

香港醫務委員會

The Medical Council of Hong Kong

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr IP David (Reg. No.: M06140)

Date of hearing: 23 June 2020 (Tuesday)

Present at the hearing

Council Members/Assessors: Prof. LAU Wan-yee, Joseph, SBS
(Chairperson of the Inquiry Panel)
Dr YEUNG Hip-wo, Victor
Dr BEH Swan-lip
Mr CHAN Wing-kai
Mr POON Yiu-kin, Samuel

Legal Adviser: Mr Edward SHUM

Defence Solicitor representing the Defendant: Mr Chris HOWSE of
Messrs. Howse Williams

Senior Government Counsel (Acting) representing the Secretary: Ms Carmen SIU

The Defendant is not present.

1. The charges against the Defendant, Dr IP David, are:

“That on divers dates between May 2013 and September 2014, he, being a registered medical practitioner, disregarded his professional responsibility to his patient Mr A (“the Patient”) in that he:

(a) issued the following sick leave certificates to the Patient at Asia Medical Centre without proper care and/or justification and/or investigation:

- (1) *Certificate dated 16 May 2013 for the period from 16 May 2013 to 14 June 2013 with a diagnosis of “Right Middle Finger Pain after Accidental Injury on Duty”;*
- (2) *Certificate dated 14 June 2013 for the period from 14 June 2013 to 13 July 2013 with a diagnosis of “Right Middle Finger Pain after Accidental Injury on Duty”;*
- (3) *Certificate dated 13 July 2013 for the period from 13 July 2013 to 11 August 2013 with a diagnosis of “Right Middle Finger Pain after Accidental Injury on Duty”;*
- (4) *Certificate dated 11 August 2013 for the period from 11 August 2013 to 9 September 2013 with a diagnosis of “Right Middle Finger Pain after Accidental Injury on Duty”;*
- (5) *Certificate dated 9 September 2013 for the period from 9 September 2013 to 8 October 2013 with a diagnosis of “Right Middle Finger Pain after Accidental Injury on Duty”;*
- (6) *Certificate dated 9 October 2013 for the period from 9 October 2013 to 19 November 2013 with a diagnosis of “Right Middle Finger Pain after Accidental Injury on Duty”;*
- (7) *Certificate dated 6 December 2013 for the period from 6 December 2013 to 4 January 2014 with a diagnosis of “Right Middle Finger Pain after Accidental Injury on Duty”;*
- (8) *Certificate dated 4 January 2014 for the period from 4 January 2014 to 2 February 2014 with a diagnosis of “Right Middle Finger Pain after Accidental Injury on Duty”;*
- (9) *Certificate dated 30 January 2014 for the period from 31 January 2014 to 1 March 2014 with a diagnosis of “Right Middle Finger Pain after Accidental Injury on Duty”;*
- (10) *Certificate dated 1 March 2014 for the period from 1 March 2014 to 30 March 2014 with a diagnosis of “Right Middle Finger Pain after Accidental Injury on Duty”;*
- (11) *Certificate dated 31 March 2014 for the period from 31 March 2014 to 29 April 2014 with a diagnosis of “Right Middle Finger Pain after Accidental Injury on Duty”;*
- (12) *Certificate dated 30 April 2014 for the period from 30 April 2014 to 29 May 2014 with a diagnosis of “Right Middle Finger Pain after Accidental Injury on Duty”;*
- (13) *Certificate dated 30 May 2014 for the period from 30 May 2014 to 11 June 2014 with a diagnosis of “Right Middle Finger Pain after Accidental Injury on Duty”;*

