

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr CHAN Wai Ip (陳偉業醫生) (Reg. No.: M06470)

Date of hearing: 1 March 2022 (Tuesday)

Present at the hearing

Council Members/Assessors: Dr CHOI Kin, Gabriel
(Chairperson of the Inquiry Panel)
Dr HO Pak-leung, JP
Dr CHUNG Wai-hung, Thomas
Mrs BIRCH LEE Suk-yea, Sandra, GBS, JP
Mr LAM Ho-yan, Mike

Legal Adviser: Mr Edward SHUM

Senior Government Counsel representing the Secretary: Miss Sanyi SHUM

The Defendant is not present.

1. The charge against the Defendant, Dr CHAN Wai Ip, is:

“That in or about May to October 2018, he, being a registered medical practitioner, issued sick leave certificates to a patient (“the Patient”) for a continuous period from 17 May 2018 to 16 January 2019 without reasonable and/or proper justifications.

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

Preliminary Issues

2. Before this inquiry began, the Legal Officer told us and we were satisfied upon reading the relevant affirmation of service that the Notice of Inquiry dated 24 November 2021 (together with a copy of the Medical Practitioners (Registration and Disciplinary Procedure) Regulation, Cap. 161E (“the Regulation”) and a copy of the Practice Directions on Disciplinary Inquiries issued by the Medical Council (“the Council”) were duly served on the Defendant by post to his address as recorded in the General Register in accordance with section 51 of the Regulation.
3. It is also evident to us from reading the relevant affirmation of service that the Defendant decided on his own volition not to be present either by himself or by his legal representative despite he has been duly served with the Notice of Inquiry dated 24 November 2021.
4. For these reasons, we decided to proceed with this inquiry in the absence of the Defendant.

Facts of the case

5. The name of the Defendant has been included in the General Register from 30 April 1987 to the present. His name has been included in the Specialist Register under the Specialty of Paediatrics from 7 July 1999 to 1 July 2009.
6. Briefly stated, the Secretary of the Council received a complaint from one Ms CHAN of QBE General Insurance Limited alleging the Defendant of malpractice in connection with the issue of sick leave certificates to a patient by the name of [REDACTED] (“the Patient”).
7. In response to the complaint, the Defendant told the Preliminary Investigation Committee (“PIC”) of the Council in his letter dated 14 November 2020 that:-

“This patient was a waitress and she first attended my clinic on 16 May 2018 because of accident on 3rd February 2017 due to deep cut in the 5th finger in the right hand because of broken porcelain at work and was admitted to Kwong Wah Hospital and had 8 stitches wound closure under local anesthetics. No x-ray was performed at that time. According to her history she had second operation

performed 6 months later on 19th July 2017 under local anesthetics to remove residual F.B. and granuloma on the right 5th finger. The tourniquet had been applied for 1 hour and when the tourniquet was removed she experienced right shoulder pain and there were bruises and hematoma in the shoulder area. The stitches were removed after 14 days but she complained of pins and needle in the right arm and cannot grasp object properly. She had been followed up by the orthopaedic OPD and she had regular physiotherapy and occupational therapy which finished on 6th April 2018...

At the consultation her right arm could not [reach] to the top of head and there was muscle wasting on the posterior part of shoulder muscle. The scar in the right 5th finger was healed but she could not grasp fully in the hand.

I had explained to her the weakness in the shoulder could be due to nerve compressive damage during the second operation. I had offered to refer her to neurology specialist and MRI, X-ray of the right shoulder which she declined and I respected her decision. I had explained to her that she needed regular arm exercise at home to prevent muscle contracture and the process of nerve regeneration might take long time to heal.

I have prescribed muscle relaxant Diazepam 2mg tds, Bromelain 100mg tds, Ponstan 500mg tds and Analgesic balm to apply locally for pain relief as required.

I also prescribed multivitamin tablets daily to take for 1 month to facilitate nerve growth and advised that she needed shoulder and arm exercise at home regularly. Her condition at that time was not safe to resume duty as a waitress...

A diagnosis of injury to the 5th right finger and right shoulder was given

She had been attended my clinic for progress of her condition and she was unable to return to work...

