

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr LAU Oi Chun (Reg. No.: M04223)

Date of hearing: 2 August 2022 (Tuesday)

Present at the hearing

Council Members/Assessors: Dr CHOI Kin, Gabriel (Chairperson of the Inquiry Panel)
Dr CHUNG Kin-lai
Dr CHAN Hung-chiu, Peter
Mr CHAN Wing-kai
Mr YUEN Hon-lam, Joseph

Legal Adviser: Mr Stanley NG

Defence Counsel representing the Defendant: Mr Eddie NG as instructed by
Messrs. Kennedys

Senior Government Counsel representing the Secretary: Miss Sanyi SHUM

1. The charges against the Defendant, Dr LAU Oi Chun, are:

“That on divers dates between April and October 2019, she, being a registered medical practitioner, in respect of her patient (“the Patient”):

(a) issued the following sick leave certificates to the Patient without reasonable and/or proper justifications –

- (1) Certificate dated 12 April 2019 for the period from 12 April 2019 to 18 April 2019;
- (2) Certificate dated 2 May 2019 for the period from 3 May 2019 to 3 June 2019;
- (3) Certificate dated 12 May 2019 for the period from 12 May 2019 to 18 May 2019;

- (4) Certificate dated 12 June 2019 for the period from 13 June 2019 to 22 July 2019;
- (5) Certificate dated 22 July 2019 for the period from 22 July 2019 to 26 August 2019;
- (6) Certificate dated 27 August 2019 for the period from 28 August 2019 to 27 September 2019;
- (7) Certificate dated 28 September 2019 for the period from 28 September 2019 to 27 October 2019; and/or
- (8) Certificate dated 29 October 2019 for the period from 29 October 2019 to 12 November 2019; and/or

(b) issued a sick leave certificate to the Patient dated 12 May 2019 on a date before 12 May 2019.

In relation to the facts alleged, either individually or cumulatively, she 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 5 March 1981 to the present.
3. The Patient consulted the Defendant from 12 April 2019 to 29 October 2019. At the material time, the Patient was pregnant. The Patient complained of loin pain and/or abdominal pain and/or per vagina bleeding. The Patient had a history of miscarriage twice resulting in two abortions before and had heart disease.
4. The following is a table of summary of all sick leave granted by the Defendant with reference to the gestational age of the Patient at the respective date, the reason stated in the sick leave certificate, and the clinical notes of the Defendant:

Date	Gestational age	Days of sick leave granted	Date of sick leave	Reasons stated in sick leave certificate	Documentation in clinical notes
12/4/2019	5 weeks + 2 days	7	12-18/4/2019	Threatened abortion	LMP 6/3/2019, married for one and half years Abortion for 2 times, 2 years ago Menstrual history: flow x 3 days, 27-30 days cycle Ultrasound done, showing sac, Loin pain

Date	Gestational age	Days of sick leave granted	Date of sick leave	Reasons stated in sick leave certificate	Documentation in clinical notes
18/4/2019	6 weeks + 1 day	15	19/4-3/5/2019	Threatened abortion Severe vomiting Abdominal pain	Lower abdominal pain with PV bleeding, SL 15 days
2/5/2019	8 weeks + 1 day	32	3/5-3/6/2019	Pregnancy with severe dizziness and weakness	Ultrasound pelvis, gestation sac 33.1mm, foetal heart beat seen, gestational age of 8 weeks Heart disease, complained body fatigue Abortion OT done at Princess Margaret Hospital 4 years ago Blood – Creatinine 77.4 micromol/L Urea 2.75 mmol/L Uric acid 289 Sodium 133L (136-145) Potassium 4.5 mmol/L (3.5-5.1) CBC – Neutro WBC 70.5 (>70) MCHC 375 (>360)
12/5/2019	9 weeks + 4 days	7	12-18/5/2019	Threatened abortion	Nil
12/6/2019	14 weeks	40	13/6-22/7/2019	Heart disease Past history of TOP 2x	Down's syndrome screening done on 4/6/2019 U/S Foetal BPD 28.2mm (15 weeks), foetal heart beat 144 per min Heart disease
22/7/2019	19 weeks + 5 days	36	22/7-26/8/2019	Pregnancy with heart disease and weakness	Male

