香 港 醫 務 委 員 會

The Medical Council of Hong Kong

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Date of hearing: 20 August 2009, 27 November 2009 and 27 January 2010
Defendant: Dr LEE York Fai (李躍輝醫生)

1. The charges alleged against Dr LEE York Fai are that:

"He, being a registered medical practitioner, disregarded his professional responsibility to his patient Madam [redacted] ("the patient") in the following respects:

(a) he issued a Certificate of Attendance dated 18 March 2004 in respect of the patient which was untrue, misleading or otherwise improper in that :-

(i) he certified that the patient was alert, orientated to time, place and persons, and mentally sound and normal, without proper clinical basis, and/or without taking proper or appropriate steps to verify the assessments;

(ii) he failed to include his assessment that the patient developed cerebral infarction without reasonable explanation;

(b) he issued a Certificate of Attendance dated 24 March 2004 in respect of the patient which was untrue, misleading or otherwise improper in that :-

(i) he certified that the patient was mentally alert and orientated, and was not a mentally incapacitated person within the definition of section 2 of the Mental Health Ordinance, Cap. 136 without proper clinical basis and/or without taking proper or appropriate steps to verify the

assessments;

(ii) he failed to include his assessment that the patient developed cerebral infarction without reasonable explanation.

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

Agreed Facts of the Case

2. At all material times, Dr Lee York Fai (the Defendant) was and is currently a registered medical practitioner. He was the treating doctor of Madam [redacted] ("Madam [redacted]").

3. On or about 24 September 2003, Madam [redacted] first attended the Defendant's clinic for shortness of breath, abdominal distension and constipation. She was then 77 years old with a history of diabetes mellitus, Parkinsonism and osteoarthritis. She was arranged to be admitted to St. Teresa's Hospital ("STH") on the same day for further examination and management.

4. During her stay in STH, Madam [redacted] signed a consent form for endoscopic procedures in the presence of a registered nurse after the Defendant and one Dr Choi Tat Fai (transliteration) had explained the effects and natures of the procedures to her. The diagnoses were "colonic polyps", "tubulovillous adenomata" and "constipation". Madam [redacted] was discharged on 4 October 2003 after treatment.

5. On 11 October 2003, Madam [redacted] was re-admitted to STH for unsatisfactory diabetic control, shortness of breath, a minor head injury caused by a slip-and-fall at home, and symptoms of urinary tract infection. Nevertheless, Madam [redacted] was able to communicate effectively with her daughter, Ms [redacted] ("Ms [redacted]") up to the end of October 2003.

6. In or about mid-December 2003, while Madam [redacted] was still in STH, she suffered a stroke. According to the MRI brain scan report dated 15 December 2003, the major portion of the right temporal lobe showed signal change. The stroke was more likely to be due to an infarct rather than

encephalitis. The infarct was subacute or subacute turning to chronic rather than acute or hyperacute. Although the size of the infarct was large, there was no major branch occlusion of the right middle cerebral artery.

7. In December 2003, Ms [redacted] returned from Canada to HK. Ms [redacted] met with Dr Richard Kay, a neurologist who wrote a report dated 1 January 2004. Dr Richard Kay was of the view that Madam [redacted] suffered from right cerebral infarction, Parkinson's disease and Alzheimer's disease.

8. In January 2004, Ms [redacted] met with the Defendant. The Defendant agreed to arrange for Dr Chan Chung Mau, a psychiatrist, to see Madam [redacted]. However, further consultations and visits by Dr Richard Kay and Dr Chan Chung Mau were stopped by Madam [redacted]'s granddaughter, Ms [redacted].

9. In January 2004, the Defendant arranged for Dr Benjamin Lai, a psychiatrist, to see Madam [redacted]. On 24 February 2004, the Defendant was informed by Madam [redacted]'s son, [redacted], that they decided to stop visits by the neurologist and the psychiatrist at the moment. Then Ms [redacted] engaged another psychiatrist, Dr Chan Sai Yin, to write a report for the Guardianship Board ("GB").

