

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr HO Chi Sun Jason (何志申醫生) (Reg. No.: M07503)

Dates of hearing: 20 June 2018 (Wednesday) (Day 1) and 8 September 2018
(Saturday) (Day 2)

Present at the hearing

Council Members/Assessors: Prof. LAU Wan-ye, Joseph, SBS
(Chairperson of Inquiry Panel)
Dr Hon CHAN Pierre
Mr KWONG Cho-shing, Antonio, MH
Prof. TAN Choon-beng, Kathryn
Mr WOO King-hang

Legal Adviser: Mr Edward SHUM

Defence Counsel representing the Defendant: Mr Paul LAM, SC, as instructed by
Messrs. Mayer Brown JSM

Senior Government Counsel (Ag.) representing the Secretary: Ms Carmen SIU

1. The amended charges against the Defendant, Dr HO Chi Sun Jason are :

“That, on or about 16 March 2012, he, being a registered medical practitioner, disregarded his professional responsibility to his patient [REDACTED] (“the Patient”) in that he:

- (a) sanctioned, acquiesced or failed to take reasonable steps to prevent the issuance of an unsigned sick leave certificate dated 16 March 2012 to the Patient; and
- (b) inappropriately or without proper justification prescribed Surlax and/or Dompe tab 10mg and/or Mylanta to the Patient.

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 22 September 1989 to present and his name has never been included in the Specialist Register.
3. Briefly stated, the Patient consulted the Defendant at his Waterloo Road clinic on 16 March 2012 complaining of fever, sore throat and common cold. There is conflicting evidence whether the Patient also complained of constipation.
4. Be that as it may, there is no dispute that the Defendant prescribed, amongst others, the following medications to the Patient after the consultation:-
 - (i) Dompe (Molitium) tablet 10 mg (1 tablet, 3 times per day) for 3 days;
 - (ii) Mylanta (1 tablet, 3 times per day) for 3 days; and
 - (iii) Surlax (2 tablets per day) for 3 days
5. According to the Defendant, he prescribed the aforesaid medications for the following purposes:-
 - (i) Motilium (for gastritis, functional dyspepsia and gastroesophageal reflux disease (“GERD”));
 - (ii) Mylanta (for gastritis); and
 - (iii) Surlax (for constipation)
6. After the consultation, the Patient was given 1 day of sick leave. However, the sick leave certificate issued by the Defendant did not bear his signature. It bore only the chop of the name of the Defendant’s clinic and his name in English and Chinese; and the Defendant’s diagnosis was also missing.
7. The Patient subsequently lodged this complaint with 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 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 the disciplinary charges against him separately and carefully.

Findings of the Inquiry Panel

10. It is not disputed that the Patient's medical condition at the time of the consultation warranted 1 day of sick leave. Whilst the sick leave certificate might be inadvertently given to the Patient without signature and diagnosis, the Defendant must nevertheless bear the personal responsibility for this administrative error of his clinic assistant.
11. It is clearly stated in the Code of Professional Conduct (2009 edition) (the "Code") that:-
- "26.1 Doctors are required to issue reports and certificates for a variety of purposes... on the basis that the truth of the contents can be accepted without question. Doctors are expected to exercise care in issuing certificates..."*
- "26.3 Any doctor who in his professional capacity gives any certificate or similar document containing statements which are untrue, misleading or otherwise improper renders himself liable to disciplinary proceedings..."*
12. This is not a case where the Patient had asked the Defendant not to mention in the sick leave the diagnosis for privacy reasons. Indeed, the Defendant had stated in the payment voucher to be submitted to the Patient's medical insurer that she was suffering from "gastritis".
13. In our view, the Defendant's failure to exercise reasonable care in his professional capacity as treating doctor to ensure that the sick leave certificate given to the Patient was true and proper in all material aspects had fallen below the standards expected of registered medical practitioners in Hong Kong. Accordingly, we find him guilty of amended charge (a).
14. Turning to amended charge (b), the Defendant agreed at the beginning of this inquiry through his counsel that he did not require the Legal Officer to call the Patient for cross examination. The Defendant also agreed that the symptoms and complaints documented in the Patient's medical record would not be sufficient to support a diagnosis of gastritis.

