

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

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**DISCIPLINARY INQUIRY**  
**MEDICAL REGISTRATION ORDINANCE, CAP. 161**

Defendant: Dr TAI Hok Leung (戴學良醫生) (Reg. No.: M11689)

Date of hearing: 6 October 2023 (Friday)

Present at the hearing

Council Members/Assessors: Prof. LAU Wan-ye, Joseph, SBS  
(Chairperson of the Inquiry Panel)  
Dr LUNG David Christopher, MH  
Dr TONG Kai-sing  
Ms HUI Mei-sheung, Tennessy, MH, JP  
Ms Careen WONG

Legal Adviser: Mr Stanley NG

Defence Counsel representing the Defendant: Dr David FONG and Mr Jason WONG as  
instructed by Messrs. Haldanes, Solicitors  
& Notaries

Government Counsel representing the Secretary: Miss Katrina CHAN

1. The amended charges against the Defendant, Dr TAI Hok Leung, are:

*“That from about December 2020 to April 2021, he, being a registered medical practitioner, improperly made voucher claim(s) under the Health Care Voucher (“HCV”) System, in the circumstances where one would reasonably have understood them to be impermissible claims under the rules of the HCV Scheme for making claims, in that he made voucher claims in respect of ordering laboratory tests for elderly persons without,*

*(i) providing medical consultations to the elderly persons before the laboratory tests; and/or*

*(ii) seeing the elderly persons in person.*

*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 29 October 1997 to the present. His name has been included in the Specialist Register under the specialty of Chemical Pathology since 2 April 2008.
3. The Government’s Health Care Voucher Scheme (“HCVS”) provides health care vouchers annually to elders aged 65 or above to subsidize their use of primary care services in the private sector. Health care professionals who are registered in Hong Kong, including medical practitioners, are eligible to enroll in the HCVS as service providers. The Defendant was an enrolled healthcare service provider (“EHCP”) under the HCVS.
4. From 24 December 2020 to 12 April 2021, the Health Care Voucher (“HCV”) Division of the Department of Health (“DH”) received six complaints from different voucher recipients (“VRs”) / VR’s family members, alleging inter alia that the Defendant might have deducted vouchers without seeing the VRs and without providing healthcare services in person to the VRs.
5. To investigate the cases, the HCV Division conducted inspections on 15 January 2021 and 16 April 2021 to check a total of 27 voucher claims made by the Defendant. Five VRs of the respective complaint cases and six VRs (6 claims involved) randomly selected for call ascertainment (collectively the “Eleven VRs”) confirmed that they had not seen nor received healthcare service in person from the Defendant. The respective voucher claims of the Eleven VRs were made by the Defendant between December 2020 and April 2021.
6. The HCV Division had also required the Defendant to declare if he had provided healthcare service in person to the VRs of all voucher claims ever made under his EHCP account. According to the first written declaration submitted by the

Defendant to HCV Division dated 11 February 2021 (“1st Declaration”), there were 21 voucher claims in total, and the Defendant gave information in respect of 20 of the 21 voucher claims made under his EHCP account. For all these 20 voucher claims, amongst other matters, the Defendant declared the following:

- (i) For all the 20 voucher claims made under his EHCP account, he had not provided healthcare services to the VRs in person.
- (ii) The respective medical services provided were “medical checkup by blood tests”, “Health Checkup by blood tests” or “chest X-Ray”.
- (iii) He had provided healthcare service/products according to the health need of the VR for that visit and his professional judgment. The Defendant wrote “...Screening for common important conditions in asymptomatic old-age individuals”, “Referred by physician for respiratory symptoms”, “Screening for common conditions in asymptomatic individuals”, “... The conditions tested are common in geriatric group”, and “...The conditions checked are common & important in geriatric population”.