... As for sick leave, it is our professional duty to grant patient sick leave for them to make proper recovery. As she was waiting the legal proceedings of employee compensation claims, she was advised by her lawyer that her sick leave could not be disconnected while waiting the proceeding which could take months or years. She had not been completely recovered to resume duty and that was why she came to my clinic for medications and sick leave certificates. She was entitled to see other doctor but she found I am a caring doctor and easy to communicate and that

was why she paid regular visits. Over the 6 months period her condition had improved slowly.

I have been running this clinic as General Practitioner in the local area for years. I did my medical training in UK and I had A/E and orthopaedic experience in UK...”

8. Copies of the Defendant’s hand written consultation records for the period from 16 May 2018 to 16 December 2018 were placed before us by the Legal Officer for our consideration.

Burden and Standard of Proof

9. 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.
10. There is no doubt that the allegation made 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 disciplinary charge against him carefully.

Findings of the Inquiry Panel

11. The Legal Officer did not call any factual witness in this inquiry and relied solely upon the evidence of the Secretary’s expert witness, Dr LUNG, a specialist in orthopaedic surgery.
12. In Hong Kong, there is no guideline requiring an expert witness to examine a patient when preparing a forensic report. But according to the British Medical Association Expert Witness Guidance October 2007, *“the expert witness provides an opinion on the facts of the case, either as provided in written form, or based on the expert doctor’s own examination of the patient...”*

13. In this case, Dr LUNG did not examine the Patient before preparing his expert report dated 6 May 2021. Instead Dr LUNG relied upon the factual account given by the Defendant and the consultation notes supplied in his submission to the PIC.
14. We need to remind ourselves that the Defendant is charged with issuing sick leave certificates to the Patient “*without reasonable and/or proper justifications*”. In this connection, it is evident to us from reading the subject sick leave certificates that the Patient was stated to be “*suffering from injury to (right) hand and (right) shoulder due to accident*”.
15. We agree with Dr LUNG, the Secretary’s expert that there was nothing in the Defendant’s PIC submission and his consultation notes to support the statement that the Patient’s right shoulder problem was “*due to accident*”. On this ground, we are satisfied on the evidence before us that the subject sick leaves were issued to the Patient for a continuous period from 17 May 2018 to 16 January 2019 without reasonable and proper justifications.
16. Further or alternatively, once the Patient had refused to take the Defendant’s advice for neurological referral and X-ray and MRI investigation, it would not be in the best interest to the Patient for the Defendant to issue her with further sick leaves after the second consultation on 15 June 2018. It is particularly true because the Patient did not show significant progress after the first month of treatment by medications. Viewed from this perspective, issuance of sick leave certificates for a continuous period after 15 June 2018 was without reasonable and/or proper justifications.
17. For these reasons, we are satisfied on the evidence before us that the issuance of the subject sick leave certificates for a continuous period to the Patient for a continuous period from 17 May 2018 to 16 January 2019 without reasonable and/or proper justifications. Accordingly, we find the Defendant guilty of the disciplinary charge against him.

Sentencing

18. The Defendant has two previous disciplinary records.
19. The Defendant was found guilty after due inquiry on 11 November 2020 for issuing to his patient an attendance record for insurance claim and his name was ordered to

be removed from the General Register (“GR”) for a period of 1 month with suspension for 12 months. The Defendant was found guilty of professional misconduct because he allowed his patient to sign on a consultation voucher or attendance record for the day following the consultation in order to facilitate the latter in making her insurance claim.

20. The Defendant was also found guilty after due inquiry on 4 June 2021 in respect of his criminal conviction for the offence of “*selling drug not of the quality demanded by the purchaser*”, which is an offence punishable with imprisonment, “*contrary to sections 52(1) and 150 of the Public Health and Municipal Services Ordinance, Chapter 132 of the Laws of Hong Kong.*”
21. We are particularly concerned about the manner in which the Defendant issued sick leave certificates and similar documents to his patients. We need to ensure that the Defendant will not commit the same or similar breach in the future.
22. Taking into consideration the nature and gravity of the disciplinary charge for which we have found the Defendant guilty, we order that the Defendant’s name be removed from the General Register for a period of 3 months. We further order that the operation of our removal order be suspended for 36 months.

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