香 港 醫 務 委 員 會
The Medical Council of Hong Kong

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr LAU Ip (Reg. No.: M13765)

Date of hearing: 28 June 2023 (Wednesday)

Present at the hearing

Council Members/Assessors: Prof. TANG Wai-king, Grace, SBS JP
(Chairperson of the Inquiry Panel)
Dr LING Siu-chi, Tony
Dr CHAN Hung-chiu, Peter
Ms LI Siu-hung
Mr NG Ting-shan

Legal Adviser: Mr Edward SHUM

Legal Officer representing the Secretary: Miss Sanyi SHUM, Senior Government Counsel

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

1. The amended charges against the Defendant, Dr LAU, were:

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

(a) failed to conduct adequate and/or proper examination for the Patient before making the diagnosis of non-specific gastroenteritis on 24 April 2018;

(b) failed to conduct adequate and/or proper examination for the Patient before making the diagnosis of suspected flu or non-specific gastroenteritis on 27 April 2018; and/or

(c) inappropriately or without proper justification prescribed "Ofloxacin" to the Patient on 27 April 2018.

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 3 January 2003 to the present. His name has never been included in the Specialist Register.

3. Briefly stated, the Patient consulted the Defendant on 24 April 2018 with complaints of epigastric bloating and abdominal pain. She did not have any vomiting or diarrhoea. During this consultation, the Defendant performed abdominal examination with the Patient sitting upright. The Defendant then diagnosed the Patient with non-specific gastroenteritis and prescribed medications for her.

4. On 27 April 2018, the Patient returned to see the Defendant and complained about abdominal bloating, abdominal pain and fever. The Patient did not have any cough, runny nose or sore throat. She also did not have any vomiting or diarrhoea. During this consultation, the Defendant again performed abdominal examination with the Patient sitting upright. The Defendant then diagnosed the Patient with suspected flu or non-specific gastroenteritis. Various medications were prescribed for the Patient, including Ofloxacin 200 mg, an antibiotic.

5. On 30 April 2018, the Patient attended the Accident and Emergency Department of Tseung Kwan O Hospital due to recurrent abdominal pain. She was admitted for further investigations. On 1 May 2018, after undergoing an urgent CT scan, the Patient was diagnosed with acute appendicitis (with inflammatory mass/abscess) and appendicectomy with drainage of appendiceal abscess was performed on that day. The diagnoses, as documented in the Discharge Summary dated 11 May 2018 of Tseung Kwan O Hospital, were acute appendicitis with appendicular abscess, gangrene and rupture. The Patient was discharged home on 11 May 2018.

6. The Patient subsequently lodged this complaint against the Defendant with the Medical Council.

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 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 each of the allegations against the Defendant here is a serious one. Indeed, it is always a serious matter to accuse any registered medical practitioner of misconduct in a professional respect. We need to look at all the evidence and to consider and determine the amended disciplinary charges against the Defendant separately and carefully.

Findings of the Inquiry Panel

9. The Defendant admits the particulars of the amended disciplinary charges against him but it remains for us to consider and determine on the evidence before us whether the Defendant has been guilty of misconduct in a professional respect.

10. Diagnosis of acute appendicitis is generally made by clinical assessment. We appreciate that clinical manifestations of acute appendicitis, especially at the early stage of onset, may be vague and non-specific. It is however the unchallenged evidence of the Secretary's expert witness, Dr CHAN, which we accept, that guarding and/or tenderness, particularly at the right lower quadrant, of the abdomen are important clinical signs for making the diagnosis of acute appendicitis.

11. In this connection, it is the unchallenged evidence of Dr CHAN, which we accept, that "*[f]or proper examination of the abdomen, it is important that the patient be lying flat, not sitting upright, with the head resting on a single pillow. This relaxes the abdominal muscles and facilitates abdominal palpation…When a patient is sitting upright in a chair for the convenience of the examining doctor, it is difficult to perform palpation with the tightened abdominal muscles in order to elicit classical signs of acute appendicitis like guarding or rebound tenderness on the lower quadrants of the abdomen…Even if palpation was done, this fundamental mistake of examining the [P]atient sitting upright would have not elicited important clinical signs for [the Defendant] to make the diagnosis of acute appendicitis…*"

12. It is imperative in our view for the Defendant to conduct adequate and/or proper examination for the Patient in order to rule out other possible cause(s) for her complaint of epigastric bloating and abdominal pain before making the diagnosis of "non-specific gastroenteritis" during the consultation on 24 April 2018.

