香 港 醫 務 委 員 會
The Medical Council of Hong Kong

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr KONG Chun Tat (Reg. No.: M09088)

Dates of hearing: Day 1 : 11 May 2022 (Wednesday)
Day 2 : 12 July 2022 (Tuesday)
Day 3 : 14 August 2022 (Sunday)

Present at the hearing

Council Members/Assessors: Prof. TANG Wai-king, Grace, SBS, JP
(Chairperson of the Inquiry Panel)
Dr CHUNG Kin-lai
Prof. LAU Yu-lung, BBS, JP
Ms LI Siu-hung
Mr NG Ting-shan

Legal Adviser: Mr Stanley NG

Defence Counsel representing the Defendant: Mr Alfred FUNG as instructed by Messrs. Mayer Brown

Senior Government Counsel (Ag.) representing the Secretary: Miss Liesl LAI

1. The charges against the Defendant, Dr KONG Chun Tat, are:

"That in or about October to November 2018, he, being a registered medical practitioner, disregarded his professional responsibility to his patient, Patient A, ("the Patient"), an infant, in that he –

(a)(i) failed to properly collect urine samples from the Patient for the urine culture tests; and/or

(a)(ii) failed to recognize the possibility of sample contamination in the urine culture report and order for a proper urine collection to confirm the diagnosis of the Patient; and/or

(a)(iii) failed to perform an examination of the Patient's external genitalia to confirm the diagnosis of the Patient; and/or

(b) improperly made a diagnosis of urinary tract infection for the Patient; and/or

(c) prescribed antibiotics to the Patient without proper justifications and/or clinical presentation.

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 24 August 1993 to the present. His name has been included in the Specialist Register under the Specialty of Paediatrics since 12 February 2003.

3. On 18 October 2018, the Patient, a 2-month old girl, was brought to see the Defendant at Out-Patient Department of St. Paul Hospital ("SPH") for skin rash on face, trunk, limbs and vomiting once on that day. The diagnosis was urticaria. The Patient was admitted to SPH. A urine sample was collected from the Patient for urine routine test that evening.

4. On 19 October 2018, the Patient was discharged from SPH as the urticarial rash subsided overnight.

5. In the evening of 19 October 2018, the Patient was called back and seen by the Defendant as the urine routine test result revealed elevated white blood cell ("WBC") (i.e. 61/μL) and negative nitrite. The Patient had no fever and was asymptomatic. The parents of the Patient were counselled about the possibility of urinary tract infection ("UTI") and a urine culture test and Ultrasound of Kidney and Bladder were arranged. The Defendant suggested a course of antibiotics but the parents of the Patient preferred to wait for the investigation results.

6. On 22 October 2018, Ultrasound of Kidneys and Urinary Bladder revealed normal results. Report of the urine culture test available on 22 October 2018 showed significant count of Escherichia coli ("E Coli") and Klebsiella pneumonia ("Klebsiella") (i.e. > 10^5 cfu/ml). The Defendant suggested antibiotics. 7 days of oral cefuroxime was prescribed.

7. On 3 November 2018, the Patient underwent repeat urine routine and culture tests.

8. On 6 November 2018, the Patient returned to see the Defendant. Urine routine test revealed elevated WBC (i.e. 40/μL) and nitrite negative. Urine culture test results continued to show significant count of E Coli and Klebsiella (i.e. > 10^5 cfu/ml). The Defendant advised that the Patient needed to be admitted for intravenous antibiotics and an admission to SPH was scheduled for 9 November 2018.

9. On 9 November 2018, the Patient was brought to see a Dr TSAO in Hong Kong Sanatorium and Hospital. The Patient was prescribed with chlorhexidine solution to the vulval area.

10. On 15 November 2018, the Patient was seen by Dr TSAO again and clean voided urine was collected. Urine routine test later revealed WBC 14/μL.

11. By way of a statutory declaration dated 10 June 2019, the mother of the Patient, Madam POON Wing Yee lodged a complaint against the Defendant with the Medical Council.

Burden and Standard of Proof

12. 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.

13. 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 charges against him carefully.

