

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr YIP Man Hing Kevin (葉文興醫生) (Reg. No.: M08526)

Date of hearing: 25 May 2022 (Wednesday)

Present at the hearing

Council Members/Assessors: Prof. LAU Wan-yee, Joseph, SBS
(Chairperson of the Inquiry Panel)
Dr HO Hung-kwong, Duncan
Dr LEUNG Hon-fai, Henry
Mrs BIRCH LEE Suk-yee, Sandra, GBS, JP
Ms HO Yuk-wai, Joan

Legal Adviser: Mr Edward SHUM

Government Counsel representing the Secretary: Mr Edward CHIK

The Defendant attends the inquiry via remote video link and he is not legally represented.

1. The charges against the Defendant, Dr YIP Man Hing Kevin, are:

“That he, being a registered medical practitioner:

(a) was found guilty of two charges of professional misconduct under section 53(1)(d) of the Medical Registration Act (Cap. 174) of the Statutes of the Republic of Singapore on or about 18 March 2020 by the Singapore Medical Council Disciplinary Tribunal; and

(b) has been guilty of misconduct in a professional respect in that he failed to report to the Medical Council that he has been the subject of adverse

findings in disciplinary proceedings by other professional regulatory bodies mentioned in (a) above within 28 days from the adverse disciplinary finding, contrary to section 29.1 of the "Code of Professional Conduct for the Guidance of Registered Medical Practitioners" published by the Medical Council of Hong Kong in January 2016.

In relation to the facts alleged, either singularly or cumulatively, he has been guilty of misconduct in a professional respect."

Preliminary Issues

2. The Defendant decided on his own volition not to be legally represented after he has been served with the Notice of Inquiry dated 16 September 2021. As the Defendant is resident in Singapore, he applied to attend the inquiry via remote video-link.
3. Pursuant to the directions of the Chairperson of the Inquiry Panel, arrangements were made for the Defendant to attend the hearing before us today via remote video-link.

Facts of the case

4. The name of the Defendant was at all material times and still is included in the General Register. His name has been included in the Specialist Register under the Specialty of Orthopaedics & Traumatology since 2 May 2002.
5. Briefly stated, by an email dated 27 April 2020, the Singapore Medical Council ("SMC") informed the Medical Council (the "Council") that the Defendant was convicted at a disciplinary inquiry held on 18 March 2020 of 2 charges of professional misconduct and was ordered, amongst others, by the Singapore Medical Council Disciplinary Tribunal ("SMCDT") to be suspended from medical practice for a period of 8 months.
6. Enclosed with the email from SMC was a copy of the Grounds of Decision of SMCDT handed down on 19 March 2020 in which it was mentioned that:-

"1 Dr Yip Man Hing Kevin ("Dr Yip") faced a total of five charges of professional misconduct under section 53(1)(d) of the Medical

Registration Act (Cap. 174) (“MRA”), pursuant to two amended Notices of Inquiry:

(a) The first amended Notice of Inquiry dated 4 February 2020 (“1st NOI”) arose out of a complaint by one Mr P1 (the “Patient”) dated 21 November 2013. The two charges (the “1st Charge” and “2nd Charge”) of the 1st NOI relate to insufficient medical leave being provided to the Patient.

(b) The second amended Notice of Inquiry dated 4 February 2020 (“2nd NOI”) arose out of a complaint by the Singapore Medical Council (“SMC”) dated 24 July 2013. The three charges of the 2nd NOI each relate to insufficient medical leave being provided to Mr P2, Mr P3, and Mr P4 respectively.

...

3 *Dr Yip elected to plead guilty to the 1st and 2nd Charge in the 1st NOI, and agreed to the remaining three charges in the 2nd NOI being taken into consideration for the purposes of sentencing (“TIC Charges”).*

...

5 *The 1st Charge concerned Dr Yip’s conduct in giving insufficient medical leave to the Patient in relation to the Patient’s right middle finger injury...*

6 *The 2nd Charge concerned Dr Yip’s conduct in giving insufficient medical leave to the Patient in relation to the Patient’s left shoulder injury...*

7 *The relevant paragraphs of the agreed statement of facts relating to the charges are as follows:*

...