Date	Gestational age	Days of sick leave granted	Date of sick leave	Reasons stated in sick leave certificate	Documentation in clinical notes
27/8/2019	25 weeks	31	28/8-27/9/2019	Pregnancy with heart disease and weakness Palpitation	25 weeks, 3rd trimester of gestation with heart disease and weakness
28/9/2019	29 weeks + 3 days	30	28/9-27/10/2019	Pregnancy with heart disease and weakness	Diarrhoea U/S x 30 weeks 23/9/2019 urine for albumin + at Prince of Wales Hospital 1 GA kidney disease
29/10/2019	33 weeks + 6 days	15	29/10-12/11/2019	Pregnancy with heart disease	Foetal heart detected 144/min

5. Additional sick leave were issued by Department of Obstetrics & Gynaecology, Prince of Wales Hospital (“O&G / PWH”) to the Patient on (i) 11 June 2019 for the period from 4 to 12 June 2019 because of Obstetrical Problem requiring inpatient admission; and (ii) 23 July 2019, 29 July 2019 and 27 August 2019 for one day sick leave on the date attended for antenatal check up.

6. On 18 March 2020, the Medical Council received a complaint from Feast Catering Group Company Limited (“Complainant”), the then employer of the Patient, against the Defendant for unreasonably issuing sick leave certificates to the Patient over a period of time from 12 April 2019 to 12 November 2019. Another complaint made was that the Complainant had on 10 May 2019 received a sick leave certificate issued by the Defendant in respect of the Patient for the period from 12 to 18 May 2019; however the date of issue of the said sick leave certificate was written as “12 May 2019”.

Burden and Standard of Proof

7. We bear in mind that the burden of proof is always on the Secretary and the Defendant does not have to prove her 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.

8. There is no doubt that the allegations against the Defendant here are serious. 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 her carefully.

Findings of the Inquiry Panel

9. The Defendant admits the factual particulars of the disciplinary charges against her but it remains for us to consider and determine on the evidence whether she is guilty of misconduct in a professional respect.

10. It is clearly stated in paragraph 26 of the Code of Professional Conduct (the “Code”) (2016 edition) that:

“26.1 Doctors are required to issue reports and certificates for a variety of purposes (e.g. insurance claim forms, payment receipts, medical reports, vaccination certificates, sick leave certificates) on the basis that the truth of the contents can be accepted without question...”

26.2 A sick leave certificate can only be issued after proper medical consultation of the patient by the doctor. The date of consultation and the date of issue must be truly stated in the certificate, including a certificate recommending retrospective sick leave.

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...”

11. On 12 April 2019, the Defendant granted the Patient sick leave for 7 days from 12 to 18 April 2019. This period was reasonable for the disease of threatened abortion. However, there was no documentation in the clinical notes of any symptom of threatened abortion. There was no evidence to support what was written in the sick leave certificate as threatened abortion. The documented “loin pain” was not a symptom of threatened abortion.

12. On 2 May 2019, the Defendant granted the Patient sick leave for 32 days from 3 May to 3 June 2019 for severe dizziness and weakness. We agree with the Secretary’s expert that this period was too long for the given diagnosis. The symptom of dizziness and weakness at 8 weeks of gestation is a common symptom at early pregnancy. Usually it will get better as pregnancy progresses. Usually doctors will give sick leave for a shorter period and assess the symptom at interval for the progress. Also, in the clinical notes dated 2 May 2019, the only documented complaint was body fatigue without further detail of other symptoms. This long sick leave period cannot be justified.

