香 港 醫 務 委 員 會

The Medical Council of Hong Kong

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr SIU Kam Wang(蕭錦宏醫生)(Reg. No.: M08814)

Date of hearing: 9 November 2018 (Friday)

Present at the hearing

Council Members/Assessors: Prof. Felice LIEH-MAK, GBS CBE JP
(Chairperson of the Inquiry Panel)
Dr CHOW Yu Fat
Professor TAN Choon-beng, Kathryn
Ms HUI Mei-sheung, MH JP
Mr WOO King-hang

Legal Adviser: Mr Edward SHUM

Defence Counsel representing the Defendant: Mr Ashok Sakhrani as instructed by Messrs. Kennedys

Senior Government Counsel representing the Secretary: Miss Vienne LUK

1. The amended charge against the Defendant, Dr SIU Kam Wang, is :

> "That in or about May 2014, he, being a registered medical practitioner, disregarded his professional responsibility to his patient [redacted] ("the Patient"), in that he missed the cervical spine lesions in the PET-CT scan examination conducted on the Patient.
>
> 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 12 October 1992 to present. His name has been included in the Specialist Register under the Specialty of Radiology since 1 August 2001.

3. The Patient had a history of cancer of right breast for which she received adjuvant chemotherapy, adjuvant hormonal therapy and radiotherapy from the Department of Clinical Oncology of Tuen Mun Hospital ("TMH") in between August 2009 to March 2010.

4. Sometime in August 2012, the Patient consulted a private doctor, one Dr LO, complaining of low back pain for 6 months. MRI spine done on 14 August 2012 then revealed multi-nodular masses in the T10 and T11 vertebrae associated with compression fracture and also paraspinal and epidural extension. In addition, small nodules were found in the Patient's T10, T12, L1, L2, L4 and L5 vertebrae and body of the right iliac bone, which were suspicious of metastases. The Patient was treated with palliative radiotherapy at St Teresa's Hospital ("STH"). The Patient was subsequently referred back to TMH for further management.

5. Meanwhile, PET-CT scan examination done at STH on 20 August 2012 confirmed the bony metastases previously shown in the MRI spine done on 14 August 2012. In addition, lesions were found in the Patient's upper thoracic spine with bilateral ilium and right acetabulum involvement.

6. On 21 August 2012, the Patient returned to the Department of Clinical Oncology of TMH and was offered continuation of hormonal therapy.

7. Follow up PET-CT scan examination done at STH on 7 January 2013 then showed interval improvement of bony metastatic lesions compared with August 2012. Moreover, the left hepatic lesion previously shown in the PET-CT scan examination done on 20 August 2012 had resolved with no residual uptake.

8. Meanwhile, the Patient continued with drug treatment and hormonal therapy.

9. On 13 May 2014, the Patient was referred by Dr NG Ting Ying ("Dr NG"), Associate Consultant of the Department of Clinical Oncology of TMH, to undergo another PET-CT scan examination of her whole body for interval assessment to see her response to hormonal therapy.

10. On 24 May 2014, the Patient attended Evangel Hospital for a PET-CT scan examination of her whole body by a technician of the Radiology Imaging Department. The images obtained were subsequently passed onto the Defendant for reporting.

11. On 26 May 2014, the Defendant issued his report on the PET-CT scan examination of the Patient to TMH and he concluded at the end that:-

"This set of PET-CT is compatible with previous PET-CT on 07/01/2013. On current examination, increase in the FDG uptake of the bony lesions are noted. No new lesion can be seen."

12. On 10 June 2014, the Patient returned to see Dr NG. She complained to Dr NG that there was increase in back and neck pain recently. Dr NG then reviewed the images obtained from the PET-CT scan examination done on 24 May 2014 and found lesions in the Patient's cervical spine, which were never mentioned in the report issued by the Defendant. Dr NG immediately telephoned the Defendant. The Defendant agreed that those lesions were new and compatible with bone metastases. Dr NG immediately arranged for radiotherapy to the Patient's cervical spine to be booked on the same day. In addition, palliative radiotherapy covering C1-C7 vertebrae was given to the Patient from 25 June to 2 July 2014.

13. A revised report was issued by the Defendant and faxed to Dr NG later in the day on 10 June 2014.

14. Meanwhile, the Patient's sister lodged this complaint against the Defendant with the Medical Council on 19 June 2014.

Burden and Standard of Proof

15. 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.

16. 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 amended charge against him carefully.

Findings of the Inquiry Panel

17. The Defendant admitted the factual particulars of the amended charge against him. However, it remains for us to determine whether the Defendant was guilty of misconduct in a professional respect.

18. In our view, the central issue in this case is whether the Defendant's failure to notice the lesions in the Patient's cervical spine after reviewing the images obtained from the PET-CT scan examination done on 24 May 2014 was below the standard expected amongst registered medical practitioners in Hong Kong.

19. 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."*

20. 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.

21. There is no dispute that the lesions found in the Patient's cervical spine were new deposits. Moreover, they were found on multiple sites and involving C2, C3, C4, C5 and C7 of the cervical spine. In our view, no specialist in radiology exercising reasonable skill and care would have missed them.

22. Accordingly, the Defendant's failure to notice the lesions in the Patient's cervical spine had fallen below the standards expected of registered medical practitioners in Hong Kong. We therefore find him guilty of professional misconduct as per the amended charge above.

Sentencing

23. The Defendant has a clear disciplinary record.

24. In line with published policy, we shall give him credit for his frank admission in this inquiry and cooperation during the preliminary investigation stage.

25. 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.

26. We accept that treatment of the Patient had not been delayed by the Defendant's failure to notice the lesions in her cervical spine. This is however purely because of the vigilance of Dr NG for which we praise.

27. We appreciate that the Defendant is taking full responsibility of his omission. The Defendant believed the omission in the report was made because he concentrated his attention on the changes in the thoracic and lumbar spine and the Request Information Sheet of TMH did not mention any symptoms in the cervical spine. However, this is not a case where the images obtained are open to different interpretations. Indeed, the Defendant also accepts that he "*omitted to report the new cervical spine lesions at C2, C3, C4, C5 and C7… despite the fact that the scans showed the existence of lesions on the cervical, thoracic and lumbar spine and their measurements*".

28. We are told in mitigation that the Defendant has reflected on the shortcomings in his practice. Several changes were made to his system of work after the incident to ensure the accuracy of his radiology reports and better communication between the patient and/or referring doctor and him and/or his radiology colleagues. Firstly, he would personally check and review the images and reports at least twice before signing his reports regardless of the contents of the Request Information Sheet given to him by the referring doctor. He would also request and remind his technicians and nurses to carefully review the medical form and records provided and to document the clinical information of the patients in detail for his consideration. Furthermore, whenever there is discrepancy between his reading of the images and the clinical history, he would discuss this with his technicians and call the patient or family member or the referring doctor to clarify or obtain further information, when appropriate. Lastly, he would instruct radiographers or technicians to check his reported findings against the scans before finalizing his report and sending the scans to the patient or referring doctor.

29. We acknowledge that this was an isolated incident and the Defendant has already learnt his lesson. We accept that the Defendant had shown sufficient insight into his shortcomings. Indeed, he admitted his mistake to Dr NG at the first available opportunity. Given his genuine remorsefulness, we believe the likelihood of his repeating the same or similar breach is low.

30. 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 1 month is appropriate. We also order that the operation of the removal order be suspended for 18 months.

Remark

31. 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. Felice LIEH-MAK GBS CBE JP
Chairperson of the Inquiry Panel
The Medical Council of Hong Kong