香 港 醫 務 委 員 會

The Medical Council of Hong Kong

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr TSUI Hing Sing Robert (徐興盛醫生) (Reg. No.: M05533)

Date of hearing: 24 June 2021 (Thursday)

Present at the hearing

Council Members/Assessors: Prof. LAU Wan-yee, Joseph, SBS
(Chairperson of the Inquiry Panel)
Dr LO Chi-yuen, Albert
Dr CHIU Shing-ping, James
Mr MUI Cheuk-nang, Kenny
Mr LAI Yat-hin, Adrian

Legal Adviser: Mr Stanley NG

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

Senior Government Counsel representing the Secretary: Miss Vienne LUK

1. The amended charges against the Defendant, Dr TSUI Hing Sing Robert, are:

"That in or about 2009, he, being a registered medical practitioner, disregarded his professional responsibility to his patient [redacted], deceased ("the Patient"), in that he:

(a) failed to take appropriate follow-up action(s) and/or arrange further investigation(s) when the Patient suffered from persistent ear and/or nose symptom(s); and/or

(b) failed to timely refer the Patient to the specialist for further investigation(s) and/or treatment(s) when the circumstances so warranted.

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 1 November 1984 to the present. His name has never been included in the Specialist Register.

3. The Patient had consulted the Defendant periodically from 9 May 2004 to 27 August 2014. The Defendant served as the Patient's primary care doctor at all material times. The Patient consulted the Defendant many times for nasal symptoms, four times in 2005, four times in 2006, seven times in 2007 and four times in 2008 in which the Defendant made the diagnosis of upper respiratory tract infection ("URI") or rhinitis.

4. The Patient had complained of nose bleed or epistaxis in four consultations (1 March 2005, 1 November 2006, 18 October 2007 and 30 June 2008). In each of these four consultations, the Defendant enquired about neurological symptoms and tinnitus, and examined the nose for the presence of bleeding, the neck for cervical lymph nodes and cranial nerves to assess the possibility of nasopharyngeal carcinoma ("NPC"). The Defendant diagnosed URI (in the consultations dated 1 March 2005, 1 November 2006 and 18 October 2007) or allergic rhinitis (in the consultation dated 30 June 2008) as the cause of nose bleed and treated the Patient with medications.

5. In the consultation dated 30 June 2008, in addition to the complaint of nose bleed, the Patient also complained of mild blocked ears. This was the first record of an ear complaint from the Patient. The Defendant recorded that examination showed ear drums were normal and treated the Patient as allergic rhinitis and complication.

6. There was no ear complaint in the consultations from 27 September 2008 to 15 April 2009. A recurrence of ear complaint (right ear ache) was documented in the consultation record dated 22 June 2009.

7. There was a record of 13 consultations or repeat prescriptions for nasal and/or ear complaints from the Patient from 15 April 2009 to 7 August 2009, in which the Defendant made the diagnosis of rhinitis or otitis.

8. The Patient complained of blocked nose in the consultation dated 15 April 2009, which was a new complaint. The Patient's complaint of blocked nose became persistent in the consultations from 30 June 2009 to 27 August 2009.

9. The Patient's nasal complaints were accompanied by ear complaints in the consultations from 22 June 2009 to 17 July 2009 in which the Defendant found abnormal ear signs: bulged ear drums (22 June 2009) and middle ear effusion (30 June 2009, 9 July 2009 and 17 July 2009). The Defendant diagnosed allergic rhinitis with Eustachian tube dysfunction and otitis as the causes of the nose and ear symptoms and prescribed medications accordingly from 22 June 2009 to 7 August 2009.

10. In the consultation dated 27 August 2009, the Patient complained of blocked ear and nose together with nose bleeding and physical examination revealed a congested right ear drum. The Defendant suspected NPC in recognition of the Patient's *"recurrent blocked right ear with rhinitis symptoms over past few months"* and referred the Patient to ██████████, a specialist in Otorhinolaryngology.

11. The Patient informed the Defendant by phone on 29 August 2009 that he was confirmed to have NPC. A referral letter to the Oncology Out-patient Department of Pamela Youde Nethersole Eastern Hospital was written by the Defendant for the Patient.