13. On 12 May 2019, the Defendant granted the Patient sick leave for 7 days from 12 to 18 May 2019 because of threatened abortion. This period was appropriate for the given diagnosis. However, there was no documentation in the clinical notes of this consultation at all. There was no evidence to support what was stated in this sick leave certificate as threatened abortion.
14. On 12 June 2019, the Defendant granted the Patient sick leave for 40 days from 13 June to 22 July 2019 because of heart disease and past history of termination of pregnancy two times. The clinical notes documented that the Patient had Down's screening test done on 4 June 2019. Ultrasound finding of the pregnancy and heart disease was documented but there was no documentation of what kind of heart disease, any symptom of cardiac decompensation nor effect of cardiac disease on pregnancy. We agree with the Secretary's expert that termination of pregnancy two times was not an indication of sick leave as the ultrasound finding showed satisfactory growth of foetus. The Secretary's expert also did not see, which we agree, that the Patient was suffering from recurrent abortion. Further, the Patient was just discharged from the PWH on 11 June 2019. She was granted sick leave during hospitalization from 4 to 12 June 2019. O&G / PWH should know the wellbeing of pregnancy and what type of heart disease the Patient suffered. However, O&G / PWH did not advise further leave other than the hospitalized period. The assessment of the Defendant was completely different from O&G / PWH, and she had no documentation in support of her decision, especially what type of heart disease and extent of the disease affecting the pregnancy. "Heart disease" was not a sound indication for such a long period of leave.
15. On 22 July 2019, the Defendant granted the Patient sick leave for 36 days from 22 July to 26 August 2019 for pregnancy of heart disease and weakness. The documentation in the clinical notes at that consultation was "male" only, which did not support the decision of this long leave. No documentation of even simple clinical sign like exercise tolerance (which reflected weakness), diet intake, orthopnoea, degree of daily work at home, dyspnoea at rest, body weight, blood pressure and pulse was found in the clinical notes. The sick leave granted for this period cannot be justified.
16. On 27 August 2019, the Defendant granted the Patient 31 days of sick leave from 28 August to 27 September 2019. On 28 September 2019, the Defendant granted the Patient 30 days of sick leave from 28 September to 27 October 2019. On 29 October 2019, the Defendant granted the Patient 15 days of sick leave from 29 October to 12 November 2019. A total of 76 days of sick leave was granted continuously from these 3 consultations with the diagnosis of pregnancy with heart disease, weakness, +/- palpitation. In all these 3 consultations, there was no documentation of any assessment of the conditions of the Patient listed above. There was no evidence supporting the necessity of the Patient requiring these long sick leaves.

17. For these reasons, we are satisfied on the evidence before us that the issuance of the subject sick leave certificates on divers dates between April and October 2019 were without reasonable and/or proper justifications. The Defendant's conduct had fallen below the standards expected of registered medical practitioners in Hong Kong. We therefore find her guilty of misconduct in a professional respect as charged under charge (a).
18. The Complainant said that on 10 May 2019 they had received a sick leave certificate issued by the Defendant in respect of the Patient for the period from 12 to 18 May 2019, but the sick leave certificate was dated 12 May 2019. The Defendant does not dispute what the Complainant said.
19. Public confidence in sick leave certificates issued by registered medical practitioners would be undermined unless the date of consultation and the date of issue are truly stated.
20. In our view, the Defendant's conduct had fallen below the standards expected of registered medical practitioners in Hong Kong. We therefore find her guilty of misconduct in a professional respect as charged under charge (b).

Sentencing

21. The Defendant has a clear disciplinary record.
22. In line with our published policy, we shall give credit to the Defendant for her frank admission and full cooperation throughout these disciplinary proceedings.
23. 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.
24. We give credit to the community and voluntary work of the Defendant and the character reference letters as submitted.
25. In respect of charge (b), although the clinical record does not show that there was any consultation on 10 May 2019 or 12 May 2019, nevertheless it is not the Secretary's case that there was no consultation at all.
26. The Defendant told us that since the complaint she has taken extra care when issuing sick leave certificates and continues to adhere to all the provisions of the Code. She would give extra thoughts on whether a patient needs sick leave, and if so, how long to ensure the sick leave certificates are issued to the patients with reasonable and/or proper justification. She would also consider recommending amended hours or duties to her patients where appropriate, depending on the

patient's conditions and the types of work. Also, she has since the incident been cautious and paid extra attention to double check the details of the sick leave certificates including the date of issue to ensure they are accurate before issuing the same to her patients. She has also kept a full record of sick leave certificates issued to her patients. With all these measures in force, we accept that the chance of re-offending is low.

27. Taking into consideration the nature and gravity of the Defendant's case and what we have heard in mitigation, we make a global order in respect of both charges (a) and (b) 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.

Other Observation

28. In this case, we note that the Defendant's clinical record was inadequate and insufficient. We wish to take this opportunity to remind the Defendant that she should give effort to ensure that her clinical record is up to standard.

Dr CHOI Kin, Gabriel
Chairperson of the Inquiry Panel
The Medical Council of Hong Kong