

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr LAU Hon Wing Daniel (柳漢榮醫生) (Reg. No.: M08294)

Date of hearing: 19 December 2022 (Monday)

Present at the hearing

Council Members/Assessors: Prof. TANG Wai-king, Grace, SBS, JP
(Chairperson of the Inquiry Panel)
Dr MAK Siu-king
Prof. SZETO Cheuk-chun
Ms LIU Lai-yun, Amanda
Ms LAU Sze-wan, Serena, JP

Legal Adviser: Mr Edward SHUM

Defence Solicitor representing the Defendant: Ms Jennifer LEE of
Messrs. Mayer Brown

Government Counsel representing the Secretary: Miss Katrina CHAN

1. The charge against the Defendant, Dr LAU Hon Wing Daniel, is:

“That in or about July 2019, he, being a registered medical practitioner, disregarded his professional responsibility to his patient [REDACTED] [REDACTED] (“the Patient”), in that he misread the tumour size on the Patient’s pathology report and/or recommended the Patient to undergo unnecessary adjuvant treatment.

In relation to the facts alleged, 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 August 1991 to the present. His name has been included in the Specialist Register under the Specialty of General Surgery since 5 September 2001.
3. Briefly stated, the Patient underwent a body check at Evangel Hospital (“EH”) on 4 June 2019. As part of her body check, a screening mammography was done and which revealed indeterminate microcalcification of left breast. The Patient was then referred to the Breast Care Center of EH for further management.
4. On 14 June 2019, the Patient visited the Breast Care Center of EH and was seen by the Defendant. During the consultation, the Defendant carried out a bedside ultrasound examination of the Patient’s breasts. According to the Defendant, a suspicious tumour was found at the retro-areolar position in the Patient’s left breast. He explained his finding to the Patient. He also advised the Patient to undergo further investigations and she agreed.
5. On 17 June 2019, the Patient attended EH for an ultrasound-guided core biopsy and which revealed a subareolar mass and ductal carcinoma in situ. Also, ultrasound and MRI scans were done and which revealed focal abnormal mass lesion at the Patient’s left breast.
6. On 24 June 2019, the Defendant saw the Patient at the Breast Care Center of EH and explained to her the said investigation findings. According to the Defendant, he also advised the Patient of the treatment options. Eventually, the Patient agreed to undergo left partial mastectomy and left sentinel lymph node resection.
7. On 5 July 2019, the Defendant performed left partial mastectomy and left sentinel lymph node resection for the Patient at EH. During the operation, specimens were taken and sent for further pathological investigations.
8. On 15 July 2019, the Defendant saw the Patient at the Breast Care Center of EH. According to the Defendant, he discussed with the Patient during this consultation “*the preliminary pathology report of the operation specimens*” and signed by one Dr TANG, a specialist in pathology. The material parts of the preliminary pathology report read as follows:-

“Summary :

Tumour type : invasive ductal carcinoma, no special type.

Background extensive high grade ductal carcinoma in situ.

Tumour grade: Modified Bloom’s and Richardson’s grade 1(2.2.1),

Tumour size: Whole 50 x 60 x 20 mm. Invasive 1 x 0.7 mm.

Tumour stage: pT1aN0

...

浸潤性乳腺導管癌，修訂 Bloom’s and Richardson’s 第一級，TNM 階段 pT1aN0.

背景有廣泛乳腺導管內原位癌

腫瘤總體大小 50 x 60 x 20 毫米，浸潤性腫瘤大小 1 x 0.7 毫米...”

9. On 22 July 2019, the Defendant saw the Patient again at the Breast Care Center of EH. According to the Defendant, he explained to the Patient during this consultation “*the final pathology report dated 20 July 2019*” of Dr TANG. The material parts of the final pathology report read as follows:-

“(1) *Left breast retroareolar tumour, partial mastectomy...*

- *Tumour type : Invasive ductal carcinoma, no special type.*

Background extensive high grade ductal carcinoma in situ.

