# 香 港 醫 務 委 員 會

# The Medical Council of Hong Kong

---

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

Defendant: Dr TUNG Ngai Lun Allen (董毅麟醫生) (Reg. No.: M15792)

Date of hearing: 17 April 2019 (Wednesday)

Present at the hearing

Council Members/Assessors: Prof. Felice LIEH-MAK, GBS, CBE, JP
(Chairperson of the Inquiry Panel)
Dr CHEUNG Chin-pang
Dr LUNG David Christopher
Ms HUI Mei-sheung, Tennessy, MH, JP
Ms NG Ka-man, Rendy

Legal Adviser: Mr Edward SHUM

Government Counsel representing the Secretary: Miss Liesl LAI

1. The charges against the Defendant, Dr TUNG Ngai Lun Allen, are:

"That, in or about April 2014, he, being a registered medical practitioner, disregarded his professional responsibility to his patient ███ ("the Patient") in that:

(a) he inappropriately caused sciatic nerve damage to the Patient when giving her an injection for treatment of her gastroenteritis; and

(b) he failed to provide appropriate medical care and management to the Patient during the review on or about 4 April 2014, despite her complaint of persistent left buttock pain and numbness after the injection.

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 2 July 2008 to present.

3. The Defendant is neither present nor represented at the hearing before us today. We first consider whether or not to proceed in the absence of the Defendant and the relevant legal principles were neatly summarized in the English High Court decision of *Yusuf v The Royal Pharmaceutical Society of Great Britain* [2009] EWHC 867 (Admin). We remind ourselves that the discretion to proceed with a disciplinary hearing in a defendant's absence should be exercised with the utmost care and caution. If the absence of the defendant is attributable to involuntary illness or incapacity it would very rarely, if ever, be right to exercise the discretion in favour of commencing the disciplinary hearing, particularly if he is unrepresented. However, where a defendant, was fully informed of a forthcoming disciplinary hearing, has deliberately chosen not to attend, there is no reason in principle why his decision to absent himself should have the automatic effect of suspending the disciplinary hearing against him until such time, if ever, as he chooses to attend or appear by counsel.

4. In our opinion, the real question here is whether in all the circumstances the Defendant can get a fair hearing at the end of the day despite his absence. We bear in mind that the nature and gravity of the allegations against the Defendant are serious. We recognize that the discretion to proceed in the absence of the Defendant is one which must be exercised with the utmost care and caution.

5. We are satisfied on the evidence adduced by the Secretary that the Defendant has confirmed in his letter dated 28 January 2019 and email dated 30 March 2019 that he will not attend the hearing. We verily believe that it is the voluntary choice of the Defendant not to attend the hearing before us today. Having considered all the circumstances, we think it is proper for us to proceed in the Defendant's absence.

6. According to the Patient, she visited the Cambridge Medical Centre ("the Clinic") on 1 April 2014 because of gastroenteritis and was attended by the Defendant. After physical examination, the Defendant offered to give the Patient an injection for relief of her various symptoms and she agreed. The Defendant then asked the Patient to lie down on an examination bed in the right lateral position and gave her an intramuscular injection ("IMI") of a mixture of Oflen, Buscopan and Gravol in the left buttock.

7. There is conflicting evidence on how the Patient felt at the time and after the injection. According to the Patient, she felt extreme pain in her left buttock after the Defendant inserted the needle of the syringe deep beneath the skin of her left buttock. She screamed in pain but the Defendant told her it was normal to have pain during the injection. The Defendant also told her that the injection was comparatively big. However, when the Defendant started to inject the medications, she felt a sharp shocking pain in her left buttock. She screamed in pain but the Defendant asked her to be patient. The Defendant reiterated that the injection was comparatively big and he had not yet finished with the injection. Later when the Defendant pulled out the needle after injection, she felt extreme pain in her left buttock again.

8. The Defendant disagreed and he mentioned in his first submission to the Preliminary Investigation Committee ("PIC") that:

> "*Because as I remember Ms Kam was already in epigastric pain and she mentioned she [was] in pain several time[s] even before my injection, so I did not notice she had excessive pain caused by my injection, it is because before and after injection she still mentioned pain in similar voice and similar frequency, and during the injection, I had already about 3 time[s] slower to finished my injection push to empty the syringe which contained 1.5ml of medication... I noticed she was sensitive and had a low tolerance to pain…And I remember that Ms Kam did not mention any numbness or burning sensation during or after the IMI in consultation of 1 April 2014.*"

9. The Defendant also emphasized in his first PIC submission that:

> "*I did a [m]aneuver which is learn[t] from medical school to guarantee IMI injection in the safe area, by using my thumb touching patient's anterior superior iliac spine and using my index finger to draw an injection safe zone to have IMI, in my impression, it was also around the outer upper region of buttock to have this IMI… And I use this maneuver to guarantee the IMI safe zone in all of my other adult patients, all of them turned up without complication.*"

10. However, according to the Patient, she was still very much in pain when she came down slowly from the examination bed. She told her boyfriend that her left buttock was very painful and she could not walk well and there was loss of power in her left lower limb. With the assistance of her boyfriend, she walked out from the consultation room to the waiting area. After sitting in the waiting area for about

10 to 15 minutes, she started to feel dizzy. Suddenly, she experienced a blackout. She needed to lie down on a bench for some 10 minutes before regaining her senses. Meanwhile, she continued to feel pain in her left buttock and there was loss of power in her left lower limb. Her gastroenteritis gradually improved after she went home. However, she later noticed bruises of the size of a tennis ball developing over the injection site. Apart from mild pain over the injection site and her left thigh, there was also numbness over the area from the injection site to the upper exterior of her left thigh.

