

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr FUNG Chi Pun Wilson (馮治本醫生) (Reg. No.: M11849)

Dates of hearing: 15 November 2021 (Monday) and 30 November 2021 (Tuesday)

Present at the hearing

Council Members/Assessors: Prof. LAU Wan-ye, Joseph, SBS
(Chairperson of the Inquiry Panel)
Dr LEUNG Chi-chiu
Prof. TAN Choon-beng, Kathryn
Ms HUI Mei-sheung, Tennessy, MH, JP
Mr LAI Kwan-ho, Raymond

Legal Adviser: Mr Stanley NG

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

Government Counsel representing the Secretary: Mr Andrew TONG

1. The charge against the Defendant, Dr FUNG Chi Pun Wilson, is:

“The particulars of the complaint are that in or about September and October 2017, he, being a registered medical practitioner, made Health Care Voucher claims for referrals of 226 elderly persons to receive laboratory tests without (i) providing any prior medical consultation and/or (ii) meeting the elderly persons in person.

In relation to the facts alleged, either individually or cumulatively, he has been guilty of misconduct in a professional respect.”

Facts of the case

2. The name of the Defendant has been included in the General Register from 6 July 1998 to the present. His name has never been included in the Specialist Register.

3. The Government's Health Care Voucher Scheme ("HCVS") provides health care vouchers annually to elders aged 65 or above to subsidize their use of primary care services in the private sector. Health care professionals who are registered in Hong Kong, including medical practitioners, are eligible to enroll in the HCVS as service providers. The Defendant was an enrolled healthcare service provider ("EHCP") under the HCVS.
4. During investigation of a case involving a Medical Laboratory Technologist under C L Medical Group Limited (焯朗醫療集團有限公司) by the Health Care Voucher Unit ("HCVU") of the Department of Health ("DH"), information revealed that the Defendant might have made health care voucher claims for providing written referrals to elderly persons, who were members of an association known as Hong Kong Safety Service Association Limited ("HKSSA"), to receive laboratory tests without providing prior medical consultation or having met the elderly persons.
5. HCVU therefore conducted a separate investigation on the voucher claims made by the Defendant under the HCVS. During the investigation, the Defendant had submitted two declarations to HCVU. The Defendant admitted in the declaration dated 15 July 2018 that he had not provided any consultation service to the voucher recipients ("VRs") in person for 199 voucher claims. The Defendant admitted in the declaration dated 29 October 2018 that he had not provided consultation services to VRs in person for another 27 voucher claims.
6. From HCVU's investigations, the Defendant was found to have breached the Health Care Voucher Scheme Definitions, and Terms and Conditions of Agreement ("the Agreement") by making a total of 226 voucher claims without providing services in person to the elderly persons. The Defendant was disqualified from the HCVS on 25 April 2019, and the payment for the concerned 226 claims (\$22,600) was recovered by HCVU from the Defendant on 6 May 2019.
7. By a letter dated 26 April 2019, DH lodged a complaint against the Defendant to the Medical Council.

Burden and Standard of Proof

8. 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.

9. 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

10. Although the Defendant admits the factual particulars of the disciplinary charge against him and does not dispute that the facts amounted to professional misconduct, it remains for us to consider and determine on the evidence whether he has been guilty of misconduct in a professional respect.
11. Pursuant to Clause 37 of the Agreement, the EHCPs were required to comply with all directions given by the Government. Non-compliance with the directions given by the Government under the Agreement or in relation to the HCVS might be treated as breach of Clause 37 of the Agreement.
12. According to the bilingual version of Proper Practices under the Elderly Health Care Voucher Scheme issued by HCVU to the EHCPs in October 2016 (“2016 Proper Practices”), the EHCPs were reminded of the following:

“You should verify the VR’s identity by checking against the particulars in their Hong Kong Identity Cards (HKICs) or Certificates of Exemption and ensure that they are the one holding the identity documents.”

“For every voucher claim, VRs should bring along their identity document and physically attend the practices of EHCP to receive healthcare services.”

“你必須核對醫療券使用者的香港身份證或豁免證書的個人資料，確認他們是身份證明文件的持有人。”

“在每一次申領醫療券時，醫療券使用者必須攜同其身份證明文件，親身到醫療服務提供者的執業地點接受醫療服務”

[Emphasis in underline added by HCVU in both English and Chinese versions of the 2016 Proper Practices.]

13. According to the Secretary, among the concerned 226 claims, 17 claims were related to the 2016 Proper Practices.
14. According to the bilingual version of Proper Practices under the Health Care Voucher Scheme issued by HCVU to the EHCPs in September 2017 (“2017 Proper Practices”), the EHCPs were reminded of the following:

“For every voucher claim, VRs should physically attend the practice of the EHCP and produce their Hong Kong Identity Cards (“HKICs”) or Certificates of Exemption (“CoEs”) issued by the Immigration Department in order to receive healthcare services... You should verify the VR’s identity by checking against the particulars in their HKICs or CoEs and ensure that they are the one holding the identity documents.”

