

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr CHEUNG Chi Yan (張智欣醫生)(Reg. No.: M13174)

Date of hearing: 25 April 2017 (Tuesday)

Present at the hearing

Council Members/Assessors: Prof. LAU Wan-yee, Joseph, SBS (Chairman)
Dr LAM Tzit-yuen, David
Dr HO Chung-ping, MH JP
Dr WONG Yee-him, John
Miss CHAU Man-ki, Mabel, MH
Dr TONG Fu-man

Legal Adviser: Mr Edward SHUM

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

Government Counsel representing the Secretary: Ms Carmen SIU

1. The charge against the Defendant, Dr CHEUNG Chi Yan, is :

“That on or about 7 February 2014, he, being a registered medical practitioner, disregarded his professional responsibility to his patient [REDACTED] (“the Patient”), deceased, in that he missed a hilum tumour shown on the chest X-ray of the Patient taken on 4 February 2014 and/or failed to order further investigation after reviewing the X-ray.

In relation to the facts alleged, 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 3 July 2001 to present. His name has been included in the Specialist Register under Specialty of Radiology since 5 January 2011.

3. The Patient first consulted one Dr FUNG of the Lek Yuen Government Outpatient Polyclinic on 3 February 2014. According to the consultation note written by Dr FUNG, the Patient complained to him of painless dysphagia for about 1 month. According to the Patient, she could tolerate fluid diet only and there was episodic vomiting after eating. There were reflux of stomach contents, epigastric pain and abdominal bloating. Physical examination did not reveal any abnormality in her throat and her abdomen was soft.
4. Moreover, according to the consultation note written by Dr FUNG, the Patient complained to him of right upper rib cage pain, which radiated to her back, for about 1 week. However, on the X-ray request form sent to the radiologist, Dr FUNG wrote down painless dysphagia for 1 month and left upper rib cage pain for 1 week. Meanwhile, Dr FUNG also made an urgent referral for the Patient to consult the Department of Surgery of the Prince of Wales Hospital ["PWH"].
5. X-rays of the Patient's ribs and chest were subsequently done at PWH on 4 February 2014. According to the unchallenged expert report of Dr CHIU, the Secretary's expert, the left hilum appeared on the frontal chest radiograph of the Patient to be slightly more prominent than the normal right hilum and a vague opacity about 2 cm in size appeared over its upper aspect. Similar finding was also shown on the oblique chest radiograph of the Patient taken on the same day.
6. And yet, none of these findings was noted in the Examination Report on the chest radiographs of the Patient prepared by the Defendant and his trainee, one Dr LEUNG, and dated 7 February 2014.
7. Indeed, it was only after the Patient underwent further radiological examinations sometime in April 2014 that she was told that there was a 10cm contrast enhanced mass arising from the medial border of the anterior segment of her left upper lung with features suggestive of malignant growth.
8. The Patient was subsequently admitted to the Queen Mary Hospital ["QMH"] on 29 April 2014 for cough, pleuritic chest pain and fever. She was diagnosed to be suffering from pneumonia. Meanwhile, she was also referred to clinical oncologists for management of her Stage IV lung carcinoma.
9. However, further CT scan at QMH on 28 May 2014 revealed quick disease progression with multiple distant metastases. Despite chemotherapy, the Patient died on 26 July 2014.
10. The Patient's daughter subsequently lodged this complaint against the Defendant with the Medical Council on 8 August 2014.

Burden and Standard of Proof

11. 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.
12. There is no doubt that the allegation made against the Defendant here is a serious one. 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 charge against him carefully.

Findings of the Council

13. The Defendant admitted the factual particulars of the disciplinary charge against him. However, it remains for us to determine whether the Defendant was guilty of misconduct in a professional respect.
14. In our view, the central issue in this case is whether the Defendant's failure to notice the hilum tumour on the chest X-ray of the Patient and/or to order further investigation after reviewing the said X-ray was below the standard expected amongst registered medical practitioners in Hong Kong.
15. We gratefully adopt the following observations in *Jackson & Powell on Professional Negligence* (8th ed.) at [1000]:-

“Bolam test applies. In relation to the roles of diagnosis... the standard of care and skill required of a medical practitioner continues to be governed by the *Bolam* test. They are roles falling within the expertise of members of the medical profession...

Standard of skill and care determined by reference to the specialization of the defendant. A practitioner who specialises in any particular area of medicine must be judged by the standard of skill and care of that specialty.”

16. It was also held in *Dr Chan Po Sum v Medical Council of Hong Kong* [2015] 1 HKLRD 331 at 350 that it was for us and not any expert witness to decide in all the circumstances whether there had been a falling short of the standard expected amongst registered medical practitioners in Hong Kong.

17. It was the unchallenged evidence of the Secretary's expert, Dr CHIU, that the left hilar opacity appeared not only on the frontal chest radiograph of the Patient but also on the oblique chest radiograph. In our view, no specialist in radiology exercising reasonable skill and care would have missed it.
18. We also agree with Dr CHIU that just on the frontal and oblique chest radiographs, it would be difficult to confirm or to exclude whether a genuine pathology of clinical concern was present. Further investigation was therefore required to clarify the left hilar opacity.
19. In our view, the Defendant's failure to notice the hilar tumour on the chest X-ray of the Patient and/or to order further investigation after reviewing the said X-ray had fallen below the standards expected of registered medical practitioners in Hong Kong. We therefore find him guilty of professional misconduct as per the disciplinary charge above.

Sentencing

20. The Defendant has a clear disciplinary record.
21. In line with published policy, we shall give him credit for his frank admission in this inquiry and cooperation during the preliminary investigation stage.
22. 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.
23. We accept that it is uncertain if an earlier diagnosis would alter the clinical outcome in this case. However, in failing to identify the left hilar opacity and hence wrongly reporting in the Examination Report that there was no abnormal features in the chest X-ray of the Patient, the Defendant had misled the referring doctor as well as the Patient into thinking that there was no suspected abnormality which called for further investigation. This also resulted in delayed diagnosis and treatment of the Patient's lung cancer which unfortunately was with the benefit of hindsight progressing rapidly.
24. We are told in mitigation that with the input from the Defendant, PWH has since implemented an audit system on its radiology reports on plain films to avoid similar mishaps from repeating. We accept that the Defendant has learnt his lesson and the likelihood of repeating the same or similar disciplinary offence is low. We are also told in mitigation that the Defendant is very sorry for the tragic outcome for the Patient and he has gone through a lot of psychological hardship and stress. We accept that the Defendant is all along a compassionate medical

practitioner and he has undertaken volunteer work in numerous countries. Moreover, the Defendant is taking full responsibility of his wrongdoing.

25. Having regard to the nature and gravity of the case and what we have heard and read in mitigation, we consider that an order of removal from the General Register for a period of one month is appropriate. We also order that the operation of the removal order be suspended for 36 months. We must emphasize that but for the strong mitigation plea for the Defendant above, which we accept, the removal order would not be suspended.

Remarks

26. The Defendant's name is included in the Specialist Register under the Specialty of Radiology. 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-yee, Joseph, SBS
Chairman
The Medical Council of Hong Kong