7. The Defendant had submitted to HCV Division a second written declaration dated 19 April 2021 (“2nd Declaration”). In his 2nd Declaration, the Defendant outlined the workflow of the outreach health check-up program for the elderly as follows:

- “1. The colleagues will inform the VR the fee and the details of the examination before the visit.*
- 2. On the day before the blood taking, the member of outreach phlebotomy team will phone the VR for confirmation.*
- 3. On the day of examination, the member of outreach team will visit the VR. Have the consent form signed before the blood taking and other physical examination.*
- 4. When the lab report is ready, I will be responsible for a written comment, interpretation and follow-up plan. I, or my assistant, will phone the VR for initial explanation. Then the VR will have an in-person detailed consultation at my office at no additional consultation fee.”*

The Defendant also explained that the in-person consultation was an integral part of the health check program and they were still waiting for the patients on the list to arrange the consultation. The Defendant added that his role in the service provision included (i) training and arrangement of outreach phlebotomy team; (ii) interpretation and workup plan for the lab report; and (iii) consultation to the VR.

8. In his 2nd Declaration, the Defendant gave information of another voucher claim which he had omitted to provide information in his 1st Declaration. In respect of this voucher claim, the Defendant again declared that he had not provided healthcare service to the concerned VR in person but provided healthcare service/products according to the health need of the VR for that visit and his professional judgment. The Defendant wrote “Screening for common important condition in asymptomatic old-age individuals”.
9. According to the investigation findings of the HCV Division, as of 23 April 2021, no in-person consultation had been provided to any of the VRs claimed under the Defendant’s EHCP account.
10. The HCV Division issued two letters on 17 May 2021 and 4 June 2021 respectively to inform the Defendant that voucher claims submitted by him in April and May 2021 would be suspended without further notice. In addition, the enrolment of the Defendant in the HCV Scheme would be suspended with effect from 18 May 2021 until further notice.
11. From the investigation findings, the HCV Division was of the view that the Defendant had not provided consultation in person to the VRs and had not assessed the health condition of the VRs properly before ordering the laboratory test. For example, in one complaint case, according to the family member, the VR already had regular blood tests conducted once every half year at Government clinic for the follow-up of his chronic disease, and therefore the blood test ordered by the Defendant was redundant. This suggested that the Defendant might have ordered laboratory tests not according to the health need of the VR.
12. By a letter dated 4 June 2021, DH lodged a complaint against the Defendant to the Medical Council.

13. Subsequently, the Defendant had written a letter to the HCV Division dated 4 November 2021. In the letter, the Defendant explained *inter alia* that when the lab report in respect of the VR was available, he would write down his observations, analysis and/or comments there. The Defendant said the health care services involved were his lab report analysis and the professional opinion he gave. He said he would also refer the VR to specialist when appropriate in his professional judgment.

14. A Hong Kong Medical Diagnostic Limited (“HKMDL”), which provided health check services together with the Defendant to the elders, had written a letter dated 4 November 2021 to the HCV Division for the Defendant. HKMDL wrote *inter alia*:

*“... In this regard, while the outreach team assisted Dr. Tai in taking blood sample of the VR and verifying their identity, Dr Tai did analyse the test results, write down his observations, analysis and comments on the lab report, which can only be done by a registered medical practitioner. He did explain, whether by himself or through his assistant, the test results to the VR over the phone. The VR may visit Dr. Tai personally in his clinic for a detailed consultation if they wished to, while in most cases they might elect not to do so in light of the COVID-19 pandemic. He also referred VR to specialists if he considered fit to do so.”*

15. The Defendant had sent to the DH a letter dated 17 March 2022. In this letter, the Defendant wrote:

*“... The persons who provided the health care service were the phlebotomist (who visited the VR home, obtained the consent and performed the blood taking), the laboratory personnel (who performed the lab analysis), myself (for clinical interpretation of the report, making the diagnosis and follow up); and my assistant (who called the VR, and their relatives if necessary, for the results)...”*

16. The Defendant had also provided a declaration dated 17 March 2022 in respect of another 6 voucher claims (3rd Declaration). The Defendant admitted in his 3rd Declaration in respect of these 6 voucher claims that he did not provide healthcare service to the VRs in person.

