

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr KONG Brian Ming Fat (江明發醫生) (Reg. No.: M11714)

Date of hearing: 30 July 2021 (Friday)

Present at the hearing

Council Members/Assessors: Prof. TANG Wai-king, Grace, SBS, JP
(Chairperson of the Inquiry Panel)
Prof. CHOW Yat-ngok, York, GBS, MBE
Prof. CHAN Anthony Tak-cheung
Ms HUI Mei-sheung, Tennessy, MH, JP
Mr HUI Cheuk-lun, Lawrence

Legal Adviser: Mr Edward SHUM

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

Senior Government Counsel (Ag.) representing the Secretary: Mr Louie CHAN

1. The charges against the Defendant, Dr KONG Brian Ming Fat, are:

“That between 4 June and 2 July 2019, he, being a registered medical practitioner:

- (a) issued more than one original receipt in respect of the same payment regarding a medical consultation with ■■■ (“the Patient”) on 4 June 2019;
- (b) issued more than one original receipt in respect of the same payment regarding a medical consultation with the Patient on 27 June 2019; and
- (c) issued more than one original receipt in respect of the same payment regarding a medical consultation with the Patient on 2 July 2019.

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 name of the Defendant has been included in the General Register from 16 January 1998 to the present. His name has been included in the Specialist Register from 4 April 2007 under the Specialty of Orthopaedics & Traumatology.
3. The Secretary of the Medical Council (the “Secretary”) received on 8 May 2020 a complaint from one Madam [REDACTED], Claims Manager of Zurich Insurance Co. Ltd., (“Zurich”) accusing the Defendant of having “*abused his professional position for issuing untrue or misleading certificates or similar documents*” in that he issued “*2 original receipts for the same consultation & payment*” to his patient, [REDACTED] (the “Patient”) on 3 occasions in between 4 June and 2 July 2019.
4. There is no dispute that the Patient consulted the Defendant on 4 June 2019, 27 June 2019 and 2 July 2019 for treatment of his right shoulder contusion injury with partial thickness rotator cuff tear.
5. The first consultation took place at the clinic of OT&P Healthcare (“OT&P”); and the other 2 consultations took place at the Defendant’s own clinic of Monash Orthopaedic and Sports Medicine Centre.
6. On each of the 3 consultations, 2 original receipts were issued to the Patient in respect of the same payment regarding his medical consultation with the Defendant.
7. The Patient later made use of the original receipts to make separate travel insurance claims from Zurich and MSIG Insurance (HK) Ltd. (“MSIG”).
8. Copies of the original receipts received by Zurich and MSIG respectively are placed before us by the Legal Officer for our consideration.
9. In response to the complaint, the Defendant submitted through his solicitors to the Preliminary Investigation Committee (“PIC”) of the Medical Council by letter dated 8 July 2020 that:
 - “8. *Dr Kong started his own private practice, Monash Orthopaedic and Sports Medicine Centre (the “Clinic”) in 2011. Since 2012, he has also carried on practice as a visiting specialist at OT&P.*
 9. *Dr Kong confirmed that he was consulted by the Patient on 4 June 2019, 27 June 2019 and 2 July 2019. The first consultation took place at OT&P’s clinic in Central, and the other two consultations took place at the Clinic.*

...

11. *At no time during any of these consultations did the Patient inform Dr Kong that he would submit a claim for insurance in respect of the consultation fees.*
12. *Following receipt of the PIC Notice, Dr Kong has investigated this matter in some detail with the senior management of OT&P, and also internally at his Clinic with his clinic assistant...*
13. *Dr Kong confirms that, given that only one payment was received from the Patient for each consultation, one of the receipts issued on each occasion should have been stamped with the word "COPY" to clearly show that it was a duplicate/copy.*
14. *Dr Kong accepts that he has responsibility to ensure the truthfulness of all documents which bear his stamp and/or his signature. He is fully aware of his duties under section 26.4 of the Code of Professional Conduct..."*

Burden and Standard of Proof

10. We bear in mind that the burden of proof is always on the Secretary 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.
11. There is no doubt that each of the allegations 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 charges against him separately and carefully.

Findings of the Inquiry Panel

12. The Defendant admits the factual particulars of the disciplinary charges against him and indicates through his solicitor that he is not going to contest these proceedings. It remains however for us to consider and determine on all the evidence whether the Defendant's conduct in the present case has fallen below the standards expected of registered medical practitioners in Hong Kong.
13. It is clearly stated in section 26 of the Code of Professional Conduct (2016 edition) (the "Code") that:

“26.1 *Doctors are required to issue reports and certificates for a variety of purposes (e.g. insurance claim forms, payment receipts...) on the basis that the truth of the contents can be accepted without question. Doctors are expected to exercise care in issuing certificates and similar documents, and should not include in them statements which they have not taken appropriate steps to verify.*

...

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...*

26.4 *Doctors must not issue more than one original receipt in respect of the same payment. Copy receipts must be clearly stated to be copies or duplicates...”*

14. We acknowledge that some of the payment receipts were issued by OT&P, which was not the Defendant’s own clinic. It does not matter however whether the payment receipts were issued by OT&P or the Defendant’s own clinic. The real point is that by allowing his stamp to be affixed to the payment receipts, the Defendant assumed a personal responsibility in his professional capacity as a registered medical practitioner to ensure that they were true and proper in every material aspect.
15. In failing to ensure on each of the 3 occasions that one of the two identical receipts had been marked “copy” or “duplicate” before giving them to the Patient, the Defendant had by his conduct in the present case fallen below the standards expected of registered medical practitioners in Hong Kong.
16. Accordingly, we find the Defendant guilty of misconduct in a professional respect as charged.

Sentencing

17. The Defendant has a clear disciplinary record.
18. In line with our published policy, we shall give the Defendant credit in sentencing for his frank admission and not contesting these proceedings.
19. 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.

20. We are told in mitigation that remedial steps had since been taken by OT&P and the Defendant's own clinic to reinforce the "usual practice" to stamp the "COPY" chop on all duplicate receipts before giving them to patients.
21. We accept that the Defendant has learnt his lesson; and we appreciate his efforts in preventing the same or similar mistake from being repeated in the future.
22. We are however particularly concerned in the present case that both the front desk staff of OT&P and the Defendant's own clinic assistant(s) had deviated from the "usual practice". Apparently, what had happened were not isolated incidents.
23. We wish to remind the Defendant that the success of any remedial steps depends on the vigilance of all those who put it into practice. At the end of the day, it remains his personal responsibility to ensure that all reports and certificates issued in his professional capacity as a registered medical practitioner would be true and proper in every material aspect.
24. Taking into consideration the nature and gravity of the present case and what we have heard and read in mitigation, we shall make a global order in respect of disciplinary charges (a), (b) and (c) that a warning letter be issued to the Defendant. We further order that our order be published in the Gazette.

Remark

25. The name of the Defendant is included in the Specialist Register under the Specialty of Orthopaedics & Traumatology. 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. TANG Wai-king, Grace, SBS, JP
Chairperson of the Inquiry Panel
The Medical Council of Hong Kong