

香港醫務委員會

The Medical Council of Hong Kong

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Dates of hearing: 24 February 2011 (Day 1), 3 September 2011 (Day 2), 19 November 2011 (Day 3), 7 December 2011 (Day 4)

Defendant: Dr TIO Man Kwun Peter (張民冠醫生) (Reg. No: M10362)

1. The charges alleged against the Defendant, Dr TIO Man Kwun Peter, are that:-

“On divers dates between 7 September 2006 and 7 December 2008, both inclusive, he, being a registered medical practitioner :-

- (1) without proper justification or otherwise improperly issued sick leave certificate undated to his patient Mr. X (“the patient”) for the period between 7 September 2006 and 14 September 2006 with a diagnosis of right elbow injury;
- (2) without proper justification or otherwise improperly issued sick leave certificate undated to the patient for the period between 14 September 2006 and 21 September 2006 with a diagnosis of elbow injury;
- (3) without proper justification or otherwise improperly issued sick leave certificate dated 20 September 2006 to the patient for the period between 20 September 2006 and 28 September 2006 with a diagnosis of elbow pain;
- (4) without proper justification or otherwise improperly issued sick leave certificate undated to the patient for the period between 28 September 2006 and 5 October 2006 with a diagnosis of elbow injury;
- (5) without proper justification or otherwise improperly issued sick leave certificate undated to the patient for the period between 5 October

2006 and 12 October 2006 with a diagnosis of elbow injury;

- (6) without proper justification or otherwise improperly issued sick leave certificate undated to the patient for the period between 12 October 2006 and 19 October 2006 with a diagnosis of right elbow injury;
- (7) without proper justification or otherwise improperly issued sick leave certificate undated to the patient for the period between 19 October 2006 and 26 October 2006 with a diagnosis of right elbow;
- (8) without proper justification or otherwise improperly issued sick leave certificate undated to the patient for the period between 26 October 2006 and 9 November 2006 with a diagnosis of elbow pain;
- (9) without proper justification or otherwise improperly issued sick leave certificate undated to the patient for the period between 9 November 2006 and 23 November 2006 with a diagnosis of right elbow pain;
- (10) without proper justification or otherwise improperly issued sick leave certificate undated to the patient for the period between 23 November 2006 and 7 December 2006 with a diagnosis of right elbow pain;
- (11) without proper justification or otherwise improperly issued sick leave certificate undated to the patient for the period between 7 December 2006 and 21 December 2006 with a diagnosis of right elbow injury;
- (12) without proper justification or otherwise improperly issued sick leave certificate dated 21 December 2006 to the patient for the period between 21 December 2006 and 7 January 2007 with a diagnosis of elbow injury;
- (13) without proper justification or otherwise improperly issued sick leave certificate dated 4 January 2007 to the patient for the period between 4 January 2007 and 18 January 2007 with a diagnosis of right elbow pain;
- (14) without proper justification or otherwise improperly issued sick leave certificate undated to the patient for the period between 18 January 2007 and 1 February 2007 with a diagnosis of elbow pain;

- (15) without proper justification or otherwise improperly issued sick leave certificate undated to the patient for the period between 1 February 2007 and 25 February 2007 with a diagnosis of right elbow pain;
- (16) without proper justification or otherwise improperly issued sick leave certificate undated to the patient for the period between 22 February 2007 and 8 March 2007 with a diagnosis of elbow pain;
- (17) without proper justification or otherwise improperly issued sick leave certificate undated to the patient for the period between 8 March 2007 and 22 March 2007 with a diagnosis of right elbow injury;
- (18) without proper justification or otherwise improperly issued sick leave certificate dated 22 March 2007 to the patient for the period between 22 March 2007 and 12 April 2007 with a diagnosis of right T E;
- (19) without proper justification or otherwise improperly issued sick leave certificate undated to the patient for the period between 12 April 2007 and 26 April 2007 with a diagnosis of right T E;
- (20) without proper justification or otherwise improperly issued sick leave certificate undated to the patient for the period between 26 April 2007 and 10 May 2007 with a diagnosis of left thumb and right elbow pain;
- (21) without proper justification or otherwise improperly issued sick leave certificate undated to the patient for the period between 10 May 2007 and 24 May 2007 with a diagnosis of TE;
- (22) without proper justification or otherwise improperly issued sick leave certificate undated to the patient for the period between 25 May 2007 and 7 June 2007 with a diagnosis of elbow pain;
- (23) without proper justification or otherwise improperly issued sick leave certificate undated to the patient for the period between 7 June 2007 and 21 June 2007 with a diagnosis of right elbow pain;