1. *Dr Yip Man Hing Kevin (“Dr Yip”) is a registered medical practitioner. He was practising as an orthopaedic surgeon at Singapore Sports and Orthopaedic Clinic... (“the Clinic”) at the material time.*

...

III. Facts pertaining to the 1st Charge of the 1st NOI

5. The Patient, a Singapore citizen, was working as a driver at Company A at the material time. The Patient presented at the Clinic on 10 April 2012 with an injury to his right middle finger. On clinical examination, this was found to be a distal phalangeal tuft fracture with subungual hematoma of the right middle finger.

6. Dr Yip treated the Patient with a splint and intravenous antibiotics, oral antibiotics, pain relief and anti-inflammatory medication, and subsequently scheduled him for a review on 13 April 2012. Dr Yip also issued a medical certificate ("MC") for the Patient for two days from 10 April 2012 to 11 April 2012, and certified that the Patient fit for light duties for two days from 12 April 2012 to 13 April 2012. The Patient was absent from work from 10 April 2012 to 13 April 2012.

7. Treatment of a tuft fracture requires the distal interphalangeal joint to be immobilized for at least 2 weeks. Given the Patient's occupation as a driver and his condition as presented on 10 April 2012, medical leave of at least 2 weeks' duration should have been given to the Patient, and Dr Yip should not have certified the Patient fit for light duties from 12 April 2012 to 13 April 2012.

8. On 13 April 2012, Dr Yip reviewed the Patient. Following this review, Dr Yip provided the Patient with medical leave for 13 April 201[2], and certified the Patient to be fit for light duties for 14 days from 14 April 2012 to 27 April 2012 with the remark "Restrict use of Rt Upper Limb". The Patient returned to work for the period from 14 April 2012 to 26 April 2012, save for 19 April 2012.

9. Treatment of a tuft fracture requires the distal interphalangeal joint to be immobilized for at least 2 weeks. Given the Patient's occupation as a driver and his condition as presented on 13 April 2012, medical leave of at least 2 weeks' duration should have been given to the Patient, and Dr Yip should not have certified the Patient fit for light duties from 14 April 2012 to 27 April 2012.

10. *By virtue of the foregoing, Dr Yip is guilty of professional misconduct under section 53(1)(d) of the Medical Registration Act (Cap. 174) in that his aforesaid conduct amounts to such serious negligence that it objectively portrays an abuse of the privileges which accompany registration as a medical practitioner.*

IV. Facts pertaining to the 2nd Charge of the 1st NOI

11. *On 8 July 2012, the Patient sustained a left shoulder injury after trying to grab hold of the back of a lorry while at work. He presented at the Clinic three days later, on 11 July 2012.*

12. *The Patient was documented to have a reduction in shoulder movements due to pain. No physical examination for tenderness or instability was recorded, but an x-ray was ordered. The x-ray showed no body abnormality and no rotator cuff calcification.*

13. *Dr Yip treated the Patient with anti-inflammatory medication and analgesia, together with muscle relaxant medication. Dr Yip then certified the Patient to be fit for light duties from 11 July 2012 to 17 July 2012.*

14. *On 14 July 2012, Dr Yip reviewed the Patient, and subsequently referred him for physiotherapy at Clinic B. The Patient underwent a total of 4 sessions of physiotherapy there from 24 July 2012 to 6 August 2012. The physiotherapist recommended further investigation of the Patient.*

15. *On 17 July 2012, either Dr Yip or a locum doctor under his charge and supervision reviewed the Patient, after which the Patient was certified fit for light duties from 18 July 2012 to 24 July 2012.*

16. *On 24 July 2012, either Dr Yip or a locum doctor under his charge and supervision reviewed the Patient, after which the Patient was certified fit for light duties from 25 July 2012 to 7 August 2012, with the remark "Restrict Strenuous Activities".*

17. *Although the Patient's next review was scheduled to be on 7 August 2012, the Patient presented himself to Dr Yip one day earlier on 6 August 2012. That day, the Patient underwent an MRI for his left shoulder. Again, Dr Yip certified the Patient fit for light duties, this time for 21 days from 8 August 2012 to 28 August 2012 with the remark "Restrict Strenuous Activities".*

18. *The MRI results dated 6 August 2012 revealed the following:*

- a. *A medial dislocation of the biceps tendon out of the bicipital groove;*
- b. *A likely partial tear of the subscapularis tendon, coraco-humeral and superior glenohumeral ligaments; and*
- c. *Tendinopathy of the supraspinatus tendon.*

