香 港 醫 務 委 員 會

The Medical Council of Hong Kong

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr KO Wing Hong (高永康醫生) (Reg. No.: M13618)

Date of hearing: 11 October 2023 (Wednesday)

Present at the hearing

Council Members/Assessors: Dr CHOI Kin, Gabriel
(Chairperson of the Inquiry Panel)
Dr CHEUNG Chin-pang
Prof. SZETO Cheuk-chun
Ms HUI Mei-sheung, Tennessy, MH, JP
Ms WU Ka-lai, Cary

Legal Adviser: Mr Edward SHUM

Defence Solicitor representing the Defendant: Mr Warren SE-TO of
Messrs. Mayer Brown

Government Counsel representing the Secretary: Mr Edward CHIK

1. The charges against the Defendant, Dr KO Wing Hong, are:

"That he, being a registered medical practitioner,

(a) between 4 May 2016 and 9 October 2016, in respect of his patient [redacted] ("Patient WONG"), failed to maintain proper and/or adequate medical records;

(b) between 14 November 2016 and 24 April 2017, in respect of his patient [redacted] ("Patient YIP"), failed to maintain proper and/or adequate medical records;

(c) *between 9 January 2017 and 20 September 2017, in respect of his patient [redacted] ("Patient LO"), failed to maintain proper and/or adequate medical records;*

(d) *on 2 October 2017, in respect of his patient [redacted] ("Patient NGAI"), failed to maintain proper and/or adequate medical records; and/or*

(e) *on 23 October 2017, in respect of his patient [redacted] ("Patient LEE"), failed to maintain proper and/or adequate medical records.*

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 2 July 2002 to the present. His name has never been included in the Specialist Register.

3. Briefly stated, the employer of the 5 above named patients lodged a complaint with the Secretary of the Medical Council (the "Council") alleging, amongst others, that the Defendant was guilty of professional misconduct in failing to maintain adequate medical records in respect of their consultations with him.

4. In response to the complaint, the Defendant explained in his submission to the Preliminary Investigation Committee ("PIC") dated 10 March 2020 that:-

"*Miss Yip [redacted] attended my clinic on 14/11/2016 after slipped and fell down a stair the day before with buttocks, neck and low back injury. She complained of low back and neck pain.*

Upon assessment, she walked slowly with pain. The main sign being severe tenderness of the low back muscles….

x-ray of the whole spine, pelvis and both hips revealed only reduced cervical lordosis as the only positive finding.

She was given NSAID and panadol for pain relief. Sick leave of 7 days was issued. She worked as a sales which needed prolonged standing.

Subsequently her pain was just partially relieved. P[hysical] E[xamination] revealed significant tenderness. The strength of NSAID was added and lexotan was tried. Sickleave of 7 days was issued.

She was then reviewed every week with minimal improvement, and she still couldn't return to duty. Sick leave periods of 7 days were hence issued.

She was referred to orthopaedics specialist on the 12/12/2016 visit. However she didn't make an appointment until the 9/1/2017 visit. She was reinforced to make the appointment in every visit… She was told the necessity of being assessed by a specialist for the cause of such long lasting and disabling pain.

On the 6/3/2017 visit, she still had pain which was improved. She still had low back pain while walking and standing. She was told that she needed either to see a specialist or try to resume duty. She was reinforced about that everytime and warned that sickleave might not be issued later. It was until 24/4/2017, upon strong reinforcement, she agreed to try to resume duty, and claimed tolerable on 2/5/2017.

She didn't attend my clinic for the same problem afterward.

…

Miss Ngai [redacted] *attended my clinic on 2/10/2017, complaining of pain of the low back after slipped and fell on 20/9/2017.*

Physical examination revealed severe tenderness of the low back muscle.

X-ray revealed no lesion.

She was given NSAID and lexotan for the probable muscle over-tenderness. Sickleave was issued for 1 week. She worked as a physical trainer which needed heavy exertion.

Reassessment 1 week later revealed improvement. There was still tenderness over the low back but improved. She still couldn't resume duty. She was given NSAID and lexotan (with tailing down dosage). Sick leave of 1 week was issued.

Pain in the subsequent visit (7/1/2018) improved further but she claimed being unable to work with heavy exertion. She was offered similar medication. 1 more week of sick leave and advised to see a specialist if pain were still disabling.

She didn't attend afterward.

…

Mr Lo [redacted] attended my clinic on 9/1/2017, for severe neck and low back pain after slipped and fell on the same day.

Physical examination revealed severe tenderness and decreased range of movement at both areas. There were no neurological sign.

x-ray of the whole spine and pelvis revealed no fracture.

He was given NSAID and Panadol. 1 week of sickleave was issued.

The pain was severe without improvement in the subsequent 1-weekly visits, despite strong pain killer prescribed. Therefore sickleave was continued.

He was referred to orthopaedics specialist on 17/2/2017…

He…attended a private O&T before the 10/3/2017 appointment here, who granted him sick leave of 1 week. His neck and low back pain was still severe. He was then attending physiotherapist also, around once to twice weekly. Pain was similar however.