- (24) without proper justification or otherwise improperly issued sick leave certificate dated 21 June 2007 to the patient for the period between 21 June 2007 and 12 July 2007 with a diagnosis of right TE;
- (25) without proper justification or otherwise improperly issued sick leave certificate undated to the patient for the period between 12 July 2007 and 2 August 2007 with a diagnosis of right TE;
- (26) without proper justification or otherwise improperly issued sick leave certificate undated to the patient for the period between 2 August 2007 and 16 August 2007 with a diagnosis of right TE;
- (27) without proper justification or otherwise improperly issued sick leave certificate undated to the patient for the period between 16 August 2007 and 30 August 2007 with a diagnosis of right TE;
- (28) without proper justification or otherwise improperly issued sick leave certificate dated 30 August 2007 to the patient for the period between 30 August 2007 and 13 September 2007 with a diagnosis of right TE;
- (29) without proper justification or otherwise improperly issued sick leave certificate undated to the patient for the period between 14 September 2007 and 22 October 2007 with a diagnosis of right TE;
- (30) without proper justification or otherwise improperly issued sick leave certificate dated 25 October 2007 to the patient for the period between 23 October 2007 and 31 October 2007 with a diagnosis of right elbow pain;
- (31) without proper justification or otherwise improperly issued sick leave certificate undated to the patient for the period between 1 November 2007 and 15 November 2007 with a diagnosis of right TE;
- (32) without proper justification or otherwise improperly issued sick leave certificate undated to the patient for the period between 15 November 2007 and 29 November 2007 with a diagnosis of right

TE;

- (33) without proper justification or otherwise improperly issued sick leave certificate undated to the patient for the period between 29 November 2007 and 13 December 2007 with a diagnosis of right elbow pain;
- (34) without proper justification or otherwise improperly issued sick leave certificate undated to the patient for the period between 13 December 2007 and 3 January 2008 with a diagnosis of right elbow injury;
- (35) without proper justification or otherwise improperly issued sick leave certificate undated to the patient for the period between 3 January 2008 and 24 January 2008 with a diagnosis of right TE;
- (36) without proper justification or otherwise improperly issued sick leave certificate undated to the patient for the period between 24 January 2008 and 14 February 2008 with a diagnosis of right TE;
- (37) without proper justification or otherwise improperly issued sick leave certificate undated to the patient for the period between 14 February 2008 and 6 March 2008 with a diagnosis of right TE;
- (38) without proper justification or otherwise improperly issued sick leave certificate undated to the patient for the period between 6 March 2008 and 27 March 2008 with a diagnosis of right TE;
- (39) without proper justification or otherwise improperly issued sick leave certificate undated to the patient for the period between 27 March 2008 and 17 April 2008 with a diagnosis of right TE;
- (40) without proper justification or otherwise improperly issued sick leave certificate undated to the patient for the period between 17 April 2008 and 8 May 2008 with a diagnosis of right TE;
- (41) without proper justification or otherwise improperly issued sick leave certificate undated to the patient for the period between 8 May 2008 and 29 May 2008 with a diagnosis of left TE;

- (42) without proper justification or otherwise improperly issued sick leave certificate undated to the patient for the period between 29 May 2008 and 19 June 2008 with a diagnosis of right TE;
- (43) without proper justification or otherwise improperly issued sick leave certificate undated to the patient for the period between 19 June 2008 and 10 July 2008 with a diagnosis of right TE;
- (44) without proper justification or otherwise improperly issued sick leave certificate dated 10 July 2008 to the patient for the period between 10 July 2008 and 31 July 2008 with a diagnosis of right elbow TE;
- (45) without proper justification or otherwise improperly issued sick leave certificate undated to the patient for the period between 31 July 2008 and 28 August 2008 with a diagnosis of right tennis elbow;
- (46) failed to state the dates of consultation and issue on the certificates referred to in (1) to (45) except (3), (12), (13), (18), (24), (28), (30) and (44);
- (47) failed to state whether the patient was fit or unfit for work on the certificates referred to in (1) to (45) except (3), (13), (15) and (30);
- (48) without proper justification or otherwise improperly issued sick leave certificate dated 28 August 2008 to the patient for the period between 28 August 2008 and 18 September 2008 with a diagnosis of right elbow injury;
- (49) without proper justification or otherwise improperly issued sick leave certificate undated to the patient for the period between 18 September 2008 and 2 October 2008 with a diagnosis of right elbow injury;
- (50) without proper justification or otherwise improperly issued sick leave certificate dated 2 October 2008 to the patient for the period between 2 October 2008 and 16 October 2008 with a diagnosis of right elbow injury;