19. *On 10 August 2012, Dr Yip reviewed the Patient's MRI results with him. Dr Yip proceeded to schedule the Patient for arthroscopic surgery on 16 August 2012.*

20. *On 16 August 2012, the Patient underwent shoulder arthroscopic surgery (the "Procedure"). The Patient had to be administered general anaesthesia for the Procedure. During the Procedure, the Patient was found to have a small degenerative labial tear which was subsequently debrided (i.e. cleaned up). As his biceps tendon and subscapularis tendon were found to be intact, as was his rotator cuff on bursoscopy, no other procedures were required.*

21. *One day after the Procedure, on 17 August 2012, the Patient was discharged. He was not prescribed any hospitalisation leave or MC. Instead, the Patient was certified to be fit for light duties from 8 August 2012 to 28 August 2012.*

22. *Dr Yip conducted a post-operation review on 22 August 2012. After that, either Dr Yip or a locum doctor reviewed the Patient again on 29 August 2012. The Patient was then certified to be fit for light duties for 15 days from 29 August 2012 to 12 September 2012, with the remark "Restrict Strenuous Activities". Dr Yip subsequently reviewed the Patient again on 12 September 2012.*

23. *The Patient was absent from work for the entire period from 16 August 2012 to 12 September 2012.*

24. *Given that the Patient worked as a driver and had just undergone a procedure that required general anaesthesia and needed extensive rehabilitation to mobilise his shoulder to regain motion after the Procedure, he should have been given medical leave of at least 4 weeks' duration upon his discharge on 17 August 2012, or at the reviews on 22 August 2012, 29 August 2012, or 12 September 2012. Dr Yip should not have certified the Patient fit for light duties on those occasions.*

25. *By virtue of the foregoing, Dr Yip is guilty of professional misconduct under section 53(1)(d) of the Medical Registration Act (Cap. 174) in that his aforesaid conduct amounts to such serious negligence that it objectively portrays an abuse of the privileges which accompany registration as a medical practitioner."*

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 his innocence. We also bear in mind that the standard of proof in disciplinary proceedings is the preponderance of probabilities. 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 each of the allegations against the Defendant here is a serious one. We need to look at all the evidence and to consider and determine each of the charges separately and carefully.

Ruling on No Case to Answer

9. After the Legal Officer had closed the Secretary's case, the Defendant submitted that there was no case to answer in respect of disciplinary charge (a). In support of his submission, the Defendant argued that (a) it would be unfair to retry him on what he had been found guilty by SMCDT; (b) the subject Patients were never called by the SMC to give evidence before SMCDT; and (c) the subject Patients

were not the complainant.

10. The Defendant was at all material times and still is a registered medical practitioner in Hong Kong and that is the reason why we have jurisdiction over him pursuant to section 21(1)(b) of the Medical Registration Ordinance (“MRO”).
11. We need to make it clear that this is not a retrial of what happened before the SMCDT. It is irrelevant in our view that the subject Patients were never called to give evidence before SMCDT. Nor does it matter whether the subject Patients were the complainant. The Secretary’s case is clear. Our task is to have regard to all the evidence including but not limited to the agreed statements of facts relating to the disciplinary charges before SMCDT and to ask ourselves whether or not we are satisfied to the requisite standard of proof that disciplinary charge (a) in the present case is made out.
12. For these reasons, the Defendant’s submission on No Case to Answer is rejected.

Findings of the Inquiry Panel

13. Whilst section 21(1)(b) of the Medical Registration Ordinance (Cap. 161) is silent on the matter, the Council has always adopted the view that the legal provision can relate to professional misconduct committed outside Hong Kong. Indeed, the Code of Professional Conduct (2016 edition) (the “Code”) also provides that:-

