

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr YIU Wai Chung Michael (姚偉聰醫生) (Reg. No.: M11192)

Date of hearing: 16 August 2016

Present at the hearing

Council Members/Assessors: Prof. Felice LIEH-MAK GBS CBE JP
(Temporary Chairman)
Dr HO Hung-kwong, Duncan
Dr LAM Tzit-yuen, David
Dr LEUNG Chi-chiu
Mr YU Kwok-kuen, Harry
Prof. CHAN Tak-cheung, Anthony
Dr MOK Pik-tim, Francis

Legal Adviser: Mr Edward SHUM

Defence Solicitor representing the Defendant: Dr David KAN of Messrs. Howse
Williams Bowers

Senior Government Counsel representing the Secretary: Mr Mark CHAN

1. The charge against the Defendant, Dr YIU Wai Chung Michael, is :

“That in or about April 2011, he, being a registered medical practitioner, disregarded his professional responsibility to his patient late Madam [REDACTED] (“the Patient”) in that he failed to promptly inform Dr LIU Chi Leung and/or the Patient and/or the Patient’s relatives of finding of pulmonary embolism in the lower division of the left pulmonary artery of the Patient.

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. His name has been included in the General Register from 31 August 1996 to present and his name has been included in the Specialist Register under the specialty of Radiology since 7 July 2004.
3. The Patient, now deceased, had a prior history of liver cyst. She was then 85 years old. On 7 April 2011, the Patient consulted one Dr LIU Chi Leung (“Dr LIU”) for pain and shortness of breath. Upon the referral of Dr LIU, the Patient received CT scanning of the abdomen later the same day at the Defendant’s radiology centre.
4. According to the information on the CT scan request form, the purpose of the CT scanning was to investigate the Patient’s liver cyst. Dr LIU made no request for early CT scanning as a matter of clinical urgency. Nor did Dr LIU indicate that the Patient was suspected of suffering from any chest condition.
5. There is no dispute that upon reviewing the CT scans, the Defendant noted incidental hypodense clot at the left lower division of the Patient’s left pulmonary artery suggesting recent thromboembolic event.
6. According to the Defendant’s submission to the Preliminary Investigation Committee (“PIC”), he made this finding of suspected pulmonary thromboembolism upon his review of the partial image of the Patient’s left lower lung base included in the CT scans. He immediately went to the waiting room of his radiology centre to look for the Patient but was informed by his staff that she had already left. However, his staff confirmed to him that the Patient was fully mobile and able to converse. Also, the Patient did not appear to have any breathing difficulties and/or discomfort when she left his radiology centre.
7. The Defendant attempted to contact Dr LIU with a view to informing him of the suspected pulmonary thromboembolism. However, the Defendant was told that Dr LIU was unavailable because he was at the operating theatre. The Defendant was also subsequently informed that Dr LIU could not be reached through his mobile phone at the time.
8. In the morning of the following day, the Defendant asked his staff to contact Dr LIU by phone again but was later informed that Dr LIU was still unreachable because he was at the operating theatre. There is no dispute that the Defendant did not make further attempt to get hold of Dr LIU. He merely instructed his staff to deliver by hand the CT films together with his finalized report to Dr LIU’s clinic for his early reference.

9. The Defendant also admitted that he failed to promptly inform the Patient and/or her relatives of his finding of suspected pulmonary thromboembolism. Indeed, he made no attempt to contact the Patient and/or her relatives at all.
10. On 11 April 2011, the Patient died from pulmonary thromboembolism at Ruttonjee & Tang Shiu Kin Hospital.

Burden and Standard of Proof

11. 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.
12. 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 a registered medical practitioner of misconduct in a professional respect. Therefore, we need to look at all the evidence and to consider and determine the above disciplinary charge against him carefully.

Findings of the Council

13. Although the Defendant does not challenge the factual particulars of the above disciplinary charge against him, it remains our duty to consider and determine whether he is guilty of misconduct in a professional respect.
14. Pulmonary thromboembolism is a potentially life threatening medical condition which requires urgent medical attention. Indeed, the Defendant was fully aware of this. As a radiologist, the Defendant owed his duty of prompt reporting of potentially life threatening medical condition which required urgent medical attention to the referring doctor. However, despite repeated attempts, Dr LIU still could not be reached, it beheld the Defendant to advise the Patient to seek urgent medical attention.
15. In our view, the Defendant ought to get hold of Dr LIU promptly. He could at least have left a message to Dr LIU's clinic assistant informing Dr LIU of his finding and urging him to call back as a matter of urgency. Given the potentially life threatening medical condition of the Patient, we are taken aback that the Defendant made no further attempt to contact the Patient directly by phone or otherwise after his staff told him that she had already left his radiology centre.

16. In our view, the Defendant's conduct had clearly fallen below the standard reasonably expected of registered medical practitioners in Hong Kong. Accordingly, we find him guilty of the disciplinary charge.

Sentencing

17. The Defendant has a clear disciplinary record.
18. In line with published policy, we shall give him credit for his frank admission in this inquiry and cooperation during the preliminary investigation stage.
19. We bear in mind that the 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 public confidence in the medical profession by upholding the high standards and good reputation of the profession.
20. We are told that the Defendant has since the incident taken a number of remedial measures to ensure that in case unexpected but important or critical radiological findings are noted after imaging, he and/or his staff can get hold of the referring doctor promptly. In case the referring doctor cannot be reached despite repeated attempts, the patient will be directed to seek urgent medical attention from Accident & Emergency Department of public hospitals.
21. We agree that the Defendant has learnt his lesson and the chance of his committing the same or similar breach of duty in the future will be low.
22. Taking into consideration the nature and gravity of the disciplinary charge for which the Defendant is found guilty, we order that a warning letter be served to the Defendant. We further order that our order be published in the Gazette.
23. We wish to emphasize that the Defendant is given such a lenient sentence mainly because we are impressed by the genuine efforts that he has taken after the incident to remedy his shortcomings.

Remarks

24. The Defendant's name is included in the Specialist Register under the specialty of Radiology. We shall leave it to the Education and Accreditation Committee to decide on whether anything may have to be done to his specialist registration.

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