He kept visiting the O&T specialist around once per month, who diagnosed him to have muscle tear which cause[d] the lasting pain. Physiotherapy was continued.

He was then under F[ollow] U[p] of me, physiotherapist…and O&T specialist… He informed me that MRI of the spine revealed multiple lesion which would be followed up by the specialist.

He still had intense pain, mainly at the low back, with intense tenderness upon physical examination till the last visit here on 24/10/2017.

…

Miss Wong [redacted] attended my clinic on 4/5/2016 after an injury of the head, neck, upper and lower back earlier on the same day. P/E revealed decreased range of movement, tenderness, swelling and bru[i]sing of those areas. There was no neurological sign.

x-ray revealed no fracture. CT brain was unremarkable.

She was given NSAID and panadol. Sick leave of 1 week was given. She worked as a sales which needed prolonged standing and walking.

The bru[i]sing and swelling subsequently recovered but pain was still significant. Severe tenderness was revealed at the subsequent 1-weekly visits. Medication and continuation of sickleave [were] given and referral to O&T was made on 13/6/2016… She was advised repeatedly and strongly to see a private O&T…

All along she had similar pain mainly at the low back and [could] not tolerate walking of short distance or prolonged standing. She was given medication and sickleave until being informed that she would not be given those until being assessed by a specialist.

Finally she didn't attend for the problem after 7/11/2016.

…

Miss Lee [redacted] attended my clinic on 23/10/2017 for severe low back pain after slipped and fell accidentally.

Physical examination revealed intense tenderness over the inferior lumbar spine area. No neurological sign.

She was given NSAID and panadol. Sick leave for 1 week was issued. She was a sales which required prolonged standing and walking.

x-ray of the lumbar spine and pelvis was arranged but refused.

She didn't attend my clinic afterward."

5. Upon request, the Defendant subsequently provided the PIC with copies of the clinical notes that he kept on the 5 above named patients. The PIC then passed them together with the Defendant's submission onto the Secretary's expert witness, Dr CHAN, a specialist in Family Medicine for advice. A copy of

Dr CHAN's expert report dated 12 March 2021, as redacted by agreement of the Secretary and the Defendant, is placed before us for our consideration at this inquiry.

Burden and Standard of Proof

6. 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.

7. There is no doubt that the allegations against the Defendant here are serious ones. 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 separately and carefully.

Findings of the Inquiry Panel

8. The Defendant admitted the factual particulars of the disciplinary charges against him. However, it remains for us to consider and determine on the evidence whether the Defendant had by his conduct fallen below the standards expected of registered medical practitioners in Hong Kong.

9. It is clearly stated in section 1 of the 2016 edition of the Code of Professional Conduct (the "Code") that:-

> "*1.1.1 The medical record is the formal documentation maintained by a doctor on his patients' history, physical findings, investigations, treatment and clinical progress…*
>
> *1.1.2 A medical record documents the basis for the clinical management of a patient. It reflects on the quality of care and is necessary for continuity of care…*
>
> *1.1.3 All doctors have the responsibility to maintain systematic, true, adequate, clear, and contemporaneous medical records…*"

10. The Defendant's handwritten clinical notes for the 5 above named patients are largely illegible. We need to emphasize that the medical records kept by the Defendant on his patients were not solely for his own reference. In our view, proper and adequate medical record keeping is essential for the management and continuity of care of his patients, be it by the Defendant or other professional colleagues.

11. We agree with the general comments of the Secretary's expert witness, Dr CHAN, that:-

"*The entr[ies] on the clinical notes were all very simple and mainly mentioned the pain status and "could not return to duty". This history and examination should include the place and cause of injury, areas of joints involvement, their range of movement, degree and severity of pain, loss of function and any nerve involvement in order to determine the progress. The psychological status of prolonged sick leave and detailed management plan should be documented especially for those on long-term sick leave.*"

12. We wish to supplement that there was nothing in the medical records kept by the Defendant on the 5 above named patients about their respective medical history which might shed light on the underlying cause(s) of the accidents and known side effects of drug taking.

13. With regard to disciplinary charge (a), we also agree with Dr CHAN's comments in respect of the medical records kept by the Defendant on Patient WONG that:-

"*… The cause and place of injury was not documented… Physical examination was not documented in the clinical note…*

…From 4 May 2016 to 30 November 2016, Miss Wong [redacted] *had consulted Dr Ko 29 times on a weekly basis…Most of the weekly entry in the case note was very simple and mentioned "pain still" or "pain same" and "can't return to duty". Physical examination was not documented in any visit…*

…On 24 August 2016, there was no clinical note on any progress but sick leave certificate was issued on that day."

14. In failing to keep proper and/or adequate medical records in respect of Patient WONG, the Defendant has in our view by his conduct in the present case fallen

below the standard 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).