- (14) *Certificate dated 14 September 2014 for the period from 14 September 2014 to 13 October 2014 with a diagnosis of “Right Middle Finger Pain after Accidental Injury on Duty”;*
- (b) *issued the following sick leave certificates to the Patient at Digital Healthcare Clinic without proper care and/or justification and/or investigation:*
- (1) *Certificate dated 4 January 2014 for the period from 4 January 2014 to 17 January 2014 for “Right Middle Finger Accident Injury on Duty”;*
 - (2) *Certificate dated 18 January 2014 for the period from 18 January 2014 to 7 February 2014 for “Right Middle Finger Accidental Injury on Duty”;*
 - (3) *Certificate dated 8 February 2014 for the period from 8 February 2014 to 28 February 2014 for “Right Middle Finger Accidental Injury on Duty”;*
 - (4) *Certificate dated 1 March 2014 for the period from 1 March 2014 to 31 March 2014 for “Right Middle Finger Accidental Injury on Duty”;*
 - (5) *Certificate dated 1 April 2014 for the period from 1 April 2014 to 30 April 2014 for “Right Middle Finger Accidental Injury on Duty”;*
 - (6) *Certificate dated 1 May 2014 for the period from 1 May 2014 to 30 May 2014 for “Right Middle Finger Accidental Injury on Duty”;*
 - (7) *Certificate dated 31 May 2014 for the period from 31 May 2014 to 30 June 2014 for “Right Middle Finger Accidental Injury on Duty”;*
 - (8) *Certificate dated 1 July 2014 for the period from 1 July 2014 to 31 July 2014 for “Right Middle Finger Accidental Injury on Duty”;*
 - (9) *Certificate dated 1 August 2014 for the period from 1 August 2014 to 9 September 2014 for “Right Middle Finger Accidental Injury on Duty”;*
 - (10) *Certificate dated 10 September 2014 for the period from 10 September 2014 to 13 September 2014 for “Right Middle Finger Accidental Injury on Duty”;*
- (c) *failed to refer the Patient to a specialist in Orthopaedics and Traumatology for further consultation and treatment 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 Defendant's name has been included in the General Register from 15 July 1986 to present. His name has been included in the Specialist Register under the specialty of Orthopaedics & Traumatology from 7 July 2004 to 2 February 2010 and the specialty of Rehabilitation since 3 February 2010.
3. The Defendant admits that he issued to the Patient without proper care the sick leave certificates, which formed the subject of disciplinary charges (a) and (b).
4. By a letter dated 31 March 2015, the Labour Department complained to the Medical Council that the Defendant was "suspected of improper issuance of sick leave certificates". Briefly stated, during the processing of 2 employees' compensation claims lodged by the Patient, the Labour Department discovered that the Patient possessed 2 sets of sick leave certificates issued by the Defendant under the name of 2 different clinics but covering the same sick leave period. Since the diagnosis stated on each of the sick leave certificates was "Right Middle Finger Pain after Accidental Injury On Duty", the Labour Department took the view that the Defendant should reasonably foresee that the Patient would make use of the same in lodging a double claim for employees' compensation.
5. In response to the complaint, the Defendant explained to the Preliminary Investigation Committee ("PIC") through his solicitors by letter dated 19 October 2016 that he practised at the 2 clinics involved in the complaint from 2013 to 2015, namely, at the Asia Medical Centre ("AMC") in Yau Ma Tei until November 2014 and at the Digital Healthcare Clinic ("DHC") in Sham Shui Po from 2014 to October 2015.
6. The Defendant's solicitors also mentioned in the letter that:

"13. Dr Ip first saw this patient at AMC on 16 May 2013. The patient reported right middle finger pain after an accidental injury on duty on 10 September 2012.

14. He reported having been treated at the Tuen Mun Hospital, and having been on occupational therapy since November 2012. He had been followed up at Yan Chai Hospital.

15. *The patient reported a pain level of 6 out of 10 and had a poor hand grip. He could not put weight on his hand and was experiencing intermittent numbness of the finger. Upon examination, Dr Ip found pain and swelling around the right middle finger area and hypersensitivity on the right middle finger tip.*
16. *Dr Ip prescribed a non-steroidal anti-inflammatory drug, Afloxan for the pain; Famotidine, to protect the patient's stomach; Lioton, a topical gel which reduces swelling and inflammation; and Vitamin B tablets. He also issued the patient a sick leave certificate for 30 days, because the patient advised Dr Ip that he was a manual labourer doing heavy work.*
17. *After this first consultation, the patient returned regularly to see Dr Ip, up to September 2014. On each occasion his complaint was the same, and the treatment provided was similar.*
18. *On 4 January 2014, Dr Ip saw the patient in the morning at AMC. That afternoon, Dr Ip was practising at DHC, and the patient re-attended him there requesting further treatment. It was at this consultation that the patient explained to Dr Ip that he had two employers, neither of whom would accept copies of sick leave certificates, hence he needed an original sick leave certificate for each employer.*
19. *Dr Ip had never told the patient that he practised at DHC as well as AMC. Dr Ip assumes that the patient had heard about his second clinic by word of mouth, because at that time Dr Ip treated a number of manual labourers who had suffered injuries on duty and who were of a similar ethnic background to this patient.*
20. *From 4 January 2014 onwards, until he was discharged by Dr Ip in September 2014, the patient saw Dr Ip intermittently at both clinics for treatment.*
21. *Throughout the entire period of treatment, the patient reported pain, and was found to have a weak hand grip that meant he could not lift heavy objects. He told Dr Ip that both of his jobs involved heavy manual labour.*