11. There is no dispute that the Patient returned to the Clinic and saw the Defendant on 4 April 2014. According to the Patient, apart from telling the Defendant that she still had a lot of gas in her stomach, she also told him that the injection site was still painful. However, the Defendant reiterated that this was because the injection was comparatively big and he did not look at the injection site.

12. The Defendant also mentioned in his first PIC submission that:

"*On 4 April 2014, this is second time I saw Ms Kam for following up gastroenteritis, she walked into my consultation room cheerfully with normal and steady walking gait at normal speed... she mentioned still some pain over IMI site, but I am very certain that she did not mention any neurological symptoms like numbness, so I [reassured] Ms Kam it is very common to still have some pain over IMI site after 3 days of injection, and she showed acceptance of my reassurance because she smiled and did not complain the IMI site any more in the consultation, so it is not necessary to examine the injection at that moment. <u>I am sure that I remember I did not hear about complaining of numbness from Ms Kam at this consultation</u>... And it is consistent with Ms Kam her own description in her complaint letter... <u>Ms Kam did not [mention] that she told me the symptom of numbness on 4 April 2014</u>.*"

13. According to the Patient, few days after the second consultation, bruises of the size of a 5 dollar coin still remained on the injection site. She had increased pain extending from the injection site to her left thigh. There was numbness over the area from the injection site to the upper exterior of her left thigh. Also, there was a feeling of sharp shocking pain extending to her left thigh whenever she pressed on the injection site.

14. On 9 April 2014, the Patient visited the Clinic for a third time and was attended by one Dr HO, the doctor-in-charge of the Clinic. According to the Patient, she told Dr HO that she had increased pain extending from the injection site to her left thigh. There was numbness over the area from the injection site to the upper exterior of

her left thigh. Also, there was a feeling of sharp electric shock extending to her left thigh whenever she pressed on the injection site. Dr HO did not look at the injection site and explained that this might be due to her over-reaction to the injection.

15. However, according to the Patient, her pain symptoms became more and more severe after she returned home. In the morning of 10 April 2014, she attended the Accident & Emergency ("A&E") Department of Prince of Wales Hospital ("PWH") for treatment.

16. According to the medical report prepared by the attending A&E Medical Officer, Dr LI, the Patient:

"*... revealed that she had left gluteal injection for gastroenteritis on 1 April 2014. She then experienced pain, bruises and swelling at injection site. Bruises and swelling gradually subsided but the pain increased in severity with loss of sensation at back of left thigh. She walked with limping gait. Physical examination showed an injection mark at lower lateral quadrant (close to center) of left buttock. There was no mass felt at left buttock. Weakness of her left knee flexion, left ankle inversion were detected. Decease in left ankle jerk reflex and touching sensation at back of left thigh were also noted. She was referred on same day of consultation to neurology and neurosurgeon departments for suspected sciatica nerve injury...*"

17. According to the Patient, she returned to see Dr HO on 13 April 2014 and informed him of the findings of Dr LI. However, Dr HO told her that the medical expertise of A&E medical officer(s) at PWH would not be high. Dr HO then offered to refer her to see one Dr LO, a specialist in neurology, and she agreed. Dr HO also arranged for her to undergo an ultrasound examination by one Dr HUI at Union Hospital on the following day.

18. However, when she consulted Dr LO at his clinic on 15 April 2014, Dr LO told her that ultrasound examination could not show the sciatic nerve. Dr LO then recommended her to undergo a magnetic resonance imaging ("MRI") examination of her pelvis and she agreed.

19. Upon the referral of Dr LO, the Patient underwent a MRI examination at one Magnus Magnetic Resonance and Ultrasound Diagnostic Center on 23 April 2014. The MRI of pelvis / buttock did not reveal any abnormality in her left sciatic nerve.

20. The Patient was subsequently referred by Dr LO to consult one Dr POON, a specialist in orthopaedics and traumatology, on 2 May 2014. In his memo dated 30 May 2014, Dr POON had this to say of the Patient:

"*This lady had an injection to her left gluteal region on 1 April 2014. There was immediate sharp radiating pain during the injection indicative of a sensory nerve affection. There was bruising around the injection site shortly afterwards.*

*There is persistent, severe, sharp pain from the injection site down along her left thigh. Clinically this is compatible with sensory nerve injury.*

*She also has right upper limb sprain due to prolonged use of walking stick.*

*This situation may be treated conservatively but it may take up to a year or longer to recover.*

*There is a possibility that the recovery may not be 100%.*"