“28.1 *Adverse findings on a registered medical practitioner in disciplinary proceedings by other professional regulatory bodies in or outside Hong Kong may likewise invoke the Council’s disciplinary procedure.*”
14. It is trite law that the findings of a foreign disciplinary tribunal are *sui generis*. They are not properly classified as hearsay or opinions. Rather, they are the judgment of the tribunal based upon an assessment of all the matters of fact and law which have been presented to it. Accordingly, it was open to a domestic disciplinary tribunal to make such use of the findings of a foreign disciplinary tribunal as was proper in the circumstances of the case [see: *In re A Solicitor* [1993] QB 69 at 77F-G].
15. We appreciate that the meaning of “professional misconduct” under section 53(1)(d) of the Singaporean Medical Registration Act may not be the same as under Hong Kong laws. But then again, our task in the present case is to have

regard to all the evidence which is adduced before us, including but not limited to the aforesaid findings of SMCDT, and to ask ourselves whether or not we are satisfied to the requisite standard of proof that the Defendant has been guilty of professional misconduct as charged [see: *In re A Solicitor* [1993] QB 69 at 80F-G].

16. In deciding the weight to be attached to the aforesaid findings of SMCDT, we bear in mind that (a) evidence relating to the disciplinary charges before SMCDT was admitted by way of an agreed statement of facts; and (b) there was no appeal from the decision of SMCDT [see: *In re A Solicitor* [1993] QB 69 at 80G-H].

17. It is clearly stated in the Code that:-

“26.2 A sick leave certificate can only be issued after proper medical consultation of the patient by the doctor...”

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...”

18. We agree with SMCDT that given the respective medical conditions of the Patients and their pre-accident occupations, it was inappropriate for the Defendant to certify them fit for light duties. In particular, statements in the medical certificates to the effect that the subject patient of the 2nd NOI would be fit for light duties, even with the remark “*Restrict Strenuous Activities*”, were misleading and improper. This was aggravated by, as SMCDT said, the fact that the Defendant “*had failed to provide sufficient medical leave on more than one occasion for each charge*”.

19. For these reasons, we are satisfied on the evidence before us that 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 per disciplinary charge (a).

20. Turning to disciplinary charge (b), it is clearly stated in the Code that:-

“29.1 A doctor who has been convicted in or outside Hong Kong of an offence punishable with imprisonment or has been the subject of adverse

findings in disciplinary proceedings by other professional regulatory bodies is required to report the matter to the Council within 28 days from the conviction or the adverse disciplinary finding, even if the matter is under appeal. Failure to report within the specified time will in itself be ground for disciplinary action.”

21. The Defendant admitted before us today and apologized for his oversight in not reporting to the Council within 28 days that he was found guilty by SMCDT on 18 March 2020 of 2 charges of professional misconduct.
22. However, in his submission to the Preliminary Investigation Committee (“PIC”) by email dated 27 February 2021, the Defendant explained that *“the Singaporean Medical Council had informed the Chairman of the HK Medical Council... about the judgment in a letter dated 27 April 2020... The letter stated that SMC will inform Hong Kong Medical Council and I therefore assumed that it was not necessary for me to inform the HK Medical Council about the judgment.”*
23. When being asked by us, the Defendant acknowledged that the email from SMC was never copied to him. But then again, the real point is that it was the personal duty of the Defendant to inform the Council of the same.
24. Moreover, by the time when SMC wrote to the Council on 27 April 2020, more than 28 days had elapsed since the Defendant was found guilty by SMCDT on 18 March 2020 of 2 charges of professional misconduct. It follows in our view that the Defendant could not pray in aid the letter from SMC to exonerate his breach of duty to report under section 29.1 of the Code.
25. We are satisfied on the evidence before us that 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 per disciplinary charge (b).

Sentencing

26. The Defendant has a clear disciplinary record.
27. In line with our published policy, we shall give the Defendant credit in sentencing for his admission and not contesting disciplinary charge (b) before us today.

28. We bear in mind that the primary purpose of a disciplinary order is not to punish the Defendant for the adverse findings to which his convictions relate for a second time. Rather, it is 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.
29. We appreciate that the Defendant believed in the benefit of mobilization after surgery. We are however particularly concerned that the Defendant continued to certify the subject Patient of the 2nd Charge of the 1st NOI “*fit for light duties*” right after the latter had undergone shoulder arthroscopic surgery which confirmed significant ligamental injury.
30. Having regard to the nature and gravity of the present case, we order that:-
- (1) the Defendant’s name be removed from the General Register for a period of 3 months in respect of disciplinary charge (a);
 - (2) the said removal order be suspended for a period of 12 months; and
 - (3) a warning letter be issued to the Defendant in respect of disciplinary charge (b).

Remark

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

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