by the

2nd Defendant.

13. There is no dispute that the Patient told the 2nd Defendant that he was tested positive by using a rapid HIV test kit at home and hence he came to the Canossa Hospital and undertook a laboratory HIV test earlier that month.
14. According to the 2nd Defendant's submission to the PIC, "*[a]fter reading the result from the computer, believing the report referred to a HIV test, [he] told the Patient his HIV test result was negative*".
15. According to the Patient, he later developed high fever, diarrhoea and rash and was admitted to the Hong Kong Baptist Hospital on 25 December 2019.
16. According to the medical records kept on the Patient by the Hong Kong Baptist Hospital, "*[a]fter admission, his respiratory condition progressive[ly] deteriorated with and complicated by respiratory failure on 27/12/2019 and required intubation and mechanical ventilator support...*".
17. On 29 December 2019, the Patient was transferred from the Hong Kong Baptist Hospital to the Queen Elizabeth Hospital for further management. Laboratory HIV test was conducted after his admission to the Queen Elizabeth Hospital and the result was found to be positive.
18. The Patient subsequently lodged the present complaint with the Council in 2021.

Burden and Standard of Proof

19. We bear in mind that the burden of proof is always on the Legal Officer and the Defendants do not have to prove their 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.
20. There is no doubt that the allegations against each of the Defendants here are serious ones. 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 respective disciplinary charges against each of them separately and carefully.

Findings of the Inquiry Panel

21. The 1st and 2nd Defendants admitted the factual particulars of the disciplinary charges against them.
22. It remains however for us to consider and determine on the evidence before us whether they are thereby guilty of misconduct in a professional respect.

1st Defendant (Dr LEUNG Wai Shun Wilson)

23. The 1st Defendant was fully aware of the purpose of the Patient's consultation with him on 7 December 2019. His failure to order a HIV test for the Patient was clearly below the standards expected of registered medical practitioners in Hong Kong. Accordingly, we find the 1st Defendant guilty of misconduct in a professional respect as per disciplinary charge (a) against him.
24. Given the Patient's self report of positive result in the rapid HIV test at home, the 1st Defendant ought to take extra caution when reading the laboratory HIV test result especially because the two results were directly opposite.
25. By informing the Patient, through nursing staff, that the Patient was tested HIV negative when in fact the test undertaken by the Patient was not a HIV test, the 1st Defendant has by his conduct in the present case fallen below the standards expected of registered medical practitioners in Hong Kong. Accordingly, we find the 1st Defendant guilty of misconduct in a professional respect as per disciplinary charge (b) against him.

2nd Defendant (Dr WONG Wai On)

26. The 2nd Defendant knew that the Patient was consulting him for his laboratory HIV test result. Given the Patient's self report of positive result in the rapid HIV test at home, the 2nd Defendant ought to take extra caution when reading the laboratory HIV test result especially because the two results were directly opposite.
27. In failing to observe that the test undertaken by the Patient was not a HIV test

despite the Patient was consulting him for his laboratory HIV test result, the 2nd Defendant has in our view by his conduct in the present case fallen below the standards expected of registered medical practitioners in Hong Kong. Accordingly, we find the 2nd Defendant guilty of misconduct in a professional respect as per disciplinary charge (a) against him.

28. For the abovementioned reasons, by informing the Patient that he was tested HIV negative when in fact the test undertaken by the Patient was not a HIV test, the 2nd Defendant has in our view by his conduct in the present case fallen below the standards expected of registered medical practitioners in Hong Kong. Accordingly, we also find the 2nd Defendant guilty of misconduct in a professional respect as per disciplinary charge (b) against him.

Sentencing

29. In line with our published policy, we shall give the 1st and 2nd Defendants credit in sentencing for their frank admission and not contesting the issue of professional misconduct.
30. We bear in mind that the purpose of a disciplinary order is not to punish the Defendants 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.

1st Defendant (Dr LEUNG Wai Shun Wilson)

31. The 1st Defendant has a clear disciplinary record.
32. We disagree with the Defence Counsel that this was an isolated incident. We are particularly concerned that the 1st Defendant repeated his mistake on two different occasions. Lulled into a false sense of security that he was HIV negative, the Patient was denied of a chance to seek treatment at the earliest possible time.
33. Taking into consideration the nature and gravity of the disciplinary charges for which we find the 1st Defendant guilty, we shall make a global order that the name of the 1st Defendant be removed from the General Register for a period of 3 months and we further order that the operation of the removal order be suspended for a period of 24 months subject to the condition that the

1st Defendant shall complete within 12 months CME courses, to be preapproved by the Council Chairman, relating to infectious diseases to the equivalent of 10 CME points.

2nd Defendant (Dr WONG Wai On)

34. The 2nd Defendant has a clear disciplinary record.
35. In our view, by confirming with the Patient that he was tested HIV negative, the 2nd Defendant had instilled a false sense of security into his mind and thereby denying the Patient of a chance to seek treatment at the earliest possible time. Accordingly, we do not find any difference in culpability between the 1st and 2nd Defendants.
36. Taking into consideration the nature and gravity of the disciplinary charges for which we find the 2nd Defendant guilty, we shall make a global order that the name of 2nd Defendant be removed from the General Register for a period of 3 months and we further order that the operation of the removal order be suspended for a period of 24 months subject to the condition that the 2nd Defendant shall complete within 12 months CME courses, to be preapproved by the Council Chairman, relating to infectious diseases to the equivalent of 10 CME points.

Dr CHOI Kin, Gabriel
Chairperson of the Inquiry Panel
The Medical Council of Hong Kong