- (51) without proper justification or otherwise improperly issued sick leave certificate dated 16 October 2008 to the patient for the period between 17 October 2008 and 30 October 2008 with a diagnosis of right TE;
- (52) without proper justification or otherwise improperly issued sick leave certificate dated 30 October 2008 to the patient for the period between 30 October 2008 and 13 November 2008 with a diagnosis of right TE due to injury;
- (53) without proper justification or otherwise improperly issued sick leave certificate dated 13 November 2008 to the patient for the period between 13 November 2008 and 30 November 2008 with a diagnosis of right TE;
- (54) without proper justification or otherwise improperly issued sick leave certificate undated to the patient for the period between 27 November 2008 and 7 December 2008 with a diagnosis of right elbow pain injury;
- (55) failed to state the dates of consultation and issue on the certificates for the periods 18 September 2008 to 2 October 2008 and 27 November 2008 to 7 December 2008;
- (56) failed to state whether the patient was fit or unfit for work on the certificates referred to in (48) to (54) above.

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

Facts of the case

- 2. This case is about the propriety of 52 sick leave certificates issued by the Defendant to the same patient. The certificates covered a continuous period of sick leave for 27 months from 7 September 2006 to 7 December 2008.
- 3. On 3 April 2006, the patient began his employment with Hongkong Post of the Government of the Hong Kong SAR. His duty was to perform mail

conveyance. On 2 August 2006, the patient suffered injury to his right elbow in the course of work. After consulting 2 doctors who granted sick leave for the discontinuous periods 2nd to 10th, 12th to 16th and 29th to 28th of August 2006, he consulted the Defendant on 7 September 2006.

4. The Defendant was and is a specialist in Orthopaedics and Traumatology. He made the diagnosis of right elbow injury, and referred the patient to a physiotherapist and issued a sick leave certificate for a week. Thereafter the patient kept returning to the Defendant for follow-up consultation and treatment, and on each consultation the Defendant issued sick leave certificates for periods ranging from 1 to 3 weeks.
5. According to his terms of employment, the patient was required to obtain approval from the Postmaster General for taking up any outside work or employment. Unknown to Hongkong Post and without approval, he had another full time job as a Quality Control Supervisor with a company which we shall refer to as Employer A. His duties involved lifting carcasses of slaughtered pigs weighing over 100 catties.
6. The patient did not reveal his employment with Hongkong Post to the Defendant. He pretended that he was injured in his job with Employer A, and the sick leave certificates would be presented to Employer A. Contrary to what he told the Defendant, the certificates were presented to Hongkong Post.
7. Throughout the 27 months of sick leave from Hongkong Post, the patient continued to work with Employer A and did not take a single day of sick leave. When asked how he could cope with the heavy work with the injury, he said that other staff helped him and he did not move his right hand.
8. Two years later on 28 August 2008 when he asked the Defendant to issue a medical report for his employee compensation claim against Hongkong Post, the patient revealed to the Defendant his employment with Hongkong Post and that he had been presenting the sick leave certificates to Hongkong Post. With this knowledge, the Defendant continued to issue 7 further sick leave certificates to the patient until 27 November 2008.

Analysis and assessment of evidence

9. The charges are in 3 categories:-
- (a) issuing sick leave certificates without proper justification or otherwise improperly;
 - (b) failure to state the date of consultation and the date of issue on the sick leave certificates;
 - (c) failure to state whether the patient was fit or unfit for work on sick leave certificates.
10. It is admitted that all sick leave certificates in question were issued by the Defendant. The allegations in respect of category (b) and (c) charges are also admitted.
11. The questions for us are:-
- (i) In respect of category (a) charges, whether it was justified and proper to issue the certificates?
 - (ii) In respect of category (b) charges, whether issuing the certificates without the dates of consultation and the dates of issue constitutes professional misconduct?
 - (iii) In respect of category (c) charges, whether issuing the certificates without stating whether the patient was unfit for work constitutes professional misconduct?
12. We shall deal with category (b) and (c) charges first. These charges relate to only the manner in which the sick leave certificates were issued, and do not depend on the evidence of the Defendant, the patient and the experts.

Category (b) charges (i.e. Charges 46 and 55)

13. Charge (46) covers 41 sick leave certificates. Charge (55) covers 2 sick leave certificates. On each of these certificates, the date of issue of the

certificate and the date of consultation based on which sick leave was recommended were missing.