12. There was no consultation between 29 August 2009 and 5 January 2011.

13. The Patient consulted the Defendant periodically from 5 January 2011 to 27 August 2014 mostly for nasal symptoms, right ear pain or discharge, headache, constipation or jaw pain. From the record of consultations dated 30 September 2011 and 10 June 2013, the Patient had recurrence of NPC.

14. The Patient passed away on 4 October 2014 from a stroke.

15. On 1 June 2016, the Patient's brother lodged a complaint with the Medical Council against the Defendant.

<u>Burden and Standard of Proof</u>

16. 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.

17. There is no doubt that each of the allegations 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 each of the amended disciplinary charges against him separately and carefully.

Findings of the Inquiry Panel

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

19. At the inquiry, the Secretary relied on the expert reports of Prof. LAM ███ ███ The Defendant did not challenge the Secretary expert's evidence.

20. To identify patients likely to have NPC, the primary care doctor must be alert to the "red flag" symptoms of early NPC such as nasal (epistaxis, nasal obstruction and nasal discharge) and ear symptoms (blocked ear, otitis media with effusion, tinnitus and deafness), particularly when the symptoms persist despite medical treatment. New-onset of otitis media with effusion ("OME") is uncommon in URI or allergic rhinitis in adults, in whom NPC must be considered.

21. The Patient complained of nose bleed or epistaxis in four consultations (dated 1 March 2005, 1 November 2006, 18 October 2007 and 30 June 2008). In these consultations, the Defendant had looked for specific symptoms and signs to exclude NPC and ensured that epistaxis had subsided. The Defendant's management of the Patient in these four consultations was appropriate and proper. In the consultation dated 30 June 2008, although the Patient complained of mild blocked ears in addition to epistaxis, the Defendant had done examination, which showed eardrums were normal and treated the Patient as *"allergic rhinitis and complication"*. The Defendant's diagnosis and management were appropriate.

22. In the consultation dated 15 April 2009, the Patient had a new complaint of *"blocked nose"* that was not present in any of the previous consultations for URI or rhinitis. From 15 April 2009 to 27 August 2009, the Patient consulted frequently for persistent blocked nose and other nasal symptoms.

23. During the period from 22 June 2009 to 27 August 2009, there were a total of 13 consultations and/or repeated medications (i.e. 22 June 2009, 27 June 2009, 30 June 2009, 6 July 2009, 9 July 2009, 11 July 2009, 13 July 2009, 17 July 2009, 20 July 2009, 24 July 2009, 5 August 2009, 7 August 2009 and 27 August 2009). The complaint of blocked nose was accompanied by ear complaints including earache, blocked ear with middle ear effusion in various of these consultations (i.e. 22 June 2009, 30 June 2009, 9 July 2009, 17 July 2009 and 27 August 2009). There were repeat medications during this period. The Patient's nasal and ear symptoms were typical symptoms of NPC. Although nasal and ear symptoms can be caused by URI/rhinitis, they are also common presenting symptoms of NPC. The very high frequency and a change of pattern of consultations in the period since 22 June 2009, as compared with previous consultations for URI/rhinitis between 14 February 2005 to 15 April 2009, were indications for a review of diagnosis of URI/rhinitis and further investigations to exclude NPC.

24. The Defendant stated in his supplemental witness statement dated 9 February 2021 that *"the Patient was diagnosed with otitis on 22 June 2009 and allergic rhinitis with Eustachian tube dysfunction on 9 July 2009"* and *"the Patient's residual blocked ears and nose during the consultation on 17 July 2009 was also expected"*. We agree with the Secretary's expert that although Eustachian tube dysfunction can be caused by allergic rhinitis or an URI, acute otitis media after an URI in adults is not common and OME in adults is also not common.

25. The Defendant also wrote in his supplemental witness statement that the Patient's complaint was that both ears were blocked and it was rare to find a tumour causing symptoms in both ears. According to the Secretary's expert, the Defendant had misunderstood as NPC can be associated with bilateral or unilateral OME. We agree with the Secretary's expert's view.