13. By failing to conduct adequate and/or proper examination for the Patient before making the diagnosis of non-specific gastroenteritis on 24 April 2018, the Defendant had in our view by his conduct 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 the amended disciplinary charge (a).

14. Turning to the amended disciplinary charge (b), there is no dispute that the Patient was febrile (38.3 degree Celsius) and she also complained of abdominal bloating and abdominal pain but without vomiting, diarrhoea, cough, runny nose or sore throat during the consultation on 27 April 2018.

15. The Defendant committed the same mistake by performing abdominal examination with the Patient sitting upright.

16. It is the unchallenged evidence of Dr CHAN, which we accept, that "*gastroenteritis without other typical symptoms like vomiting or diarrhoea is a dangerous diagnosis to make in patients with acute abdominal pain as there is always a possibility of acute abdomen…Regardless of the flu season that was prevailing, abdominal pain with fever = 38.3C and without any upper respiratory tract symptoms, these were red flags symptoms that acute abdomen must be considered.*"

17. Moreover, despite no upper respiratory tract symptoms were elicited, the Defendant nevertheless made the diagnosis of "*suspected flu*" since it was "*flu season*" and the Patient had a fever.

18. We also agree with Dr CHAN that "*[f]or "fever of uncertain origin", it was paramount important for [the Defendant] to engage further examination and investigation in order to identify the cause. To treat empirically with an antibiotic was inappropriate in this context. There are only two symptoms: fever and abdominal pain. The high index of suspicion must be acute abdomen. For bacterial gastroenteritis, antibiotics are usually reserved for the severe cases. There was no bloody diarrhoea and in fact there was no vomiting or diarrhoea or dehydration at all to justify the diagnosis and its severity that treatment with antibiotic was needed. Indiscriminate use of antibiotics will enhance antibiotic resistance which is harmful to the individual and community as a whole.*"

19. By failing to conduct adequate and/or proper examination for the Patient before making the diagnosis of "*suspected flu*" or "*non-specific gastroenteritis*" on 27 April 2018, the Defendant had in our view by his conduct 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 the amended disciplinary charge (b).

20. It is clearly stated in paragraph 9.1 of the Code of Professional Conduct (2016 edition) that:

"*A* doctor *may prescribe medicine to a patient only after proper consultation and only if drug treatment is appropriate.*"

21. Given our findings in relation to the amended disciplinary charge (b) against the Defendant, we also find that his prescription of "Ofloxacin" to the Patient on 27 April 2018 to be inappropriate and without proper justification.

22. We are satisfied on the evidence before us that the Defendant had by prescribing "Ofloxacin" to the Patient on 27 April 2018 fallen below the standards expected of registered medical practitioners in Hong Kong. Accordingly, we also find the Defendant guilty of misconduct in a professional respect as per the amended disciplinary charge (c).

Sentencing

23. The Defendant has a clear disciplinary record.

24. In accordance with our published policy, we shall give the Defendant credit in sentencing for his admission and not contesting the issue of professional misconduct before us today.

25. 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 the public confidence in the medical profession by upholding its high standards and good reputation.

26. We are particularly concerned that the Defendant mentioned in his supplemental statement to the Preliminary Investigation Committee that it was his routine practice to perform abdominal examination for patients with them sitting upright. This demonstrates, in our view, his lack of basic knowledge and skill in performing abdominal examination. We also agree with Dr CHAN's criticism of the Defendant's indiscriminate prescription of antibiotics.

27. We are told in mitigation that the Defendant has since the incident taken online courses on management of irritable bowel syndrome. We need to ensure that the Defendant will not repeat the same or similar breach in the future.

28. Taking into consideration the nature and gravity of the amended disciplinary charges for which we find the Defendant guilty and what we have read and heard in mitigation, we shall make a global order in respect of the amended disciplinary charges (a), (b) and (c) that the name of the Defendant be removed from the General Register for a period of 2 months. We further order that the said removal order be suspended for a period of 12 months subject to the conditions that the Defendant shall complete within 12 months courses relating to (i) safe use of antibiotics to the equivalent of 5 CME points; and (ii) diagnosis of medical conditions relating to abdominal diseases to the equivalent of 5 CME points; and such courses have to be pre-approved by the Chairman of the Medical Council.

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