

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr NGAI Peter (倪夢熊醫生) (Reg. No. M03807)

Date of hearing: 11 April 2014 (Day 1) and 10 May 2014 (Day 2)

1. The amended charge against the Defendant, Dr NGAI Peter, is that:

“On or about 2 September 2008, he, being a registered medical practitioner, failed to take steps to rectify the mistake in the issuance of a document of “內地產婦預約分娩證明” (English translation: Confirmation Certificate on Maternity Booking for Mainland Pregnant Mothers) in respect of Madam ■■■■■ (Madam ■■■■■) with the expected date of delivery of 10 April 2009 when he knew or should have known that the expected date of delivery was in or around November 2008.

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

Facts of the case

2. The Defendant was at all material times a registered medical practitioner and his name has been included in the General Register from 1 November 1979 to present. Also, his name has been included in the Specialist Register under the specialty of “Obstetrics and Gynaecology” since 4 March 1998.
3. There is no dispute that a Confirmation Certificate on Maternity Booking for Mainland Pregnant Mothers (“the Certificate”) was issued by Tsuen Wan Adventist Hospital (“the Hospital”) to Madam ■■■■■ upon the presentation of a letter bearing the signature and name chop of the Defendant (“the Letter”) dated 26 August 2008.
4. It is also undisputed that the purpose of the Letter was to reserve a maternity

bed space for Madam ■ whose estimated expected delivery date (“EDD”) was stated in the Letter to be 10 April 2009.

5. The Certificate was required because some time in or around 2007, the Hong Kong Government introduced a booking system whereby no expectant mother from the Mainland at an advanced stage of pregnancy (i.e. 28 weeks gestation or above) could come to Hong Kong to give birth unless she was able to produce a certificate issued by a hospital in Hong Kong confirming that booking had already been made for delivery of her baby.
6. On 2 September 2008, Madam ■ first visited the Defendant’s clinic for antenatal check up. The Defendant performed an ultrasound scan on her and he noted down in the clinical note that she was in 30 weeks gestation. Her EDD was on 6 October 2008. The ultrasound scan indicated that her delivery would be on 9 November 2008.
7. Although the Defendant was well aware that Madam ■’s EDD was wrongly stated in the Letter to be 10 April 2009, he did not inform the Hospital of the mistake in the Letter; nor had he ever asked the Hospital to rectify the mistake by cancelling the Certificate.
8. Eventually, Madam ■ was admitted to the Hospital on 27 October 2008 and her daughter was delivered by the Defendant on the same day. Her daughter developed respiratory distress since birth requiring oxygen support and was transferred to the Neonatal Intensive Care Unit of the Queen Elizabeth Hospital later on the same day. Her daughter’s condition was stabilized after treatment and was discharged home 9 days later.

Burden and Standard of Proof

9. We bear in mind that the burden of proof is always on the Legal Officer 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. It is always a serious matter to accuse a registered medical practitioner of misconduct in a professional respect. We need to look at all the evidence and to consider and determine the charge against him carefully.

Findings of Council

11. No matter how the Letter was issued to Madam ■■■, be it a pure administrative error on the part of the Defendant's nurse or otherwise, the Defendant knew fully well after performing the ultrasound scan on 2 September 2008 that the EDD stated in the Letter was wrong. And yet, he did not inform the Hospital; nor had he ever asked the Hospital to rectify the mistake by cancelling the Certificate.
12. In Hong Kong, hospitals readily accept medical certificates and similar documents from medical practitioners without questioning. Members of the public also rely on the self-discipline of the medical profession in ensuring the accuracy of medical certificates and similar documents. In our view, any medical practitioner who finds out that any certificate or similar document issued by him has contained untrue or misleading information on his patient must take appropriate steps to rectify it.
13. No doubt, the purposes of the booking system introduced by the Government were to ensure limited maternity beds would be fairly distributed and to alleviate the tremendous pressure on neonatal intensive care occasioned by some Mainland expectant mothers who might otherwise come to Hong Kong for delivery without adequate antenatal check-ups.
14. By failing to notify the Hospital of the incorrect EDD in the Letter and to ask the Hospital to rectify the mistake by cancelling the Certificate, the Defendant's conduct has clearly fallen short of the standard expected amongst registered medical practitioners in Hong Kong. We therefore find the Defendant guilty of the amended charge.

Sentencing

15. The Defendant has a clear record.

16. In line with our published policy, we shall give him credit for his full cooperation and frank admission both at the PIC stage and before us today.
17. It is clearly stated in the Code that medical practitioners are expected to exercise due care in issuing medical certificates and similar documents and any medical practitioner who in his professional capacity gives any certificate or similar document containing untrue or misleading information renders himself liable to disciplinary proceedings.
18. This is not a case where a medical practitioner has no choice but to continue to offer medical treatment to his patient e.g. a risk of death or serious harm if this is not continued. The Defendant ought to take appropriate steps to rectify the mistake by cancelling the Certificate.
19. Taking into consideration the nature and gravity of the disciplinary charge and what we heard in mitigation, we order that the Defendant's name be removed from the General Register for 3 months.

Other remarks

20. We note that the Defendant's name is on the Specialist Register under the specialty of "Obstetrics and Gynaecology" and we shall leave it to the Education and Accreditation Committee to decide whether any further action is to be taken.

Prof. Felice LIEH-MAK, GBS, CBE, JP
Temporary Chairman, Medical Council