

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr CHEUNG Benjamin Sze Tat (張思達醫生) (Reg. No.: M12889)

Date of hearing: 31 August 2020 (Monday)

Present at the hearing

Council Members/Assessors: Prof. LAU Wan-yee, Joseph, SBS
(Chairperson of the Inquiry Panel)
Dr LO Chi-yuen, Albert
Dr CHAN Hung-chiu, Peter
Prof. WONG Yung-hou, MH
Mr YUEN Hon-lam, Joseph

Legal Adviser: Mr Edward SHUM

Defence Solicitor representing the Defendant: Dr David KAN of
Messrs. Howse Williams

Senior Government Counsel representing the Secretary: Miss Carmen POON

The Defendant is not present.

1. The charges against the Defendant, Dr CHEUNG Benjamin Sze Tat, are:

“That on or about 31 March 2016, he, being a registered medical practitioner, disregarded his professional responsibility to his patient [REDACTED] [REDACTED] (“the Patient”), in that, he:

- (a) failed to keep proper and adequate medical records in respect of the Patient;
- (b) diagnosed the Patient to have gastritis without proper justification; and
- (c) advised the Patient to undergo a scan without proper justification.

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’s name has been included in the General Register from 22 August 2000 to the present. His name has never been included in the Specialist Register.
3. Briefly stated, the Patient felt intense pain in her right stomach whilst travelling on a train from Tai Po to Kowloon in the morning of 31 March 2016. When the train was approaching Hung Hom Station, the Patient suddenly passed out. After about 10 seconds, the Patient found herself sitting on the floor and the train doors were open. The Patient managed to stand up and alight the train by herself. The Patient then sat down on a chair at the platform and telephoned her father to pick her up. After resting for a while, the Patient was led by MTR staff to a room to wait for her father to come.
4. The Patient’s father later arrived and drove the Patient back to Tai Po. Accompanied by her father, the Patient visited the Town Health Medical Centre (the “Clinic”) at Uptown Plaza and was subsequently attended by the Defendant, a locum doctor of the Clinic, at around 11:00 a.m. This was the only time when the Patient attended the Clinic.
5. According to the Patient, whose evidence is unchallenged by the Defendant, she told the Defendant during the consultation what happened to her earlier in the morning when she was travelling on a train. The Defendant then suggested her to undergo a scan but he also said that it would be relatively expensive. The Patient replied that she needed to discuss with her father first. The Patient then went out of the consultation room. After relaying the Defendant’s suggestion to her father, the Patient and her father returned and asked the Defendant the purpose of a scan. The Defendant never explained why a scan would be required and merely told them that he suspected the Patient to be suffering from gastronomic pain. The Defendant then prescribed the Patient with gastrocaine tablets, Ponstan capsules and Paracetamol tablets.
6. However, the Patient did not take any of the prescribed medications and went to see one Dr CHUNG of Quality Healthcare Medical Centre at Tsim Sha Tsui on the following day. A diagnosis of epigastric pain was made and the Patient was prescribed with Mylanta.

7. Upon the referral of Dr CHUNG, the Patient subsequently underwent an endoscopic examination on 22 April 2016 which further revealed a mild antral gastritis.
8. Meanwhile, the Patient's father lodged this complaint with the Medical Council against the Defendant.

Burden and Standard of Proof

9. 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.
10. There is no doubt that the allegations against the Defendant here are serious ones. 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 each the disciplinary charges against him separately and carefully.

Findings of the Inquiry Panel

11. The Defendant admitted the factual particulars of the disciplinary charges against him and indicated through his solicitor that he is not going to contest the issue of professional misconduct. However, it remains for us to consider and determine on the evidence before us whether the Defendant has been guilty of misconduct in a professional respect.
12. We agree with the opinion of the Secretary's expert witness, Dr CHAN, that "acute pain is a rather common cause of syncope"; and the Patient "most likely had an attack of "syncope" caused by the acute stomach pain" when she was travelling on a train from Tai Po to Kowloon on 31 March 2016.
13. We also agree with Dr CHAN that careful medical history taking and in particular of what had happened to the Patient before, during and after the "blackout" was essential for finding out the likely cause of the syncope. This is particularly true because the Patient never consulted the Defendant before.

However, the Defendant merely noted down under the column of “History” in the medical records the words “Blackout first time with ⊕ (left) stomach pain” when according to the Patient her stomach pain was on the right side.

