

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr FAN Sze Yuen Celine (范思遠醫生) (Reg. No.: M12995)

Date of hearing: 22 August 2019 (Thursday)

Present at the hearing

Council Members/Assessors: Prof. LAU Wan-ye, Joseph, SBS
(Chairperson of the Inquiry Panel)
Dr SHEA Tat-ming, Paul
Prof. TAN Choon-beng, Kathryn
Ms HUI Mei-sheung, Tennessy, MH, JP
Mr POON Yiu-kin, Samuel

Legal Adviser: Mr Edward SHUM

Defence Counsel representing the Defendant: Mr Edward FAN instructed by
Messrs. Johnnie YAM, Jacky LEE & Co.

Senior Government Counsel representing the Secretary: Ms Carmen POON

1. The charge against the Defendant, Dr FAN Sze Yuen Celine, is:

“That in or about June 2013, she, being a registered medical practitioner, disregarded her professional responsibility to her patient [REDACTED] [REDACTED] (“the Patient”), deceased, in that she prescribed Voltaren to the Patient when she knew or ought to have known that the Patient was allergic to NSAID and could develop asthmatic attack from its use.

In relation to the facts alleged, either singularly or cumulatively, she 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. Her name has been included in the General Register from 9 May 2001 to present and her name has never been included in the Specialist Register.
3. There is no dispute that the Patient had consulted the Defendant on and off for 37 times since July 2005. The Patient's past history of asthma was documented in her consultation records. The Defendant also learnt from reading a drug allergy alert card issued by the Queen Elizabeth Hospital ("QEHA") that the Patient was allergic to amongst other drugs, "NSAID". The Defendant believed it was sometime in 2011 that she copied the information from the Patient's drug allergy alert card onto the front page of the Patient's consultation record.
4. There is also no dispute that the Patient, who was then 64 years old, consulted the Defendant on 3 June 2013. According to her consultation records, the Patient complained of myalgia, cough with sputum, shortness of breath and running nose for one week.
5. According to the Defendant's submission to the Preliminary Investigation Committee, she had asked the Patient during the consultation whether she had any drug allergy updates and whether she had any allergic episodes since her last visit. The Patient then showed her the same drug allergy alert card issued by QEHA in January 2010. The Defendant also asked the Patient whether she had any adverse reaction after taking the drugs she had previously prescribed. The Patient confirmed that she did not. Knowing from the Patient that she had not demonstrated any genuine allergic symptoms to Voltaren and had been prescribed it on previous occasions, the Defendant believed Voltaren was an appropriate drug for the Patient's circumstances to treat her pain. The Defendant then proceeded to prescribe the Patient with various drugs including Voltaren 50mg 4 times a day for 3 days.
6. According to her daughter (the "Complainant"), the Patient developed shortness of breath after taking the drugs prescribed by the Defendant and had to be admitted to the Accident & Emergency Department ("AED") of QEHA later in the evening of 3 June 2013.

7. According to the medical records obtained from QEH, the Patient lost consciousness on the way to hospital and had developed bradycardia during the ambulance journey to QEH. Upon arrival at the AED, the Patient developed respiratory arrest and then cardiac arrest. She was resuscitated and transferred to the Intensive Care Unit (“ICU”) for further management. Although her asthma was subsequently controlled by medication, the Patient remained deeply comatose and in a vegetative state throughout her stay in the ICU. CT on 6 June 2013 then showed diffuse cerebral oedema which was most likely due to anoxic damage. Decision was made to withdraw life support and she was weaned off the ventilator on 15 June 2013. On 17 June 2013, the Patient was discharged to the general ward for palliative care. Eventually, she passed away on 24 June 2013.
8. The Complainant subsequently lodged this complaint against the Defendant with the Medical Council.

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 her 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 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 her carefully.

Findings of the Inquiry Panel

11. The Defendant admits the factual particulars of the disciplinary charge against her but it remains for us to decide on the evidence whether she is guilty of misconduct in a professional respect.