10. Ms [redacted] went to find another doctor, Dr Yung Leung Tung, a general practitioner to write a report for GB. Based on the report of Dr Yung Leung Tung and of Dr Chan Sai Yin, Ms [redacted] made an application for a guardianship order on 9 March 2004. The Defendant wrote two Certificates of Attendance dated 18 March 2004 and 24 March 2004 respectively. The hearing of the GB was held on 26 March 2004. The Defendant attended the GB hearing on 26 March 2004. The GB made a guardianship order in respect of Madam [redacted] after the hearing on 26 March 2004. Ms [redacted] wrote a complaint letter dated 16 April 2004 against the Defendant to the Medical Council. Ms [redacted] wrote two further letters to the Medical Council dated 5 April 2005 and 30 July 2008.

11. Madam [redacted] stayed in the hospital from September 2003 up to sometime in 2007 (except for a short period of discharge in about October 2003). Madam [redacted] stayed in a care centre since 2007.

Evidence of Expert

12. Dr. Derek Lee Seung Yau was called in as the Secretary's expert psychiatrist. He gave evidence that he had never seen a case where a person with a very severe vascular or multi-infarct dementia would recover almost full function and that it was physiologically impossible.

13. Dr. Derek Lee was of the opinion that there was a consistent finding of cognitive impairment by the psychiatrists and the neurologists for the period from 16 December 2003 to 8 March 2004, and that such impairment was permanent.

14. Based on the result of the mini-mental state examination conducted by Dr. Chan Sai Yin, Dr. Derek Lee considered that Madam [redacted] was a severely demented patient.

15. Dr. Derek Lee was of the opinion that there was a question on how the assessment of the mental state in the two certificates issued by the Defendant were arrived at, as there was no record of what tests were done.

Evidence of Madam [redacted]

16. Madam [redacted] gave evidence on her observation of her mother's mental condition in December 2003. She said that Madam [redacted] could not recognize her and identified her as an older sister.

17. Madam [redacted] talked to the neurologist, Dr. Richard Kay, who recommended that a psychiatrist should be consulted for the application for the guardianship order.

18. Madam [redacted] talked to the Defendant and he agreed that Madam [redacted] should be assessed by a psychiatrist, Dr. Chan Chung Mau.

Evidence of the Defendant

19. The Defendant gave evidence at the inquiry. He explained the steps he had taken in assessing the cognitive function of the patient and the clinical basis.

20. The Defendant admitted that he had not conducted the assessment systematically. Nevertheless, he claimed that the steps taken were largely consistent with those described by Dr. Derek Lee, the expert psychiatrist.

21. The Defendant considered the physical illness which might have affected the patient's cognitive function. However, he was not able to give acceptable explanation for his clinical observation of the very significant improvement of Madam [redacted]'s mental state within a short time after she was found by all the other doctors to be suffering from cognitive impairment.

Findings of Council

22. We accept the evidence given by Dr. Derek Lee, the expert psychiatrist.

23. We find Madam [redacted] a credible witness in terms of the description of her mother's mental state when she saw her in December 2003, and of the subsequent events that led to the issuing of the guardianship order.

24. We find the Defendant lacking in reliability. He claimed to have conducted the mini-mental state examination but he was not able to describe the examination in detail. Furthermore, he claimed to have conducted a full neurological and cognitive assessment of Madam [redacted]. We do not find evidence of these in the case record. This is not simply a case of poor record keeping, but in the absence of any such record, we are not convinced that the Defendant had conducted the test. Nor are we convinced that he was able to conduct the test in view of the fact that he could not even properly describe the tests.

25. In his Certificate of Attendance dated 18 March 2004, he found that Madam [redacted] was mentally sound and normal. In his Certificate of Attendance dated 24 March 2004, he assessed Madam [redacted] to have no evidence of mental incapacity, and concluded that she was not a mentally incapacitated person within the definition of Section 2 of the Mental Health Ordinance. He claimed that it was what he observed when he examined Madam [redacted] at the material times.

26. We find that the Defendant's clinical observations were at great variance from those made by Dr. Richard Kay, Dr. Chan Chung Mau, Dr. Benjamin Lai, Dr.

