

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr LEUNG Ying Kit (梁英傑醫生) (Reg. No.: M01930)

Date of hearing: 12 August 2016

Present at the hearing

Council Members/Assessors: Prof. Felice LIEH-MAK GBS CBE JP
(Temporary Chairman)
Dr IP Wing-yuk
Dr LAI Sik-to, Thomas
Ms LAU Wai-ye, Monita
Mr POON Yiu-kin, Samuel

Legal Adviser: Mr Edward SHUM

Defence Solicitor representing the Defendant: Dr Bernard Murphy of Messrs.
Howse Williams Bowers

Senior Government Counsel representing the Secretary: Mr Mark CHAN

1. The charges against the Defendant, Dr LEUNG Ying Kit, are:-

“That in or about March 2009, he, being a registered medical practitioner, disregarded his professional responsibility to his patient [REDACTED] [REDACTED] (“the Patient”) in that:

- (1) he failed to adequately and properly explain to the Patient of the risks and possible complications of colonoscopy, including but not limited to the risk of bowel perforation, before performing colonoscopy on the Patient; and
- (2) he failed to adequately and properly perform colonoscopy on the Patient, which caused perforation of the Patient’s colon.

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 8 July 1972 to present and his name has never been included in the Specialist Register.
3. There is no dispute that the Patient consulted the Defendant on 3 March 2009 for her moderately severe abdominal pain and other medical problems. The Patient was 79 years old at the time. Beforehand, she had consulted other doctors for the problems but had no improvement after taking the medication prescribed by these other doctors.
4. Upon the advice of the Defendant, the Patient was admitted to Precious Blood Hospital for upper GI endoscopy and colonoscopy (“the said medical procedures”) for diagnostic and examination purposes on the following day.
5. It is commonly accepted that colon perforation during colonoscopy should be regarded as a known, though uncommon, severe complication, which can lead to severe morbidity or even mortality.
6. There is no dispute that the Defendant did not advise the Patient of the risk of bowel perforation at the consultation on 3 March 2009. Nor had he advised the Patient of the same before performing the said medical procedures on the following day.
7. The Patient complained of abdominal pain after the said medical procedures. Upon referral by the Defendant, the Patient was later admitted to a public hospital and was found to have perforated abdominal viscera.
8. The Patient’s son subsequently lodged this complaint against the Defendant with the Medical Council.
9. At the beginning of this inquiry, the Legal Officer informed us that no evidence would be offered against the Defendant in respect of charge (2) above. The said charge is therefore dismissed.

Burden and Standard of Proof

10. 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.

11. 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 a registered medical practitioner of misconduct in a professional respect. Therefore, we need to look at all the evidence and to consider and determine charge (1) above carefully.

Findings of the Council

12. Although the Defendant does not challenge the factual particulars of the disciplinary charges against him, it remains our duty to consider and determine whether he is guilty of misconduct in a professional respect.

13. It is clearly stated in para. 2.1 of the Code of Professional Conduct (2009 edition) that:-

“Consent to medical treatment is part of quality care and also a legal requirement. Consent has to be given voluntarily by the patient after having been informed of the relevant aspects of the medical procedure including the general nature, effect and risks involved.”

14. It is the duty of any doctor to give his patient proper explanation of the risks and complications of the proposed medical procedure. The explanation should be balanced and sufficient to enable the patient to make an informed decision, and should cover significant risks as well as risks of serious consequence even if the probability is low.

15. Bowel perforation is a known, though uncommon, serious complication of colonoscopy. This may lead to severe morbidity or even mortality. The Defendant should adequately and properly explain to the Patient of the risk of bowel perforation before performing colonoscopy on her.

16. In our view, the Defendant’s conduct has fallen below the standard reasonably expected of registered medical practitioners in Hong Kong. Accordingly, we find him guilty of charge (1) above.

Sentencing

17. The Defendant has a clear disciplinary record.

18. In line with our published policy, we shall give him credit for his frank admission in this inquiry and cooperation during the preliminary investigation stage.
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 also remind ourselves that charge (1) above is not about the propriety of the colonoscopy, nor the manner in which the medical procedure was carried out.
21. Taking into consideration the nature and gravity of the disciplinary charge for which the Defendant has been found guilty and what we have read and heard in mitigation, we shall order that the Defendant's name be removed from the General Register for 1 month and the operation of the removal order be suspended for a period of 6 months.

Prof. Felice LIEH-MAK GBS CBE JP
Temporary Chairman
Medical Council