14. In our view, the Defendant ought to have carried out proper physical examination on the Patient before making a diagnosis. However, apart from noting down under the column of “Examination Investigation” the findings of “Afebrile ENT Chest clear”, there was no mention in the Defendant’s medical records of results of any other physical findings compatible with suspected or potential neurological condition.
15. In our view, by failing to keep proper and adequate medical records in respect of the Patient, the Defendant has by his conduct fallen below the standards expected of registered medical practitioners in Hong Kong. Accordingly, we find him guilty of disciplinary charge (a).
16. The Defendant accepted that he diagnosed the Patient to have gastritis without proper justification.
17. In his second submission to the Preliminary Investigation Committee dated 20 September 2018, the Defendant explained that he made the diagnosis of gastritis simply because the Patient had “stomach pain and burning sensation throughout her abdominal area”. There was however no mention in his medical records of physical examination being done in this respect.
18. But then again, the real point is that none of these symptoms are specific to gastritis. The Defendant ought to identify the underlying cause of these non-specific symptoms instead of jumping to a diagnosis of gastritis. In our view, the Defendant ought to take proper medical history and to perform proper physical examination before ruling out other conditions involving stomach pain and burning sensation of abdominal area.
19. In making a diagnosis of gastritis without proper justification, the Defendant has by his conduct fallen below the standards expected of registered medical practitioners in Hong Kong. Accordingly, we also find the Defendant guilty of disciplinary charge (b).
20. The Defendant also accepted that he advised the Patient to undergo a scan for suspected or potential neurological condition without proper justification.

21. We agree with Dr CHAN that the Defendant's advice "was not supported by his initial clinical assessments which was evidently inadequate". In this connection, apart from noting down under the column of "Examination Investigation" that the Patient was "Afebrile ENT Chest clear", there was no mention in the Defendant's medical records of results of other physical examination like her "pallor, the pulse and blood pressure, auscultation of the heart", which we agree with Dr CHAN would be essential for finding out the underlying cause of the syncope.
22. Our attention was also drawn by Dr CHAN to an article entitled "NICE Guideline: transient loss of consciousness (blackouts) in adults and young people" [see: *British Journal of General Practice*, January 2011] and we agree with the learned authors that "[i]f a diagnosis of uncomplicated faint or situational syncope is made, no further immediate management is required" unless there is medical evidence indicative of suspected or potential neurological condition.
23. Therefore, in our view, the Defendant's advice for the Patient to undergo a scan was made without proper justification. Accordingly, we also find the Defendant guilty of disciplinary charge (c).

Sentencing

24. The Defendant has a clear disciplinary record.
25. In line with our published policy, we shall give the Defendant credit in sentencing for his frank admission and not contesting the issue of professional misconduct.
26. We bear in mind that the primary 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 the public confidence in the medical profession by upholding its high standards and good reputation.
27. We appreciate that the Defendant has reflected on his inadequacies in medical records keeping and lack of patient communication skills. And we are told in mitigation that the Defendant has identified some CME courses with a view to making good his shortcomings.

28. In our view, the Defendant still fails to appreciate the gravamen of his misconduct lies in the deficiencies in his diagnostic skills. It is elementary principle in medicine that diagnosis of a patient's illness should only be made after detailed medical history taking and thorough physical examination; and differential diagnoses, if any, should be properly evaluated in the light of all the medical evidence before a working diagnosis is reached.

29. Taking into consideration the nature and gravity of this case and what we read and heard in mitigation, we order in respect of disciplinary charges (b) and (c) that the name of the Defendant be removed from the General Register for a period of 2 months. We further order that the operation of the removal order be suspended for a period of 12 months, subject to the conditions that:

(1) the Defendant shall complete within 12 months CME courses (or such other courses pre-approved by the Chairman of the Council) relating to medical records keeping, patient communication skills and common general practitioner practice to the equivalent of 10 CME points;

(2) the Defendant shall complete during the suspension period satisfactory peer audit by a Practice Monitor to be appointed by the Council with the following terms:

(a) the Practice Monitor shall conduct random audit of the Defendant's practice with particular regard to medical records keeping and management of patients;

(b) the peer audit should be conducted without prior notice to the Defendant;

(c) the peer audit should be conducted at least once every 6 months during the suspension period;

(d) during the peer audit, the Practice Monitor should be given unrestricted access to all parts of the Defendant's clinic and the relevant records which in the Practice Monitor's opinion is necessary for proper discharge of his duty;

(e) the Practice Monitor shall report directly to the Chairman of the Council the finding of his peer audit at 6-monthly intervals. Where

any defects are detected, such defects should be reported to the Chairman of the Council as soon as practicable;

- (f) in the event that the Defendant does not engage in active practice at any time in Hong Kong during the suspension period, unless otherwise ordered by the Council, the peer audit shall automatically extend until the completion of 12-month suspension period; and
- (g) in case of change of Practice Monitor at any time before the end of the 12-month suspension period, unless otherwise ordered by the Council, the peer audit shall automatically extend until another Practice Monitor is appointed to complete the remaining period of peer audit.

30. We further order that in respect of disciplinary charge (a) a warning letter be issued to the Defendant.

Prof. LAU Wan-yee, Joseph, SBS
Chairperson of the Inquiry Panel
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