### **Burden and Standard of Proof**

17. 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.
18. There is no doubt that the allegations made against the Defendant here are serious. Indeed, it is always a serious matter to accuse any registered medical practitioner of misconduct in a professional respect. We need to look at all the evidence and to consider and determine the disciplinary charges against him carefully.

### **Findings of the Inquiry Panel**

19. 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 he has been guilty of misconduct in a professional respect.
20. According to the directions given by the Government to all EHCPs in the Proper Practices under the HCV Scheme issued under Clause 39 of the “HCVS Definitions, Terms and Conditions of Agreement”, the VRs should receive healthcare services in person provided by the EHCPs before they can use their vouchers to settle the relevant fees.
21. The Defendant admitted in all his Declarations that he had not provided healthcare services to the VRs in person before the blood tests and chest X-Rays. No doubt, the Defendant was not in compliance with the requisite directions given to all EHCPs in the Proper Practices under the HCV Scheme, thus violated the agreement with the Government. Having said that, albeit there was violation or breach of the agreement with the Government, such breach or violation per se was not sufficient to constitute professional misconduct.
22. It is stated in paragraph 17.1 of the Code of Professional Conduct (the “Code”) (2016 edition) that:

*“A doctor may refer a patient for diagnostic ... services to ... any other provider of health care services permitted by law to furnish such services, if in his clinical judgment this may benefit the patient...”*

23. The Defendant had never provided medical consultations to the VRs in person at all. The Defendant would not have known about the medical histories and the medical conditions of the VRs, and if it was indicated for them to undergo the blood tests / chest X-Rays. There was also no opportunity for the Defendant to confirm with the VRs in person if it was really their wish to undergo the blood tests / chest X-Rays. The Defendant would also not know if what the members of the outreach team told the VRs about the blood tests / chest X-Rays were correct or anything important was missing.
24. As the HCV Division pointed out, in one complaint case, the concerned VR already had regular blood tests conducted once every half year at Government clinic for follow-up of chronic disease, and therefore the blood test ordered by the Defendant was redundant. We agree with the HCV Division that this shows that the Defendant provided health-care service not according to the health need of the VR.
25. We do not accept that health-care services can be indiscriminately prescribed to VRs, who are all elderly patients, without prior medical consultations on the pretext that the conditions checked were common and important in geriatric population. In the circumstances, we are not satisfied that the Defendant’s referral of the VRs for blood tests / chest X-Rays were in the patients’ best interests and benefits.
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 as per both charges (i) and (ii).

### **Sentencing**

27. The Defendant has a clear disciplinary record.
28. In line with published policy, we shall give credit to the Defendant for his frank admission and full cooperation throughout these disciplinary proceedings.

29. 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.
30. The Defendant's counsel told us that the Defendant had already withdrawn from all the Government schemes. He had also terminated all his connections with the organisations involved. We accept that the risk of re-offending is low.
31. The offence of which the Defendant was convicted is serious. Doctors shall not refer patients to diagnostic tests without medical consultations.
32. The Defendant's counsel asked us to look at one of our previous decisions, which is of the same nature. The Defendant's counsel told us that in that case the number of the voucher claims involved was of a greater number, and therefore in the present case, which involved a lesser number, the sentence to be imposed should be more lenient. We wish to point out that the number of voucher claims is only one of the factors that we consider.
33. 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 both charges (i) and (ii) that the Defendant's name be removed from the General Register for a period of 1 month. We further order that the removal order be suspended for a period of 6 months.

**Remark**

34. The name of the Defendant is registered in the Specialist Register under the specialty of Chemical Pathology; and we shall leave it to the Education and Accreditation Committee to decide on whether anything needs to be done in respect of his specialist registration.

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