12. The central issue is whether the Defendant's prescription of Voltaren to the Patient was in all the circumstances of this case below the standards expected of registered medical practitioners in Hong Kong.
13. There is no dispute that the Patient was suffering from NSAID-exacerbated respiratory disease ("NERD") when she was admitted to the AED of QEH on 3 June 2013. We also accept on the evidence that the effective cause of the Patient's death was due to acute asthma exacerbation which was most likely triggered by the intake of Voltaren.
14. Before she prescribed Voltaren to the Patient, the Defendant was fully aware from reading the Patient's drug allergy alert card that she was allergic to "NSAID".
15. We agree with the Secretary's expert, Dr WU, that NERD is strictly speaking not an allergy as the mechanism does not involve specific antibodies or lymphocytes. But then again, the real point is that whilst the use of the word "Allergy" was imprecise in textbook terms, it was more than sufficient to convey the warning that the Patient could not tolerate "NSAID".
16. Patients are entitled to, and they often do, rely on doctors to exercise reasonable care and competence in avoiding prescription of drug to which they have a known allergy or sensitivity.
17. In our view, neither the use of the word "NSAID" in singular instead of plural form nor the use of the word "Allergy" instead of "Sensitivity" could relieve the Defendant of her duty to give adequate consideration for the drug safety of her prescription of Voltaren to the Patient.
18. In this connection, it was specifically stated on this drug allergy alert card which was printed by QEH for the Patient on 20 January 2010 that:-

"This card contains the Allergy and other medical information of the above patient for alert and reference only and should not be considered exhaustive or absolute."
19. There is no dispute that the Patient had a history of asthma for more than 10 years before she consulted the Defendant again on 3 June 2013. The Defendant also admitted in her evidence before the Coroner that the Patient had asthma exacerbation from time to time. On 19 February 2013, the Patient developed

severe asthma exacerbation after taking vinegar which required an injection of bronchodilator by the Defendant.

20. Although it is unclear how NERD is triggered, we agree with Dr WU that patients who have a true allergic reaction to one NSAID may also increase the risk of allergy to other NSAIDs. We also agree with Dr WU that asthmatic patients are more prone to NSAID hypersensitivity.
21. The Defendant denied that she had any knowledge of the Patient's previous hospital admissions for severe asthma exacerbation. However, when being shown the drug allergy alert card, the Defendant should in our view at least enquire with the Patient the circumstances under which it was issued by QEH.
22. We are particularly concerned that according to the Defendant, she did ask the Patient for further information about her drug allergy to NSAID but in vain. Given the warning in the Patient's drug allergy alert card that she was allergic to NSAID, the Defendant ought in our view to have considered carefully whether there were safer alternatives than NSAID. This is particularly true when the Patient was found in physical examination by the Defendant to be wheezing and the Patient's asthma exacerbation would be aggravated by taking Voltaren.
23. We also agree with Dr WU that patients with true drug allergy should not be expected to react on every exposure. It was therefore illogical in our view for the Defendant to deduce from the lack of reaction from a previous prescription of Voltaren in August 2012 that it would be safe to prescribe Voltaren to the Patient. We also agree with Dr WU that there was no urgent reason for the Patient to be prescribed with Voltaren. This is particularly true when prescription of NSAID was non-essential for treating minor illness like respiratory tract infection.
24. For these reasons, prescription of Voltaren to the Patient, whom the Defendant well knew was allergic to NSAID and could develop asthmatic attack from its use, was inappropriate and unsafe.
25. In our view, the Defendant's conduct had fallen below the standards expected of registered medical practitioners in Hong Kong. We therefore find her guilty of professional misconduct as charged.

Sentencing

26. The Defendant has a clear disciplinary record.
27. In line with our published policy, we shall give her credit for her frank admission and cooperation before us today.
28. 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.
29. We are particularly concerned that the Defendant nevertheless prescribed the Patient with NSAIDs on 6 occasions after the date of issuance of the drug allergy alert card.
30. We are told in mitigation that the Defendant had followed the expert advice of Dr WU and would refrain from prescribing drugs to which her patients were known to have adverse reactions.
31. However, the drug allergy alert card is not intended to be exhaustive or absolute. In our view, the real point is that despite being shown the drug allergy alert card, the Defendant never enquired with the Patient the circumstances under which it was issued by QEH.
32. We accept that the Defendant had learnt her lesson. However, we need to ensure that she would not commit the same or similar misconduct in the future.
33. Taking into consideration the nature and gravity of the disciplinary charge and what we have heard and read in mitigation, we order that the Defendant's name be removed from the General Register for a period of 6 months. We further order that the removal order be suspended for a period of 36 months, subject to the conditions that the Defendant shall complete during the suspension:-
 - (1) Course(s) on safe prescription of drugs to be approved by the Medical Council to the equivalent of 10 CME points and to be completed within the next 12 months; and

- (2) Satisfactory peer audit by a Practice Monitor to be appointed by the Medical Council with the following terms:-
- (a) the Practice Monitor shall conduct random audit of the Defendant's practice with particular regard to safe prescription of drugs;
 - (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(s) 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. 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 during the suspension period, unless otherwise ordered by the Council, the peer audit shall automatically extend until the completion of 36-month suspension period; and
 - (g) in case of change of Practice Monitor at any time before the end of the 36-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.

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