21. Meanwhile, the Patient first consulted the Neurology Clinic of the Department of Medicine and Therapeutics of PWH on 5 May 2014. According to the medical report prepared by Dr AU, a specialist of the Neurology Clinic:

"*Ms Kam was referred to the Neurology Clinic from [t]he Department of A&E on 10-Apr-2014 for "sciatic nerve injury after injection"…*

*On examination on 5-May-2014, she walked with a limping gait and assisted by a stick. She had no muscle wasting, no palpable mass over left buttock, normal limb tone. Right leg power was normal. Left leg power was weak (hip and knee power MRC grade 4, ankle and toe power MRC grade 5). Reflexes were normal. Plantar response was normal. There was 20% reduction in pinprick sensation over left posterolateral aspect of her buttock and thigh.*

*Nerve conduction study was performed on 21-May-2014, reported normal study.*

*MRI pelvis and hip was repeated on 26-Jun-2014, reported:*

*1) Swollen left sciatic nerve just beyond left sciatic foramen compatible with nerve injury.*
*2) No nerve transection evident.*

*3) Otherwise, unremarkable appearances.*

*…*

*Our clinical diagnosis was left sciatic injury.*"

22. The Patient subsequently lodged this complaint against the Defendant with the Medical Council.

**Burden and Standard of Proof**

23. 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.

24. 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 each of the disciplinary charges against him separately and carefully.

**Findings of the Inquiry Panel**

25. We remind ourselves that the burden of proof is always on the Secretary and we must not draw any adverse inference against the Defendant for electing not to attend this inquiry and to give his evidence under oath.

26. We agree with the Secretary's expert, Dr YU, a specialist in neurosurgery, that IMI should not be administered at a point close to the sciatic nerve.

27. The Defendant also emphasized in his first PIC submission that the IMI was done around the outer upper region of the Patient's left buttock. This is however contradicted by the medical report prepared by Dr LI of the A&E Department of PWH in which she mentioned and we accept that "*[p]hysical examination showed an injection mark at lower lateral quadrant (close to central) of [the Patient's] left buttock.*"

28. But then again, the real point is that the Patient screamed in pain during the IMI and we accept the Patient's testimony that when the Defendant started to inject the medications in the syringe, she felt a sharp shocking pain in her left buttock. We agree with Dr YU that the Defendant should stop administering the IMI once the Patient, whose evidence on this point we accept, alerted him of severe pain.

29. We agree with Dr YU that the Patient's description of her neurological deficits, which was corroborated by the physical examination findings of Dr LI, were consistent with the left sciatic nerve injury.

30. There is no doubt in our minds that the left sciatic nerve injury subsequently confirmed by the MRI done at PWH was caused by an indirect injury by deposit of medications in the IMI very close to the left sciatic nerve. In this connection, we agree with Dr YU that magnetic resonance ("MR") neurography of the sciatic nerve requires special sequences and protocol to visualize the sciatic nerve in the gluteal region. We also agree with Dr YU that the failure to pick up the injury to the sciatic nerve in the earlier MRI examination was due to its visual inadequacy for MR neurography of the sciatic nerve.

31. For these reasons, we are satisfied on the evidence before us that charge (a) has been made out. Moreover, we find the Defendant's conduct to have fallen below the standards expected of registered medical practitioners in Hong Kong. Therefore, we find him guilty of charge (a).

32. Turning to charge (b), there is no dispute that the Patient had complained of pain at the injection site when she consulted the Defendant on 4 April 2014. And yet, the Defendant never looked at her injection site during this consultation. In fairness to the Defendant, we appreciate that his management of the Patient might be different had she complained to him of numbness after the injection. It is therefore essential in our view for the Secretary to prove in respect of charge (b) that the Patient had complained to the Defendant not only of persistent left buttock pain but also numbness after the injection.

33. However, the Patient frankly accepted that she never complained of numbness after the injection at any time during the second consultation on 4 April 2014. On this ground alone, the Secretary has in our view failed to make out on the evidence before us every essential element of charge (b). Therefore, we find the Defendant not guilty of charge (b).

34. We wish to emphasize our agreement with Dr YU that regardless of whether the Patient had complained of numbness after the injection, the Defendant should have examined her injection site and the neurological signs of her left lower limb in order to rule out iatrogenic cause(s) of her left buttock pain. In our view, the Defendant's management of the Patient during the consultation on 4 April 2014 was suboptimal. But then again, this is not the charge that the Defendant is facing.

**Sentencing**

35. The Defendant has a clear disciplinary record.

36. 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.

37. We are particularly concerned that the Defendant continued to administer the IMI despite that the Patient had alerted him of severe pain during the injection. We have doubts if the Defendant has sufficient insight into his misdeeds and therefore we need to ensure that the Defendant will not commit the same or similar breach in the future.

38. Having considered the nature and gravity of the disciplinary charge for which we find the Defendant guilty and what the Defendant told us in his letter dated 28 January 2019, we order the Defendant's name to be removed from the General Register for a period of 3 months. We further order that the operation of the removal order be suspended for 2 years on condition that he shall complete to the satisfaction of the Medical Council, during the suspension period, courses to be approved by the Medical Council, on communication skills; and clinical skills on administration of IMI.

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