

香港醫務委員會

The Medical Council of Hong Kong

DISCIPLINARY INQUIRY **MEDICAL REGISTRATION ORDINANCE, CAP. 161**

Date of hearing: 2 March 2009, 7 March 2009, 22 June 2009 and 28 August 2009
Defendant: Dr IP Wing Kin (葉榮根醫生)

1. The charges alleged against Dr IP Wing Kin are that:

“On 20 February 2006 he, being a registered medical practitioner:

- (i) improperly or unnecessarily conducted a physical examination of his patient for sexually transmitted diseases when the patient had no symptoms or signs suggestive of any such diseases;
- (ii) improperly or unnecessarily advised the patient to undergo a laboratory test, namely Human Papillomavirus (HPV) DNA PCR-RFLP;
- (iii) charged the patient excessively for the laboratory tests conducted for sexually transmitted diseases.

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

2. Charge (i) has been dismissed for the reason that, after reviewing the evidence provided by the Defence, the Legal Officer decided to withdraw the charge.
3. At the beginning of the inquiry, the Legal Officer applied for an order that the identity of the patient should not be disclosed. The reason for the application was the protection of the patient’s privacy. The Defence Counsel did not object to the application. We granted the application and ordered that the patient’s identity should not be disclosed.
4. The Defendant Doctor exercised his right not to give evidence. We shall not

draw any adverse inference from it.

Facts of case

5. The Defendant Doctor at all material times was and is a registered medical practitioner, with his name also included in the Specialist Register under the Specialty of Dermatology and Venerology.
6. On 19 February 2006, the Patient was seen by a doctor at United Christian Hospital and diagnosed to have Herpes Zoster.
7. On 20 February 2006, the Defendant Doctor saw the Patient in his clinic. The Patient was then 79 year-old. During the consultation with the Defendant Doctor, the Patient revealed that he had 40 odd years of venereal exposure, about 8 or 10 times a year. He claimed that the last occasion was about 2 to 3 years ago.
8. The whole consultation lasted about 30 minutes. The Defendant Doctor made a provisional diagnosis of Herpes Simplex and advised the Patient to have laboratory tests. The Defendant Doctor spent about 7 minutes to take blood sample and to collect specimens by swabs. The tests then ordered were: VDRL, Urinalysis, Gram Stain, Chlamydia DNA, Ureaplasma & Mycoplasma ID & ST, and Human Papillomavirus (“HPV”) DNA PCR-RFLP.
9. These facts are not disputed.

Charge (ii)

10. Having considered the evidence from both sides, we are satisfied that the Defendant Doctor did not improperly or unnecessarily advise the Patient to undergo a laboratory test, namely Human Papillomavirus (HPV) DNA PCR-RFLP. We accept the evidence of Dr. Waugh that in some countries, this test is accepted as a diagnostic test for HPV infection in men. There is evidence that a very small number of doctors in Hong Kong also ordered this test in their clinical practice.

11. We therefore dismiss charge (ii). The reason is laid out in *Cranley v. Medical Board of Western Australia 1990*, “*that in professional conduct case, once evidence disclosed that there was respectable minority view for particular medical treatment it was no part of task of tribunal concerned to determine merits of particular treatment*”.

Charge (iii)

12. The actual fees charged by the laboratories in this case were agreed by both sides.

13. We give a plain and natural meaning to the statements in the receipts issued by the Defendant Doctor dated 20 February 2006 and 22 February 2006. We also give a plain and natural meaning to the itemized Investigation Fee issued by the Defendant Doctor and signed by the Patient’s daughter on 20 February 2006.

14. The plain and natural meaning is that those are the fees charged by the laboratories. This is, in particular, supported by the division in the receipts into two items, i.e. “Consultation, Medication & Treatment” and “Laboratory Tests”.

15. While PathLab Medical Laboratories Ltd. charged a sum of HK\$ 1400, the Defendant Doctor charged the Patient HK\$ 2780. This is in excess of the actual laboratory charge.

16. While GenePro Medical Biothechology Ltd. charged a sum of HK\$ 175, the Defendant Doctor charged the Patient HK\$ 1400. This is in excess of the actual laboratory charge.

17. A doctor shall not receive any rebate from diagnostic laboratories or similar organizations to whom he refers patients. A doctor must be honest and clear in setting out the charges to patients. The differences in charges indicate that the Defendant Doctor has a financial gain from referring the Patient for laboratory tests. This is a rebate in disguise.

18. The Defence Counsel asked us to infer that the differences in the charges included the Defendant Doctor's fee for taking the samples, counselling and explaining the results to the Patient. We see no evidential basis for this inference. There is no reason for us not to adopt the plain and natural meaning of the documents.
19. We are satisfied that the Defendant Doctor charged the Patient excessively for the laboratory tests conducted for sexually transmitted diseases.
20. We are satisfied that the Defendant Doctor's conduct has fallen short of the standard expected amongst registered medical practitioners. We are satisfied that his conduct constitutes professional misconduct. We find him guilty of charge (iii).

Sentencing

21. The Council was informed that there has been a previous disciplinary order made against the Defendant Doctor. We have considered the nature of the previous conviction and come to the conclusion that it is not strictly similar to the present case, although both involve an element of dishonesty.
22. We are of the view that doctors should maintain the trust of their patients and also of the public. In this regard, the doctor must set out his fees in a clear, honest and transparent manner. The fees should reflect the items accurately, and should not include any hidden elements.
23. There was no mitigation of weight. Having regard to the gravity of the charge, we order that the Defendant Doctor be reprimanded. Such decision would be published in the Government of Hong Kong Special Administrative Region Gazette.
24. The Defendant Doctor's name is also included in the Specialist Register. While it is for the Education and Accreditation Committee to consider whether any action should be taken in relation to his specialist registration, we are of the view that the present case does not reflect adversely on his suitability to remain on the Specialist Register under the Specialty of Dermatology and Venerology.

25. We wish to impress upon members of the profession that the doctors' own fees for professional services should be clearly separated from the fees collected on behalf of laboratories for investigations. If the doctor charges fees for his own services in connection with the investigations to be performed by the laboratories, that should be clearly set out and explained to the patient.
26. We are concerned that the Defendant Doctor has apparently been making covert tape recording of consultations with patients. We view this as a very serious matter, and will refer it to the appropriate authority for investigation. For the avoidance of doubt, we have not taken this matter into consideration in reaching our judgment.

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