14. Paragraph 3.1 of the Professional Code and Conduct (November 2000 version) provided that doctors were expected to exercise care in issuing medical reports and certificates, and to include the date of consultation where required.
15. In December 2007, section 26.2 of the Code of Professional Conduct which made specific provisions on sick leaves was promulgated. Section 26.2 provides that “*A sick leave certificate can only be issued after proper medical consultation of the patient by the doctor. The date of consultation and the date of issue must be truly stated in the certificate, including a certificate recommending retrospective sick leave.*” From that point onwards, it was even clearer to doctors that the date of consultation and the date of issue of the certificate must be stated.
16. Sick leave certificates issued by doctors are given statutory recognition under the Employment Ordinance, Chapter 57, Laws of Hong Kong. A sick leave certificate issued by a doctor is binding on the employer of the patient for the purpose of payment of sickness allowance. It is an important document which must be issued with proper medical reasons. The necessary information must be carefully and truly stated on the certificate.
17. The sick leave certificates in question were in a pre-printed form with blanks to be filled in for various items. Of the 52 certificate issued by the Defendant to the patient, the date of issue was stated in 9 certificates only. As the date of consultation was pre-printed as the date of issue of the certificate, for the 43 certificates with no date of issue it follows that the date of consultation was also missing.
18. The date of issue and the date of consultation are reference points for checking the provenance of the certificate if required. In the absence of such dates, it may be difficult to verify the truth of the certificate thus leaving room for manipulation by some unscrupulous employees and doctors. Failure to insert such dates also reflects that the doctor in issuing the certificate has not exercised proper care as required.
19. We are satisfied that the Defendant’s conduct in failing to state the date of consultation and the date of issue of each of the 43 certificates in question is

below the standard expected amongst registered medical practitioners. Such conduct constitutes professional misconduct. We find him guilty of charges (46) and (55).

Category (c) charges (i.e. Charges 47 and 56)

20. Charge (47) covers 41 sick leave certificates. Charge (56) covers 7 sick leave certificates.
21. A sick leave certificate must certify that the patient is unfit to work on the days of sick leave recommended. Otherwise, it defeats the purpose of the certificate, as a certificate which does not certify that the patient is unfit for work is of no value.
22. We note that the pre-printed form bears the heading in capital letters "SICK LEAVE CERTIFICATE", which made clear the nature of the certificate. In the body of the form, there is an item "He/she is fit/unfit for work on/from _____ He/she will be fit to resume duty on _____". All that is required is for the doctor to cross out either "fit" or "unfit".
23. The design of the form is somehow perplexing, as the word "fit" plays no part in a sick leave certificate. If a patient is fit for work, there is no reason for a sick leave certificate to be issued. A doctor issuing a sick leave certificate naturally means that the patient is unfit for work, and by the heading such meaning is made obvious to the employer. There will be no confusion or misunderstanding.
24. While the Defendant should have been more careful and should have crossed out the word "fit" in the certificates in question, we are of the view that his failure to do so would not cause any confusion or misunderstanding that the patient might be fit for work. We find him not guilty of charges (47) and (56).

Category (a) charges (i.e. Charges 1-45 and 48-54)

25. The charges in category (a) cover 52 sick leave certificates.

26. In deciding on whether these certificates were justified and proper, we have to consider the presenting symptoms of the patient, the nature of the patient's work which the Defendant was given to understand, the diagnoses made by the Defendant, the treatments provided by the Defendant, and the progress of the patient's recovery having regard to the fact that according to the Defendant's belief the patient had not been working during the days of sick leave.
27. We warn ourselves of the need for caution in assessing the evidence of the patient, as he has admitted that he was dishonest in that he had been lying to the Defendant about his work and the use of the certificates for 2 years, and he only revealed his double employment to the Defendant when he had to ask for a medical report for the employee compensation claim.
28. After the patient had told the Defendant about his lies and his double employment, there was every reason for the Defendant to be more critical of what the patient told him. He should be more alert to the possibility of malingering, and review carefully whether continued sick leave would be justified.
29. Sick leave certificates should be issued on the basis of clinical judgment. The nature of the patient's work is directly relevant to whether the patient is fit for work.
30. Mutual trust between doctors and patients is an important basis for proper delivery of medical services. A doctor should proceed on the basis of the information available to him, which often comes from the patient. A doctor should not be required to be sceptical of what the patient says, unless the circumstances cause the doctor to doubt the truth of the patient's words and to verify the information from other sources.
31. It is highly regrettable that the patient in this case has abused the doctor's trust. We condemn such irresponsible and dishonest conduct. Nevertheless, we cannot blame the Defendant for falling victim to the patient's deceit. We must objectively assess whether the Defendant had issued the sick leave certificates in good faith and according to the medical condition of the patient.
32. We have heard expert evidence from both sides. Both experts agree, except for a few certificates issued in the early stage, that the sick leave certificates were justifiable. They are of the opinion that some orthopaedic cases are

chronic. Persistence of symptoms for years can occur, although such cases are in the minority.

