香 港 醫 務 委 員 會

The Medical Council of Hong Kong

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr FONG Man Chung (方文聰醫生) (Reg. No.: M14533)

Date of hearing: 22 May 2020 (Friday)

Present at the hearing

Council Members/Assessors: Dr CHOI Kin, Gabriel
(Chairperson of the Inquiry Panel)
Dr LO Chi-yuen, Albert
Prof. KONG Pik-shan, Alice
Mr CHAN Wing-kai
Mr LAI Kwan-ho, Raymond

Legal Adviser: Mr Edward SHUM

Defence Counsel representing the Defendant: Ms Ann LUI instructed by
Messrs. Kennedys

Senior Government Counsel representing the Secretary: Ms Cindy LEUNG

1. The charge against the Defendant, Dr FONG Man Chung, is:

"That on or about 7 May 2016, he, being a registered medical practitioner, disregarded his professional responsibility to his patient [redacted] ("the Patient"), in that he failed to conduct proper examination in response to the Patient's complaint of skin rash at the back during consultation.

In relation to the facts alleged, 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 3 January 2005 to the present. His name had never been included in the Specialist Register.

3. Briefly stated, the Patient consulted the Defendant on 7 May 2016 complaining of left lower chest pain. During the consultation, the Patient also complained that there were skin rashes at her back.

4. However, without examining her skin rash, the Defendant merely told that the Patient was suffering from skin allergy and proceeded to prescribe her with anti-allergy medication and ointment.

5. The Patient returned home and took, amongst others, the anti-allergy medication and ointment. The Patient did not notice any improvement and on 9 May 2016 the Patient consulted another doctor who diagnosed her to be suffering from Herpes Zoster.

6. Thereafter, the Patient lodged this complaint against the Defendant with the Medical Council.

Burden and Standard of Proof

7. 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.

8. There is no doubt that the allegation 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 the disciplinary charge against him carefully.

Findings of the Inquiry Panel

9. The Defendant admits the factual particulars of the disciplinary charge against him but it still remains for us to consider and determine on the evidence before us whether he is guilty of misconduct in a professional respect.

10. It is clearly stated in section 9.1 of the Code of Professional Conduct (2016 edition) that:

"A doctor may prescribe medicine to a patient only after proper consultation and only if drug treatment is appropriate."

11. The Defendant sought to explain in his first letter to the Preliminary Investigation Committee ("PIC") that one of the reasons why he did not examine the skin rash on the Patient's back was because there were some "108+20 patients within 11 working hours" on his patient list and "the nurses are all very busy at that moment and it was difficult to find a chaperone immediately to do the physical examination for the female patient."

12. When being asked by us, the Patient told us and we accept that there were only a few patients waiting outside the consultation room when she arrived at the Defendant's clinic. Indeed, the Patient's evidence on this point was consistent with the entries in the Defendant's patient list.

13. However that may be, the real point in our view is that the Defendant ought to allot sufficient time for each and every patient during the consultation.

14. The Defendant also mentioned in his first letter to the PIC that he was concerned that the Patient might accuse him of indecent assault if he were to carry out the examination of her skin rash without the presence of chaperone, especially when according to him, "the patient's manner was still challenging without respect to the doctor".

15. The Patient told us and we accept that the consultation lasted only two to three minutes. We find it implausible that the Patient's manner would be "challenging" and disrespectful when there was hardly any time for rapport.

16. We are deeply concerned that the Defendant did not examine the Patient's skin rash before prescribing her with anti-allergy medication and ointment, namely, Clobetasol cream and Berclomin, which contained steroid, were in our view inappropriate for treatment of the Patient's Herpes Zoster.

17. In our view, the Defendant's conduct had fallen below the standards expected of registered medical practitioners in Hong Kong. Accordingly, we find the Defendant guilty of professional misconduct as charged.

Sentencing

18. The Defendant has a clear disciplinary record.

19. In line with our published policy, we shall give him credit in sentencing for his frank admission and full cooperation throughout the disciplinary proceedings.

20. 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 public confidence in the medical profession by upholding its high standards and good reputation.

21. We are told in mitigation that those in charge of the management of his clinic have since the incident implemented a new protocol requiring clinical assistants to respond to calls for assistance to act as chaperones promptly. Doctors would explain to patients that intimate examination needed to be carried out in the presence of chaperones and they could wait outside until there were available chaperones. And if patients requested to undergo intimate examination without the presence of chaperones, such requests should be documented in their medical records.

22. This is however beside the point. The best protocol requires the vigilance of doctors working in the medical practice. In our view, the Defendant still fails to appreciate the gravamen of his misconduct lies in his failure to allot sufficient time for each and every patient during the consultation. The Defendant should reflect on his work schedule and ensure that quality medical services can always be provided to his patients.

23. We accept that the Defendant has learnt his lesson but we need to ensure that the chance of his repeating the same or similar breach in the future would be low.

24. Taking into consideration the nature and gravity of the disciplinary charge for which we find him guilty of 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 1 month. We further order that the removal order be suspended for a period of 12 months, subject to the condition that the Defendant shall complete during the suspension period 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 on the sufficiency of time and examination 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(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 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.

Dr CHOI Kin, Gabriel
Chairperson of the Inquiry Panel
The Medical Council of Hong Kong