

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr HO Ka Keung (何家強醫生) (Reg. No.: M08777)

Date of hearing: 30 March 2020 (Monday)

Present at the hearing

Council Members/Assessors: Prof. LAU Wan-yee, Joseph, SBS
(Chairperson of the Inquiry Panel)
Dr CHEUNG Chin-pang
Dr LAM Ho
Mr MUI Cheuk-nang, Kenny
Mr HUI Cheuk-lun, Lawrence

Legal Adviser: Mr Edward SHUM

Defence Solicitor representing the Defendant: Mr Chris HOWSE of
Messrs. Howse Williams

Senior Government Counsel representing the Secretary: Miss Vienne LUK

1. The charge against the Defendant, Dr HO Ka Keung, is:

“That he, being a registered medical practitioner, disregarded his professional responsibility to his patient [REDACTED] (“the Patient”) in that he failed to obtain informed consent from the Patient before performing cryotherapy treatment(s) on the Patient from about June to August 2012.

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 22 September 1992 to the present. His name has been included in the Specialist Register under the Specialty of Dermatology & Venereology since 2 April 2003.
3. Briefly stated, the Patient consulted the Defendant on 3 May 2012 complaining of multiple erythematous papules and pustules over anterior chest wall and both upper arms for six months. A diagnosis of bacterial folliculitis and molluscum contagiosum was made. The Defendant then prescribed to the Patient oral doxycycline 100 mg twice daily for treatment of the bacterial folliculitis and fucidin ointment for treatment of the molluscum contagiosum.
4. The Patient returned to see the Defendant on 23 May 2012 and the same set of medications as prescribed in the first consultation was repeated for another two weeks. However, the Patient found no improvement after taking the prescribed medications.
5. On 5 June 2012, the Patient returned to see the Defendant, who then advised him to undergo cryotherapy treatment.
6. There is no dispute that the Patient received multiple sessions of cryotherapy treatment by the Defendant from 5 June to 3 August 2012. According to the Patient, whose evidence is unchallenged by the Defendant, he developed multiple hypertrophic scars with skin hyperpigmentation over the treated sites after cryotherapy but the Defendant merely prescribed him with ointments for scar removal.
7. The Patient subsequently consulted some other doctors and was advised that the multiple hypertrophic scars with skin hyperpigmentation over the treated sites after cryotherapy might not be easy to manage and complete resolution might not be possible.
8. By a letter dated 16 June 2013, the Patient 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 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 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

11. We gratefully adopt as our guiding principles the following statements of the law expounded in *Montgomery v Lanarkshire Health Board* [2015] UKSC 11:-

“87. ... The doctor is therefore under a duty to take reasonable care to ensure that the patient is aware of any material risks involved in any recommended treatment, and of any reasonable alternative or variant treatments. The test of materiality is whether, in the circumstances of the particular case, a reasonable person in the patient’s position would be likely to attach significance to the risk, or the doctor is or should reasonably be aware that the particular patient would be likely to attach significance to it.

...

90. ... the doctor’s advisory role involves dialogue, the aim of which is to ensure that the patient understands the seriousness of her condition, and the anticipated benefits and risks of the proposed treatment and any reasonable alternatives, so that she is then in a position to make an informed decision. This role will only be performed effectively if the information provided is comprehensible. The doctor’s duty is not therefore fulfilled by bombarding the patient with technical information which she cannot reasonably be expected to grasp, let alone by routinely demanding her signature on a consent form.”

12. Although the judgment in *Montgomery v Lanarkshire Health Board* was handed down on 11 March 2015, the UK Supreme Court was in our view stating what the law has always been.
13. We accept that development of hypertrophic scars with skin hyperpigmentation over the treated sites, though uncommon, is a known significant risk after cryotherapy. In our view, when deciding whether to undergo cryotherapy treatment, a reasonable person in the position of the Patient would no doubt attach significance to this risk. It was therefore incumbent upon the Defendant to advise the Patient of this risk so that the latter could make an informed decision.
14. The Defendant admits that he did not specifically advise the Patient of the risk of development of hypertrophic scars with skin hyperpigmentation over the treated sites after cryotherapy. He had however given the Patient an information leaflet entitled “Post-cryotherapy Care Notes” with regard to the general risks and complications of cryotherapy treatment two weeks before the medical procedure started.
15. In this connection, there is no dispute that the Defendant’s information leaflet merely advised the Patient of the general risks of development of redness, swelling and blisters over the treated sites during the first seven days after cryotherapy. There was however no mention in the Defendant’s information leaflet of the risk of development of hypertrophic scars with skin hyperpigmentation over the treated sites beyond the first seven days after cryotherapy.
16. We are therefore satisfied on the evidence before us that the Defendant had failed to obtain informed consent from the Patient before performing cryotherapy treatments on the latter from about June to August 2012.
17. 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 misconduct in a professional respect as charged.

Sentencing

18. The Defendant has a clear disciplinary record.

19. The Defendant admits the factual particulars of the disciplinary charge and does not contest the issue of professional misconduct. In line with our published policy, we shall give him credit in sentencing for his admission and full cooperation before us today.
20. We bear in mind 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 also remind ourselves that we are not dealing with the propriety of cryotherapy, nor the manner in which the medical procedure was carried out.
22. We accept that the Defendant has learnt his lesson. We are told in mitigation that the Defendant has taken remedial measures to improve on the information leaflet and consent form to be provided to his patients for consideration and signature.
23. Having considered the nature and gravity of the disciplinary charge for which the Defendant was found guilty 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 and that the operation of the removal order be suspended for a period of 6 months.

Remark

24. The Defendant's name is included in the Specialist Register under the Specialty of Dermatology and Venereology. We shall leave it to the Education and Accreditation Committee to decide on whether anything may need to be done to his specialist registration.

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