33. We have particular regard to the fact that the patient's injury has been assessed twice by two separate Medical Assessment Boards which consisted of registered medical practitioners. Both Boards came to the conclusion that the sick leave covered by the certificates in question was necessary.
34. The Defendant had suggested various treatment modalities for the patient, including debridement and referring him to a pain clinic. He had given various treatments including injection, physiotherapy, and extra-corporeal shock wave treatment. He had made various efforts to identify the problem by ordering investigations including MRI and nerve conduction tests.
35. He had also advised the patient to change to a job with light duties. However, the patient refused to change job, and it was not for the Defendant to stop recommending sick leave if it was medically justified.
36. We see no evidence of symptom fabrication or exaggeration by the patient. Although the patient is a dishonest person, we note that he has separately sought treatment from Chinese medicine practitioners for his elbow injury and underwent painful treatment procedures (i.e. extra-corporeal shock wave). This is consistent with his elbow pain being genuine.
37. While the Legal Officer's expert was more critical of the need for continued sick leave and was of the view that more actions should have been taken to prevent abuse of the sick leave certificates, particularly in view of the prolonged period of non-response to various treatment modalities, we cannot say that the sick leave certificates issued by the Defendant were improper.
38. We find the Defendant not guilty of charges (1) to (45) and charges (48) to (54).

Sentencing

39. The defendant has a clear record. He has also performed pro bono medical services.

40. The Defendant has honestly admitted the faults in respect of the 43 sick leave certificates during both preliminary investigation and this inquiry. We shall give him credit in accordance with our published policy.
41. We note that the Defendant has amended the pre-printed form to ensure that all future sick leave certificates will have the date of issue automatically imprinted. Nevertheless, we wish to remind him that he should still check each certificate before issue to ensure that the date is not wrongly printed.
42. We are of the view that the likelihood of re-offending is low. Although many certificates are involved in the present case, his carelessness has not caused any prejudice to any person.
43. We consider that a warning letter is appropriate, and we so order. The order shall be published in the Gazette.

Other remarks

44. There are three matters on which we wish to make some comments.

Amendment of charges

45. It has been argued that the charges can be amended after the opening of the inquiry. As indicated in our ruling, we are bound by section 16(2) of the Medical Practitioners (Registration and Disciplinary Procedure) Regulation which permits amendment to the charges only before the opening of the inquiry. Until and unless the Regulation is amended, there is no jurisdiction to amend after the opening of the inquiry. That is the reason why we have emphasized repeatedly the importance of framing the charges carefully at the very beginning.
46. Badly drafted charges have been criticized by the Court as early as 1975, as illustrated by the judgment of the Court of Appeal in *Chan King Pan v. The Medical Council of Hong Kong* CACV 13/1973. Those responsible for drafting the charges must exercise particular care in future cases.

47. Nevertheless, we must point out that where a charge contains redundant words or mere surplusage (i.e. unnecessary allegations with no effect on the offence charged), it is open for this Council to ignore the redundant words.

Reporting wrongful acts of patients

48. Doctors owe a duty of confidence to patients. They are not required to report patient's wrongful act to the employers, unless there is evidence showing criminal offences or where required by law.

Anonymity order

49. We have made an order that the identities of the patient and his other employer (i.e. employer A) should not be disclosed in the inquiry. This order was made for the reason that the Defendant might be deprived a fair hearing in that the patient might be unwilling to give truthful evidence if his identity was to be disclosed.
50. Other persons may take legal actions in respect of the dishonest scheme by the patient. We must not allow our order to frustrate such legal actions by prohibiting other persons from revealing the identity of the patient or Employer A. Otherwise, we would be prejudicing the legal rights of other persons. That is not our intention. We shall not assist anyone to cover up his wrongful act or provide him with a safe haven from the reach of justice.
51. We have to make clear that our order only governs what information should not be revealed in the inquiry, but it has no effect in respect of information which had not emanated from the inquiry. In fact, we have no jurisdiction to govern the flow of information outside the inquiry.

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