22. *It was Dr Ip's judgment as a specialist in rehabilitation that the patient should be given sick leave, not only to prevent further injury to his hand through heavy manual labour; but also to avoid injury to the patient's co-workers. Heavy items are frequently carried by several workers on construction sites, hence if one person suddenly drops such an item, this could cause injury to the rest.*

...”

7. The Defendant's solicitors further explained in the letter that:

“37. *In summary, it is submitted that Dr Ip has not done anything wrong.*

38. *The PIC may note that Dr Ip saw the patient twice on 4 January 2014 and 1 March 2014; and he also saw the patient on consecutive dates on three occasions, i.e. on 31 March 2014 and 1 April 2014; on 30 April and 1 May 2014; and on 30 May and 31 May 2014.*

39. *This is because it is not Dr Ip's practice to refuse to see a patient who attends him at one of his clinics seeking a consultation. Accordingly, when the patient attended Dr Ip in both of his clinics on the same day or on consecutive days, Dr Ip did not refuse to see him.*

40. *The duration of sick leave issued from the two clinics varies because Dr Ip consults with his patients regarding when they are able to return for follow up and allows them some flexibility, within reason. The maximum duration of sick leave Dr Ip will agree to issue at one time is four to six weeks. However, if a patient with a chronic problem wishes to re-attend for follow up one week or two weeks later, rather than one month later, Dr Ip will not refuse to see the patient.*

41. *Dr Ip accepted in good faith the information that the patient gave him about his employment. There was no reason for him not to do so. There is nothing wrong with a person working for two employers. There is also nothing wrong with an employer insisting upon an original sick leave certificate.*

42. *Dr Ip never imagined that the patient would take his sick leave certificates and attempt to use them to make a fraudulent employees' compensation claim. It never occurred to Dr Ip that this would happen because it is very obvious that, if an employee tried to do so, the Labour Department would immediately notice that there were two overlapping claims, as occurred in this instance.*
43. *Dr Ip saw the patient on each occasion that he issued a sick leave certificate. He treated the patient in good faith throughout the treatment period. The sick leave certificates contained no statements which are untrue, and no statements which Dr Ip had not taken appropriate steps to verify.*
- ...”

Burden and Standard of Proof

8. 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.
9. There is no doubt that the allegations made against the Defendant here are serious ones. 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 each of the disciplinary charges against him separately and carefully.

Findings of the Inquiry Panel

10. At the beginning of the inquiry, we were informed by the Legal Officer that she would offer no evidence in relation to disciplinary charge (c). Since the burden of proof is always on the Legal Officer, we therefore have to find the Defendant not guilty of disciplinary charge (c).
11. Turning to disciplinary charges (a) and (b), the Legal Officer did not call the Patient to give evidence but the Defendant admitted that he issued the subject sick leave certificates without proper care.

12. According to the Defendant, the Patient first consulted him at AMC on 16 May 2013. Clinical records of this and all subsequent consultations with the Patient at AMC were brief. Most of the time they merely repeated the diagnosis of “Right Middle Finger Pain after Accidental Injury on Duty” and the same medications were prescribed to the Patient.
13. The Defendant’s clinical records of his consultations with the Patient at DHC were equally brief. Save for the subjective symptom of “pain”, there was nothing in the clinical records on the objective physical findings. The only exception was on the Patient’s first visit to DHC on 4 January 2014 when it was recorded that:

“IOD (Injury on Duty) case all along seen at YMT Asia Medical x Right Middle Finger Pain after IOD on 10-9-2012, initially seen in TMH (Tuen Mun Hospital) Rn (treatment) done no use still pain cannot make a hand grip. Told # (fracture) in TMH Prefer to sometimes go here and sometimes to YMT for follow up. P/E (Physical Examination):- Tender Right M/F (Middle Finger) USS (Ultrasound Scan) found still soft tissue inflamed Pain Rn (Infrared, USS, TENS) SL- till Fu (Follow Up) med: Afloxan Losec Fastum”

14. In this connection, we agree with the comments of the Secretary’s expert, Dr TSE, in his report that:

“C. Diagnosis and Management

1. *Pain after accidental injury is NOT a diagnosis. It’s simply a descriptive term. Mr Faiz sustained the injury in September 2012, 9 months before he consulted Dr Ip. For pain to persist for that period of time after an injury, I am of the opinion that it is important to establish the initial diagnosis and any cause for the persistent pain.*

...