26. According to the Secretary's expert, although there is no consensus on when a patient with OME should be referred to the specialist, it is the standard practice for primary care doctors to investigate or refer a patient to a specialist whose symptoms persist for more than two or three weeks, which the Defendant stated in his supplemental witness statement that this was also his routine practice. The Defendant explained in his supplemental witness statement that he did not refer the Patient to the specialist until 27 August 2009, more than nine weeks since the Patient presented with ear symptoms and signs of OME on 22 June 2009, because *"the Patient reported improvement in his symptoms at*

the consultations of 30 June 2009, 17 July 2009 and 5 August 2009." However, the medical record dated 9 July 2009 stated the complaint of *"... still blk ears, blk nose same"* and on 17 July 2009 *"residual blk ears and nose"*. Further, there were findings of *"drums bulging"* or *"drums effusion"* on 22 June 2009, 30 June 2009, 9 July 2009 and 17 July 2009, which showed the Patient's OME had persisted for nearly four weeks from 22 June 2009 to 17 July 2009, despite treatment with medications. Still further, the medical record dated 30 June 2009 showed the Patient was prescribed an increased number of medications that included two new antibiotics (Cedax and Zimax) and the start of an antidepressant (Doxepin) and an oral steroid (Synbetamine) which suggested that the Patient's symptoms were significant and disturbing in the consultation dated 30 June 2009. The Patient was prescribed with oral steroid (Synbetamine) again on 6 July 2009, 9 July 2009, 17 July 2009, 24 July 2009 and 5 August 2009, and there was a double entry of Synbetamine for three weeks in the consultation dated 5 August 2009, which indicated that the Patient would have taken oral steroids for more than eight weeks from 30 June 2009 to 27 August 2009. Oral steroids is a very potent anti-inflammatory agent and ear and nose symptoms caused by allergic rhinitis or post viral or bacterial URI would be expected to resolve within one week of treatment of oral steroid. Doing a blood test for Epstein Barr virus serology ("EBV IgA test"), which is something very basic and often used in primary care as an initial diagnostic investigation to identify patients who are likely to have NPC, or a referral to a specialist should have been done when the Patient's OME did not resolve after more than two weeks of treatment with oral steroid and antibiotics. It was risky for the Defendant to continue with the diagnosis and management of the Patient's persistent blocked nose and OME as a case of allergic rhinitis for more than eight weeks until 27 August 2009 without the exclusion of NPC in these consultations.

27. Doctors in Hong Kong need to have a high index of suspicion of NPC because it is a common cancer among Southern Chinese, particularly in male. Persistent OME associated with blocked nose since 22 June 2009 were red flag symptoms of NPC, and particularly so when the Patient's OME did not resolve after more than two weeks of treatment with oral steroids and antibiotics since 30 June 2009.

28. In our view, the Defendant should have offered the Patient an EBV IgA test when the Patient suffered from persistent ear and/or nose symptoms. However, the Defendant had failed to do so. We are satisfied that the Defendant's conduct had fallen below the standards expected of registered

medical practitioners in Hong Kong. We find him guilty of amended disciplinary charge (a).

29. We are also satisfied that the Defendant had not timely referred the Patient to the specialist. We find him guilty of amended disciplinary charge (b).

Sentencing

30. The Defendant has one previous disciplinary record in 2020 relating to the prescription of Synbetamine tablets on divers dates from August 2012 to November 2013 without advising the patient on the nature and possible side effects of the said tablets. The Defendant's name was ordered to be removed from the General Register for 2 months, to be suspended for a period of 12 months subject to conditions. The offence in the present case was not committed within the suspension period of the 2-month removal order. We shall therefore not activate the suspended removal order. In any event, the nature of the previous disciplinary conviction and the conviction in the present case are different.

31. The Defendant admits the factual particulars of the amended disciplinary charges. In line with our published policy, we shall give him credit in sentencing for his admission and full cooperation before us today.

32. 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.

33. We give credit to the Defendant for his endeavour in accumulating yearly CME points since 2009, his active role in organizing education programmes for the profession, and his character as mentioned in the reference letters written for him.

34. In this case, although the Defendant failed to further investigate to exclude NPC or to refer to the specialist when all the red flag symptoms of NPC were already present, he did closely monitor the Patient all along, and did refer the Patient to the specialist on 27 August 2009, only that he did not make the referral to the specialist timely. We are satisfied that the Defendant is remorseful and the chances of re-offending is low.

35. Having considered the nature and gravity of the amended charges for which the Defendant is convicted and what we have heard and read in mitigation, we order in respect of disciplinary charges (a) and (b) that the name of the Defendant be removed from the General Register for a period of 6 months and that the operation of the removal order be suspended for a period of 24 months.

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