15. In his supplemental statement dated 14 June 2018, the Defendant initially admitted in paragraph 26 that:-

“... I therefore also agree and admit that the prescription of Motilium and Mylanta based on such diagnosis was without sufficient justification. Accordingly, insofar as the prescription of Motilium and Mylanta under Charge (b) is concerned, I would admit my mistake and leave it to this Council to decide whether such mistake was grave enough to constitute professional misconduct ...”
16. However, when the Defendant gave oral evidence before us, he sought to defend that the prescription of Motilium, Mylanta and Surlax were appropriate. According to the Defendant, although he might not have put down in the medical records each and every signs and symptoms he found, he would have asked in accordance with his routine practice the Patient whether she had in the past constipation, the severity of the duration of her present complaint of constipation; and whether she had in the past bad stomach and alimentary tract or other symptoms related to her gastro-intestinal tract. Although the Defendant had no independent memory of what the Patient’s answers were, he believed that every diagnosis that he made was actually based on the Patient’s answers to his questions. The Defendant further explained to us for the first time that the diagnosis of gastritis stated in the payment voucher to be submitted to the Patient’s medical insurer was wrong and it should have been GERD instead of “gastritis”.
17. In view of the latest position taken by the Defendant, we allowed the Legal Officer to reopen the Secretary’s case and to call the Patient to give oral evidence.
18. The Patient was adamant that she never suffered from constipation. However, our attention was drawn by the Defendant’s counsel to the complaint of “no excrement of stool” in the Patient’s medical record. Bearing in mind that the burden of proof is always on the Legal Officer, we are not satisfied on the evidence that the Defendant’s prescription of Surlax to the Patient was inappropriate or without proper justification.
19. But then again, the Defendant accepted that the diagnosis of gastritis could not be made by clinical examination alone. The Defendant also accepted the symptoms and complaints documented in the Patient’s medical records were insufficient to support a diagnosis of gastritis. That being the case, we find the Defendant’s prescription of Mylanta to the Patient for gastritis to be inappropriate and without justification.
20. As for his prescription of Motilium, the Defendant’s case is that Motilium was prescribed for gastritis, functional dyspepsia and gastroesophageal reflux disease (“GERD”). In view of our findings in paragraph 19 above, the Defendant’s

prescription of Motilium to the Patient for gastritis was also inappropriate and without justification. Moreover, the Patient told us in her oral evidence, which we accept, that she had never complained to the Defendant of symptoms relating to her stomach, alimentary tract or gastro-intestinal tract. Indeed, none of these symptoms and complaints was documented in the contemporaneous medical record made by the Defendant. Accordingly, we also find the Defendant's prescription of Motilium to the Patient for functional dyspepsia and GERD to be inappropriate and without justification.

21. It is clearly stated in paragraph 9.1 of the Code that:-

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

22. In our view, the Defendant's conduct had fallen below the standards expected of registered medical practitioners in Hong Kong. Accordingly, we also find him guilty of amended charge (b).

Sentencing

23. The Defendant has a clear disciplinary record.

24. We shall give credit to the Defendant for not contesting amended charge (a).

25. 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.

26. We accept that the unsigned sick leave certificate was given to the Patient after proper consultation. We also accept that this case did not involve wrongful prescription on multiple occasions and there was no evidence that physical harm had been caused to the Patient.

27. However, we are particularly concerned about the Defendant's prescription of more than one medication to the Patient inappropriately and without proper justification. Whilst we accept that the Defendant has learnt his lesson but we need to be assured that the chance of his committing the same or similar breach in the future is low.

28. Having considered the nature and gravity of the disciplinary charges for which we find the Defendant guilty and what we have heard and read in mitigation, we order that in respect of amended charge (b) that the Defendant's name be removed from the General Register for a period of 3 months, and the operation of 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 Council with the following terms:

- (a) the Practice Monitor shall conduct random audit of the Defendant's practice with particular regard to prescription of medications to 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 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.

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

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