“在每一次申領醫療券時，醫療券使用者必須親身到醫療服務提供者的執業地點，出示其香港身份證或由入境事務處簽發的《豁免登記證明書》才可接受醫療服務……你必須核對醫療券使用者的香港身份證或《豁免登記證明書》上的個人資料，確認他們是身份證明文件的持有人。”

[Emphasis in underline added by HCVU in both English and Chinese versions of the 2017 Proper Practices.]

15. According to the Secretary, among the 226 claims, 209 claims were related to the 2017 Proper Practices.
16. The Defendant admitted that he had not provided consultation service to all the 226 VRs in person. No doubt he was not in compliance with the requisite directions under the 2016 and 2017 Proper Practices and thus violated the Agreement with the Government. Having said that, albeit there was violation or breach of the agreement with the Government, we agree with the Legal Officer that such breach or violation *per se* was by no means sufficient to constitute professional misconduct.
17. The Legal Officer submitted that the Defendant knowingly breached the Agreement and thus amounted to abuse of the system and trust. We must say that there is no direct evidence that the Defendant had intentionally breached the Agreement. We do not agree that the Legal Officer can meet a case that the Defendant had abused the system and trust.
18. In his submission to the Preliminary Investigation Committee (“PIC”) dated 5 November 2020, the Defendant explained the key steps that were taken in referring elderly patients for laboratory tests under the health check scheme set up by HKSSA (“the Scheme”). The Defendant said that he was involved via the practice entitled Doctor Now Limited in the Scheme. Elderly patients who were members of HKSSA would first inform a representative from HKSSA that they would like to undergo the basic health screening organized by HKSSA. The HKSSA representative would inform the patients of the scope of the screening, the blood and urine tests to be performed and the instructions the patients had to follow. Upon being notified by HKSSA, the Defendant would review the patient’s medical history, which had been obtained by HKSSA from the member.

The Defendant would consider if there were any contraindications for the laboratory tests. If appropriate, he would prepare a referral letter to the laboratory so that the relevant tests could be arranged. In regard to the member's samples, which normally consisted of urine and blood, the HKSSA representative, who would either be a nurse or a phlebotomist, would obtain at the member's home. If the member wished to use his/her health care vouchers to settle the relevant fees, he/she would be asked to sign two consent forms, one for the purposes of confirming their agreement to use their vouchers to settle the Defendant's fees, and the other to settle the laboratory fees. The samples would then be sent to the laboratory together with the Defendant's referral letter. After the results became available, they would be analysed by the Defendant. Further medical information would be sought from the patient and family as necessary. The results would be explained to the patients and family members, with recommendations and follow-up actions if appropriate.

19. It is stated in paragraph 17.1 of the Code of Professional Conduct (the "Code") (2016 edition) that:

"A doctor may refer a patient for diagnostic ... services to ... any other provider of health care services permitted by law to furnish such services, if in his clinical judgment this may benefit the patient..."

20. According to what the Defendant told us in his PIC submission, we simply do not see there was any opportunity at all for him to confirm with the elderly patients if it was really their wish to undergo the blood and/or urine tests and what they would wish to find out from the tests. The Defendant would also not know if what the HKSSA representatives told the elderly patients about the screening tests were correct or if anything important was missing. All that the Defendant did after HKSSA referred an elderly patient to him was reviewing the medical history of the patient, and if there was no contraindication, then referring the patient for the laboratory tests. In our view, this was totally unacceptable. By simply reviewing the medical history, there was no opportunity at all to verify from the patients if the medical history was accurate, not to mention there was no opportunity to find out if there had been any updates on the medical conditions. With all these information missing, we are not satisfied that the Defendant's referral of the 226 VRs for laboratory tests were in the patients' best interests and benefits.
21. In our view, the Defendant's conduct had fallen below the standards expected of registered medical practitioners in Hong Kong. We therefore find him guilty of misconduct in a professional respect as charged.

Sentencing

22. The Defendant has a clear disciplinary record.

23. In line with published policy, we shall give credit to the Defendant for his frank admission and full cooperation throughout these disciplinary proceedings.
24. 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.
25. The Defendant explained to us that he was under the mistaken belief that he was in compliance with the Agreement and he should have persevered in insisting HKSSA to allow him to meet the patients in person. We must stress that it is no excuse for the Defendant not to have perused the terms and conditions carefully, and he should not have allowed HKSSA to dictate what a medical practitioner thought was in the best interest of the patients. After all, a medical practitioner has the primary responsibility for the welfare and care of patients, and it is not any third party in which he has association with. In our view, the offence committed by the Defendant in this case is serious. Having said that, we accept that there was no dishonesty or improper intent on the part of the Defendant.
26. The Defendant told us that he is no longer involved in any Government scheme. We accept that the Defendant should have learnt his lesson and the risk of re-offending is low.
27. Taking into consideration the nature and gravity of the Defendant's case 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 6 months.

Prof. LAU Wan-ye, Joseph, SBS
Chairperson of the Inquiry Panel
The Medical Council of Hong Kong