Findings of the Inquiry Panel

14. We gratefully adopt the following observations in *Jackson & Powell on Professional Negligence* (8th ed.) at [1000]:-

> *"**Bolam test applies.** In relation to the roles of diagnosis... the standard of care and skill required of a medical practitioner continues to be governed by the Bolam test. They are roles falling within the expertise of members of the medical profession...*
>
> ***Standard of skill and care determined by reference to the specialization of the defendant.** A practitioner who specialises in any particular area of medicine must be judged by the standard of skill and care of that specialty."*

15. It was also held in *Dr Chan Po Sum v Medical Council of Hong Kong* [2015] 1 HKLRD 331 at 350 that it was for us and not any expert witness to decide in all the circumstances whether there had been a falling short of the standard expected amongst registered medical practitioners in Hong Kong.

16. The Defendant criticizes the Secretary for not particularizing the dates of all the charges. In our view, the Defendant was able to deal with the Secretary's case on all the charges throughout the inquiry. We do not see there was any prejudice caused to the Defendant.

Charge (a)(i)

17. In the evening of 19 October 2018, the Patient was called back and seen by the Defendant as the urine routine test result revealed elevated white blood cell ("WBC") (i.e. 61/μL) and negative nitrite. The Defendant said that he confirmed his diagnosis of UTI on this consultation.

18. The Defendant simply based his diagnosis of UTI on pyuria and the dipstick. In our view, pyuria is only suggestive of UTI. Considering that the Patient had no fever, it is clearly wrong to base the diagnosis of UTI on pyuria and dipstick only.

19. In respect of the urine culture test, the Defendant ordered bag urine sample to be taken on 19 October 2018.

20. According to the HKHA Guidelines, the diagnosis of UTI should be proven by both positive urinalysis results indicating inflammation (i.e. pyuria), and a positive bacterial culture from a properly collected urine sample. The suggested means of collection include suprapubic aspiration ("SPA"), catheterization and clean catch. Culture of bag urine has high contamination rates and should not be used for confirming UTI.

21. The HKHA Guidelines also contained a table entitled *"Table 2: Comparison of recent National Guidelines (and this new local guideline) on management of UTI in young children"*. At the row "culture criteria", for both the NICE[1] guidelines and the American Academy of Pediatrics ("AAP") guidelines, a single growth of uropathogen is required; for the Australian guideline and Hong Kong guideline, it was written *"Definite if SPA (any growths); Catheter (> 10^4); CVU (> 10^5) Probable if Catheter (> 10^3 or 2 org); CVU (> 10^4 or 2 org)"*. There is no mentioning at all in this table under the different guidelines that bag urine sample should be used for confirming UTI.

22. At the inquiry, the Defendant's expert, Dr MO Kit Wah ("Dr MO") agreed that according to the literature, bag urine was not recommended for urine culture test for confirmation of UTI.

[1] *The Clinical Guideline of the National Institute for Health and Care Excellence: Urinary tract infection in under 16s: diagnosis and management* ("NICE Guidelines")

23. The results of the urine culture test ordered by the Defendant on 19 October 2018 came back on 22 October 2018. The results showed significant count of E Coli and Klebsiella (i.e. > 10^5 cfu/ml). The report however did not set out the individual counts of each of the two organisms. We agree with the Secretary's expert, Dr MIU Ting Yat ("Dr MIU"), that the report of growth of 2 organisms was generally interpreted as sample contamination, and the result could not confirm the diagnosis of UTI. If UTI was suspected, a proper urine sample (such as clean catch sample, catheterization and SPA) should be collected and repeated.

24. At the inquiry, Dr MO also agreed that the report which came back on 22 October 2018 and showed 2 organisms should raise alertness to the possibility of contamination, and could not be relied upon to confirm UTI. Dr Mo agreed that a proper urine sample (such as clean catch sample, catheterization and SPA) should be used if the intention was to confirm UTI.