Ng Ka Kui, Philip, and Dr. Chan Sai Yin. This variance was especially noticeable in the observation made by Dr. Benjamin Lai, who examined Madam [redacted] on 20 occasions from the period 5 January 2004 to 15 February 2004. On each occasion, Dr. Lai found Madam [redacted] to be a person suffering from severe cognitive impairment.

27. Additional variance was also found between the observation of Dr. Chan Sai Yin on 8 March 2004 and the Defendant's observation on 18 March 2004. The difference of 10 days would not have resulted in such a remarkable improvement in view of the fact that Madam [redacted] suffered from a stroke that affected a large portion of her temporal lobe. As we have stated earlier, such drastic improvement within a short time was physiologically impossible.

28. Given that we have accepted the observation and findings of all other doctors to be correct, the irresistible inference is that the Defendant's alleged observations were untrue. Even if assuming that the Defendant did observe such significant improvement of the patient's cognitive functions in the face of the gross clinical discrepancy, the Defendant as a responsible doctor should have consulted a psychiatrist or neurologist before making the assessments in the certificates.

Charge a (i)

29. Having considered all the evidence, we are satisfied that the Certificate of Attendance dated 18 March 2004 was untrue and misleading, and the assessments stated therein were made without proper clinical basis. We are also satisfied that the Defendant had not taken proper steps to verify the assessment.

30. Medical practitioners are required to issue reports and certificates on the assumption that the truth of the certificates can be accepted without question. In the context, medical practitioners have to exercise due care in signing any reports or certificates. We are satisfied that the Defendant has not exercised the degree of care required of registered medical practitioners, and his conduct has fallen below the standard expected.

31. The Council is satisfied that the facts of the Charge (a) (i) have been proved, and this amounts to misconduct in a professional respect. The Council finds the Defendant guilty of Charge a (i).

Charge a (ii)

32. We find that cerebrovascular accident / ischaemic stroke are but different terms used to mean cerebral infarction. As such, the facts of Charge (a) (ii) were not been proved. We find the Defendant not guilty of charge (a) (ii).

Charge b (i)

33. Having considered all the evidence, we are satisfied that the Certificate of Attendance dated 24 March 2004 was untrue and misleading, and the assessments stated therein were made without proper clinical basis. We are also satisfied that the Defendant had not taken proper steps to verify the assessment.

34. We have earlier set out the requirement for doctors to exercise due care in issuing medical reports and certificates. We are satisfied that the Defendant has not exercised the degree of care required of registered medical practitioners, and his conduct has fallen below the standard expected.

35. The Council is satisfied that the facts of Charge (b) (i) have been proved, and this amounts to misconduct in a professional respect. The Council finds the Defendant guilty of Charge (b) (i).

Charge b (ii)

36. We find the patient's history of cerebral infarction was clearly stated in the certificate dated 24 March 2004. In the circumstances, there is no evidence at all in support of charge (b) (ii).

37. We find that there is no case to answer on the charge (b) (ii). Accordingly, we dismiss the charge and find the Defendant not guilty.

Sentencing

38. The Defendant has a clear record. Other than this, there is no mitigating factor of weight.

39. The Defendant has neither shown remorse nor gained insight into the problem in respect of the way he issued the certificates.

40. This is a case that involved fabrication of untrue matters.

41. In mitigation, the Defendant claimed there was no harm to the patient. We disagree; but for the persistence of the patient's daughter in applying for a guardianship order, the patient would have been left with no protection. In this context, the Defendant has not fulfilled his responsibility as the treating doctor to act in the best interest of the patient. This is especially germane in a situation where the patient is demented.

42. The Council has repeatedly pointed out that the issue of untrue or misleading documents by a doctor is a serious matter which undermines the public trust in the integrity of the medical profession, and such misconduct will usually be sanctioned by removal from General Register.

43. Having regard to the gravity of the case and the mitigation advanced on the Defendant's behalf, the Council orders that:-

(a) In respect of Charge (a)(i), the name of the Defendant be removed from the General Register for a period of one year.
(b) In respect of Charge (b)(i), the name of the Defendant be removed from the General Register for a period of one year.
(c) The removal orders shall be served concurrently.

44. We have considered whether the sentence should be suspended. We did not see any reason for suspension.

Prof. Felice Lieh-Mak, CBE, JP
Chairman, Medical Council