

香港醫務委員會

The Medical Council of Hong Kong

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr CHAN Tung Fei (陳東飛醫生)(Reg. No.: M10714)

Date of hearing: 2 May 2017 (Tuesday)

Present at the hearing

Council Members/Assessors: Prof. LAU Wan-yee, Joseph, SBS (Chairman)
Dr WONG Yee-him, John
Ms LAU Wai-yee, Monita
Mr POON Yiu-kin, Samuel
Dr KHOO Lai-san, Jennifer

Legal Adviser: Mr Edward SHUM

Defence Solicitor representing the Defendant: Mr Woody CHANG of Messrs. Mayer
Brown JSM

Senior Government Counsel representing the Secretary: Mr William LIU

1. The charges against the Defendant, Dr CHAN Tung Fei, are :

“That, in or around May 2012, he, being a registered medical practitioner, disregarded his professional responsibility to his patient [REDACTED] (“the Patient”) in that:

- (a) he failed to properly and adequately advise the Patient of the nature, procedures, all risks and complications of the “RF 射頻” treatment (“the Treatment”) before performing the Treatment; and
- (b) he failed to obtain informed consent from the Patient before performing the Treatment.

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 Defendant was at all material times a registered medical practitioner. His name has been included in the General Register from 17 July 1996 to present. His name has been included in the Specialist Register under the Specialty of General Surgery since 4 August 2004.
3. The Patient first consulted the Defendant on 10 May 2012. The Patient was accompanied by her mother and she complained to the Defendant of excessive sweating with odour. On examination, the Defendant found that the Patient's hands were dry and her axillas were mildly clammy. The Defendant made the diagnosis of axillary bromhidrosis. He told the Patient that the traditional method to treat axillary bromhidrosis would be by way of surgery but this treatment method could result in wound-related complications. He then recommended the Patient to undergo radiofrequency treatment ["RF treatment"]. According to the Defendant, he also told her this involved the use of radiofrequency to heat up the underlying sweat glands to destroy them.
4. There is however no dispute that in recommending the Patient to undergo RF treatment, the Defendant did not warn the Patient that since she had received 8 previous laser treatments to axillary skin areas, the incidence of local wound complication by the radiofrequency ablation might be higher compared to those without previous laser treatments. Moreover, the Defendant failed to inform the Patient sufficiently about the limitations of RF treatment and that there was no medical literature at the material time to support the use of RF treatment for axillary bromhidrosis.
5. The Patient returned to the Defendant's clinic for RF treatment on 14 May 2012 and a consent form was signed before RF treatment started.
6. The Patient complained of pain in the treatment area soon after RF treatment started. After discussion with the Patient, the Defendant put her on local anaesthesia and continued with RF treatment for a short while before she complained of pain again. According to the Defendant, he noted that there was some superficial skin epidermal sloughing compatible with burn injury to the treatment area. RF treatment was therefore abandoned. Wound dressing was done and anti-inflammatory analgesics were given to the Patient for pain control on the same day. The Patient was also asked to come again on the next day for review of her condition.

7. Thereafter, the Patient visited the Defendant's clinic for review and treatment of her burn injury on various occasions. However, the Patient later lost confidence in the Defendant when she found the wound in her armpit did not improve. She decided not to return to see the Defendant again and sought treatment from government hospital and clinic instead. Meanwhile, her mother lodged this complaint against the Defendant with the Medical Council on 14 August 2012.

Burden and Standard of Proof

8. We bear in mind that the burden of proof is always on the Legal Officer 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.
9. There is no doubt that the allegations made against the Defendant here are serious ones. 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 the Defendant separately and carefully.

Findings of the Medical Council

10. The Defendant admits the factual particulars of the disciplinary charges against him but it remains for us to determine on the evidence whether he is guilty of misconduct in a professional respect.
11. We remind ourselves that we are not dealing with the propriety of the Defendant's treatment of the Patient's axillary bromhidrosis in this case.
12. However, it is the unchallenged expert evidence of Dr LEE, the Secretary's expert, that the use of radiofrequency to generate heat to treat axillary bromhidrosis by way of ablation of the axillary sweat glands was at the material time a new form of alternative treatment modality.
13. The Defendant might genuinely believe that RF treatment would yield better results than the conventional treatment by way of surgery. However, it was

clearly stated in the Code of Professional Conduct (2009 edition) [the “Code”] that:-

“22.1 Doctors ... in the private sector may apply new methods of treatment for appropriate patients under appropriate circumstances.

...

22.3 Doctors when using NEW surgical procedures...on patients should give due consideration to the following:-

...

(b) The doctor should have good grounds, supported where necessary by experimental or trial results, to expect that such surgical procedures... would yield equal or better results than alternative methods of available treatment.

...

(d) The doctor should clearly explain to the patient the nature of the surgical procedure..., as well as alternative methods of available treatment. Informed consent from the patient is required for invasive procedures.

...

22.5 Doctors are reminded that they may be asked to justify their action. Failure to adhere to the above principles may result in disciplinary action.

...

24.1 A doctor utilizing complementary/alternative treatment modalities should ensure that:-

...

(c) informed consent has been obtained after the following have been properly explained to the patient:-

(i) the benefits of the procedure;

(ii) the risks of the procedure;

(iii) the fact that the procedure is a form of complementary/alternative treatment; and

(iv) the prevailing conventional method available...”

14. In this connection, we wish to emphasize that any explanation about the benefits and risks of the procedure should be balanced and sufficient to enable the patient to make an informed decision. In failing to properly and adequately advise the Patient of the lack of supporting medical literature at the material time as well as the limitations of RF treatment, the Defendant had failed to discharge his

obligation to give a proper and balanced explanation of the proposed treatment to the Patient.

15. Indeed, the Defendant also accepted that the Patient had not been sufficiently advised of the risk of burn injury to the skin of the treatment area during RF treatment. In failing to do so, the Defendant had in our view deprived the Patient of necessary information to make an informed decision whether to proceed with the proposed treatment on an area which had been treated by laser 8 times before.
16. For these reasons, we find the Defendant's conduct in this case to have fallen below the standards expected of registered medical practitioners in Hong Kong. Accordingly, we also find him guilty of professional misconduct as charged.

Sentencing

17. The Defendant has a clear disciplinary record.
18. In line with published policy, we shall give him credit for his frank admission in this inquiry.
19. 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 the high standards and good reputation of the profession.
20. We are particularly concerned that the Defendant had failed to take into account the Patient's medical history of 8 laser treatments to her axillary skin areas and recommending to her a new form of alternative treatment modality without advising her properly and sufficiently. However, we accept that the Defendant has learnt his lesson. We are told in mitigation that the Defendant has stopped using RF ablation for treatment of axillary bromhidrosis and the chance of his committing the same or similar disciplinary offence is low.
21. Taking into consideration the nature and gravity of the disciplinary charges for which the Defendant has been found guilty and what we have heard and read in mitigation, we shall order that the Defendant's name be removed from the General Register for 1 month. We further order that the operation of the removal order be suspended for a period of 6 months.

Remarks

22. The Defendant's name is included in the Specialist Register under the Specialty of General Surgery. It is for the Education and Accreditation Committee to consider whether any action should be taken in respect of his specialist registration.

Prof. LAU Wan-ye, Joseph, SBS
Chairman,
The Medical Council of Hong Kong