25. All the literatures clearly recommend that SPA, catheterization and clean catch should be used for urine collection for culture for confirmation of UTI. Urine bag has high contamination rates and should not be used for confirming UTI. The culture results in this case, which showed significant counts of 2 organisms, pointed that there was the possibility of contamination. The reasons put forward by the Defendant that there would be risks in the recommended methods of SPA and catheterization, and that clean catch would also be subject to contamination, are still not reasons for his use of urine bag for confirmation of UTI. In any event, we consider that the risks as suggested by the Defendant in SPA and catheterization are exaggerated.

26. On 3 November 2018, the Defendant ordered another urine culture test, again using urine bag.

27. Similar results showing significant growth of E Coli and Klebsiella (i.e. > 10^5 cfu/ml) came back.

28. On 6 November 2018, the Defendant advised admission to hospital and intravenous antibiotics and the diagnosis was written as *"UTI"*.

29. For the same reasons given above, ordering the use of urine bag on 3 November 2018 was not the proper method for culture for confirmation of UTI as there was the possibility of contamination, and the results which came back did show 2 organisms which should have called for alertness of its reliability.

30. For these reasons, we are satisfied on the evidence before us that 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 under Charge (a)(i).

Charge (a)(ii)

31. The fact that the urine culture report identified 2 organisms of significant amount pointed to the possibility of contamination and this should have called for alertness on its reliability. It is no excuse to blame it on the laboratory, which prepared the report, for not warning of the possibility of contamination.

32. The Defendant failed to recognize the possibility of contamination when 2 organisms were found in the urine culture report, particularly when urine bag was used, and he did not order proper urine collection (i.e. SPA, catherization and clean catch) to confirm the diagnosis of UTI. The use of dipstick and pyuria cannot confirm a diagnosis of UTI.

33. For these reasons, we are satisfied on the evidence before us that 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 under Charge (a)(ii).

Charge (a)(iii)

34. The Defendant admitted that he had not inspected the external genitalia of the Patient.

35. The examination of the genitalia area would not confirm the diagnosis of UTI.

36. We therefore acquit the Defendant of Charge (a)(iii).

37. Although we acquit the Defendant of this charge, examination of the external genitalia is recommended to exclude vulvitis that may lead to contamination

Charge (b)

38. We do not agree that the diagnosis of UTI should be based on pyuria and dipstick. The Defendant should have ordered a proper urine culture (i.e. SPA, catherization and clean catch) to confirm UTI, but he had failed to do so.

39. There was therefore no proper basis for the Defendant to make the diagnosis of UTI.

40. For these reasons, we are satisfied on the evidence before us that 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 under Charge (b).

Charge (c)

41. Following what we found above that there was no proper basis to make the diagnosis of UTI, there was no reason for the Defendant to prescribe antibiotics.

42. According to NICE Guidelines, at *"Table 3 Guidance on interpretation of microscopy results"*, if pyuria and bacteriuria are both positive, the infant or child should be regarded as having UTI.

43. However, in the case of the Patient, only pyuria was positive. Pending a proper urine culture test to be done, there was yet to be any reliable results on bacteriuria. In our view, antibiotics treatment was not indicated.

44. The said table 3 also provides that if pyuria is positive and bacteriuria negative, *"antibiotic treatment should be started if clinically UTI"*. In the case of the Patient, the clinical picture on 22 October 2018 did not suggest UTI. Therefore, antibiotics treatment was not indicated.

45. For these reasons, we are satisfied on the evidence before us that 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 under Charge (c).

Sentencing

46. The Defendant has a clear disciplinary record.

47. 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.

48. We give credit to the volunteer work and the character reference letter as provided by the Defendant.

49. The Defendant told us that he has taken remedial measures, namely that he will provide the proper options (i.e. SPA, catherization and clean catch) of conducting urine culture test to patients; and if the laboratory report shows 2 organisms, he will discuss with the laboratory and will investigate to check if this can be contamination. The Defendant said he will ensure proper urine sample be collected before coming to the diagnosis of UTI. We are satisfied that the Defendant has insight into his transgression.

50. Taking into consideration the nature and gravity of the Defendant's case and what we have heard and read in mitigation, we make a global order in respect of the charges of which he was convicted that the Defendant 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.

Remark

51. The name of the Defendant is included in the Specialist Register under the Specialty of Paediatrics. 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