4. *I am not able to see on the clinical notes that Dr Ip has taken any further steps to find out the diagnosis and the cause of the persistent pain.*

...

6. *Dr Ip never mention in his clinical note that he suspected the patient suffers from chronic pain syndrome.*

...”

15. The Defendant never identified in his clinical records any significant pathology that could be the cause of the persistent pain. Save for the clinical record in respect of the first consultation at AMC and DHC, there was no mention in the clinical notes about the result(s) of any physical examination(s) done in the subsequent consultations.
16. In our view, the Defendant ought to find out the underlying cause of the Patient’s persistent pain instead of simply issuing the Patient with continuous and/or overlapping sick leave certificates.
17. But then again, the Defendant kept prescribing the same medications to the Patient. Apparently, the Patient was not responding to this treatment modality. Or the Patient did not, subjectively speaking, find his pain symptom relieved. This is particularly true when on more than one occasion the Patient had consulted the Defendant 2 times in a day.
18. In view of the persistency of the Patient’s pain symptom, the Defendant should take proper care to assess on each consultation the Patient’s medical condition(s) and to review the treatment modality. Further investigation(s) like X-ray or MRI & etc. should also be made to look for other underlying cause(s) that could justify the prolonged sick leave. We are however unable to find anything in the clinical records to this effect. We are therefore satisfied on the evidence before us that the Defendant issued the subject sick leave certificates without proper care and investigation.
19. For these reasons, we are of the view that the Defendant’s conduct has fallen below the standards expected of registered medical practitioners in Hong Kong. Accordingly, we also find him guilty of the disciplinary charges (a) and (b).

Sentencing

20. The Defendant has a previous disciplinary record in respect of prescription of mefenamic acid to a patient whom he knew or ought to have known to be allergic to aspirin.
21. In accordance with our published policy, we shall give him credit in sentencing for admitting disciplinary charges (a) and (b) and not contesting the issue of professional misconduct before us today.
22. Through his solicitor, the Defendant accepted that in order to avoid possible confusion and fraudulent use of sick leave certificates, if 2 sick leave certificates have to be issued for the same period, a doctor should state clearly on one of them that it is a certified true copy. However, we wish to emphasize that this is not the basis upon which we find the Defendant guilty of misconduct in a professional respect.
23. Patients consult specialists on faith that the latter would exercise due diligence in applying their specialist skill and knowledge to their medical problems. We are particularly concerned that the Defendant, being a Specialist in Rehabilitation, had repeatedly issued sick leaves to the Patient with persistent pain without proper care and investigation. In our view, only those doctors befitting of the title of specialist should be allowed to have their names remained in the Specialist Register.
24. In view of the persistency of the Patient's symptom, any registered medical practitioner in the position of the Defendant would have reviewed the Patient's medical condition(s) and to find out the underlying cause(s) of his persistent pain.
25. Taking into account the nature and gravity of this case and what we have heard and read in the mitigation, we shall make a global order in respect of disciplinary charges (a) and (b) that:-
 - (1) the name of the Defendant be removed from the General Register for a period of 1 month;
 - (2) the operation of the removal order from the General Register be suspended for a period of 24 months, subject to the conditions that the Defendant shall complete during the suspension satisfactory peer audit by a Practice Monitor to be appointed by the Medical Council with the following terms:

- (a) the Practice Monitor shall conduct random audit of the Defendant's practice with particular regard to management of patients and clinical records keeping;
 - (b) the peer audit should be conducted without prior notice to the Defendant;
 - (c) the peer audit should be conducted at least once every 6 months during the suspension period;
 - (d) during the peer audit, the Practice Monitor should be given unrestricted access to all parts of the Defendant's clinic(s) and the relevant 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 of his peer audit. Where any defects are detected, such defects should 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 suspension period, unless otherwise ordered by the Council, the peer audit shall automatically extend until the completion of 24-months suspension period; and
 - (g) in case of change of Practice Monitor at any time before the end of the 24-months 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; and
- (3) the name of the Defendant be removed from the Specialist Register for a period of one month.

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