- *Tumour grade: Modified Bloom’s and Richardson’s grade 1(2.2.1),*

- *Tumour size: Whole 50 x 60 x 20 mm. Invasive 1 x 0.7 mm.*

- *Tumour stage: pT1aN0.”*

10. It is not disputed that the Defendant told the Patient during this consultation that the size of the invasive component of the left breast retroareolar tumour was “*1 x 0.7 cm*” and the tumour stage was 1b.
11. The Defendant then advised the Patient to consult an oncologist for further management of her left breast cancer. It is also not disputed that the Defendant recommended the Patient that for stage 1b breast cancer, subject to the treating oncologist’s final decision, she might need to undergo chemotherapy and target therapy together with radiotherapy and hormone therapy.
12. On 2 August 2019, the Patient consulted one Dr LI, a specialist in Clinical Oncology, and was advised that she had overall very early stage, namely stage 1a, left breast cancer. Dr LI also informed the Patient that according to the oncology practice recommendations at that time, there was no indication for

systemic adjuvant therapy. Dr LI further advised the Patient to undergo radiotherapy for her left breast in order to complete her breast conserving treatment.

13. The Patient later lodged this complaint with the Medical Council (the “Council”).

Burden and Standard of Proof

14. 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.

15. 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

16. The Defendant admits the factual particulars of the disciplinary charge against him. It remains for us to consider and determine on all the evidence whether the Defendant had by his conduct in the present case fallen below the standards expected of registered medical practitioners in Hong Kong.

17. In response to the Patient’s complaint, the Defendant explained to the Preliminary Investigation Committee (“PIC”) of the Council through his solicitors’ letter dated 4 March 2021 that:-

“... On 15 July 2019, the Patient attended follow-up at the Breast Care Center and was seen by Dr. Lau... That day, Dr. Lau also discussed the preliminary pathology report of the operation specimens dated 15 July 2019 (Enclosure 2) with the Patient.

... On 22 July 2019, the Patient attended another follow-up at the Breast Care

Center, whereby Dr. Lau explained the final pathology report dated 20 July 2019 (Enclosure 4) to her... Together with Dr. Lau's mistaken impression that the tumour size was 1 x 0.7 cm instead of 1 x 0.7 mm, he thought that the Patient had stage 1b breast cancer when in fact, the staging was 1a.

While many general surgeons would choose not to comment on or discuss the adjuvant treatment plan with their patients (and would leave the explanations to oncologists), in Dr. Lau's experience, it would be better to give patients and relatives an early explanation regarding the likely adjuvant treatment plan (which, in the end, will be decided by the oncologist) so that patients and relatives would be mentally prepared and have more time to digest and discuss before consulting an oncologist."

18. Patients are entitled to, and they often do, rely on doctors to exercise reasonable care and diligence when explaining to them results of pathological investigations of operation specimens and their implications on future treatment plan, if any.
19. And yet, not only did the Defendant repeatedly tell the Patient that the invasive component of the left breast retroareolar tumour was "1 x 0.7 cm", he also repeatedly misled the Patient into thinking that the tumour stage was 1b. It should be abundantly clear to the Defendant upon reading the preliminary and final pathology reports by Dr TANG that the tumour stage was 1a.
20. There is no dispute that, for stage 1a breast cancer, adjuvant treatment of chemotherapy or target therapy is not required.
21. In misreading the tumour size on the Patient's pathology report and recommending the Patient to undergo unnecessary adjuvant treatment, the Defendant had by his conduct in the present case fallen below the standards expected of registered medical practitioners in Hong Kong. Accordingly, we find the Defendant guilty of misconduct in a professional respect as charged.

Sentencing

22. The Defendant has a clear disciplinary record.
23. In line with our published policy, we shall give the Defendant credit in sentencing for his frank admission and full cooperation throughout these disciplinary proceedings.

24. 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.
25. We are particularly concerned about the Defendant's repeated failures to study the results of pathological investigations of operation specimens with care.
26. We appreciate that the Defendant took full responsibility for his mistake and he apologized to the Patient upon knowing the same on 2 August 2019. He also assured the Patient that she would most likely not require chemotherapy or target therapy.
27. We also appreciate that the Defendant had the best interest of the Patient in mind when advising her in advance of the possible need for adjuvant therapy.
28. We accept that the Patient did not suffer any physical harm as a result of the Defendant's mistake. But then again, in our view, the anxiety of the Patient should not be underestimated.
29. Taking into the consideration the nature and gravity of the disciplinary charge for which we find the Defendant guilty and what we have read and heard in mitigation, we order that a warning letter be issued to the Defendant; and our order shall be published in the Gazette.

Remark

30. The name of the Defendant is included in the Specialist Register under the Specialty of General Surgery. It is for the Education and Accreditation Committee to consider whether any action should be taken in respect of his specialist registration.

Prof. TANG Wai-king, Grace, SBS, JP
Chairperson of the Inquiry Panel
The Medical Council of Hong Kong