15. With regard to disciplinary charge (b), we also agree with Dr CHAN's comments in respect of the medical records kept by the Defendant on Patient YIP that:-

"*... Physical examination was not documented in the clinical note…*

...From 14 November 2016 to 2 May 2017, Miss Yip [redacted] *had consulted Dr Ko 25 times on a weekly basis. From 14 November 2016 to 24 April 2017, each visit was issued with sick leave certificate for 7 days with the same entry: "accidental back and neck injury"... Most of the weekly entry in the case note was very simple and mentioned pain was still persisted and "can't return to duty". Physical examination was not documented in any visit…"*

16. In failing to keep proper and/or adequate medical records in respect of Patient YIP, the Defendant has in our view by his conduct in the present case fallen below the standard 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).

17. With regard to disciplinary charge (c), we also agree with Dr CHAN's comments in respect of the medical records kept by the Defendant on Patient LO that:-

"*…From 9 January 2017 to 24 October 2017, Mr Lo* [redacted] *had consulted Dr Ko 44 times on a weekly basis. From 9 January 2017 to 3 October 2017, each visit was issued with sick leave certificate for 7 days with the same entry: "accidental low back and neck injury"... Most of the weekly entry in the case note was very simple and mentioned the pain status and "can't return to duty"...*

…Documentation of physical examination cannot be found in the clinical notes except for Mr Lo's first visit. All the follow-ups or subsequent consultations had no physical examination which was the most important part of the whole consultation to elicit clinical signs and determine the severity and progress of injury in order to issue sick leave certificates especially for those that were on long-term sick leave…"

18. In failing to keep proper and/or adequate medical records in respect of Patient

LO, the Defendant has in our view by his conduct in the present case fallen below the standard expected of registered medical practitioners in Hong Kong. Accordingly, we find the Defendant guilty of misconduct in a professional respect as per disciplinary charge (c).

19. With regard to disciplinary charge (d), we also agree with Dr CHAN's comments in respect of the medical records kept by the Defendant on Patient NGAI that:-

"*…In total, there were three visits and each visit was issued with sick leave certificate for 7 days…*

…Miss Ngai had the accidental low back injury on 20/9/2017 but attended Dr Ko on 2/10/2017 which was two weeks later. Any previous consultations with other doctors related to this injury was not documented…"

20. In failing to keep proper and/or adequate medical records in respect of Patient NGAI, the Defendant has in our view by his conduct in the present case fallen below the standard expected of registered medical practitioners in Hong Kong. Accordingly, we find the Defendant guilty of misconduct in a professional respect as per disciplinary charge (d).

21. With regard to disciplinary charge (e), we agree with Dr CHAN's comments in respect of the medical records kept by the Defendant on Patient LEE that:-

"*…The place of injury was not documented. Examination revealed intense tenderness over inferior lumbar spine area (L3-L5) and there was no neurological sign…*"

22. We also note that the cause of Patient LEE's slip and fall was not documented.

23. In failing to keep proper and/or adequate medical records in respect of Patient LEE, the Defendant has in our view by his conduct in the present case fallen below the standard expected of registered medical practitioners in Hong Kong. Accordingly, we find the Defendant guilty of misconduct in a professional respect as per disciplinary charge (e).

Sentencing

24. The Defendant has a clear disciplinary record.

25. In line with our published policy, we shall give the Defendant credit in sentencing for his admissions.

26. 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.

27. We are particularly concerned about the Defendant's repeated failures to keep proper and/or adequate medical records in respect of multiple patients. We need to ensure that he will not commit the same or similar misconduct in the future.

28. Taking into consideration the nature and gravity of the disciplinary charges for which we find the Defendant guilty and what we have heard and read in mitigation, we shall make a global order that in respect of disciplinary charges (a) to (e) that the name of the Defendant be removed from the General Register for a period of 1 month. We further order that the operation of the removal order be suspended for a period of 12 months, subject to the conditions that the Defendant shall complete during the suspension period:-

(1) CME courses relating to medical record keeping and medical ethics to the equivalent of 10 CME points and such courses have to be pre-approved by the Chairman of the Council; and

(2) satisfactory peer audit by a Practice Monitor to be appointed by the Council with the following terms:-

(a) the Practice Monitor shall conduct random audit of the Defendant's practice with particular regard to medical records keeping and management of patients;

(b) the peer audit shall be conducted without prior notice to the Defendant;

(c) the peer audit shall be conducted at least once every 6 months during the 12-month suspension period;

(d) during the peer audit, the Practice Monitor shall be given unrestricted access to all parts of the Defendant's clinic and the relevant medical records which in the Practice Monitor's opinion is necessary for proper discharge of his duty;

(e) the Practice Monitor shall report directly to the Chairman of the Council the finding(s) of his peer audit. Where any defects are detected, such defects shall be reported to the Chairman of the Council as soon as practicable;

(f) in the event that the Defendant does not engage in active practice at any time during the 12-month suspension period, unless otherwise ordered by the Council, the peer audit shall automatically extend until the completion of the 12-month suspension period; and

(g) in case of change of Practice Monitor at any time before the end of the 12-month suspension period, unless otherwise ordered by the Council, the peer audit shall automatically extend until another Practice Monitor is appointed to complete the remaining period of peer audit.

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