

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

1st Defendant: Dr MA Cheuk Hong Kenneth (馬焯康醫生) (Reg. No.: M04014)
2nd Defendant: Dr BAN Chung Man John (班仲民醫生) (Reg. No.: M10383)
3rd Defendant: Dr TO Kim Chung (杜劍聰醫生) (Reg. No.: M10423)

Date of hearing: 4 June 2024 (Tuesday)

Present at the hearing

Council Members/Assessors: Dr LUNG David Christopher MH
(Chairperson of the Inquiry Panel)
Dr HO Hung-kwong, Duncan
Dr KWOK Kam-hung
Ms LIU Lai-yun, Amanda
Mr YUEN Hon-lam, Joseph

Legal Adviser: Mr Edward SHUM

Defence Solicitor representing the three Defendants: Mr Chris HOWSE of
Messrs. Howse Williams

Legal Officer representing the Secretary: Ms Queenie NG as instructed by
the Department of Justice

1. The amended charge against the 1st Defendant, Dr MA Cheuk Hong Kenneth, is:

“That he, being a registered medical practitioner, disregarded his professional responsibility to his patient Madam NG Ka Man (“the Patient”), in that on or about 23 December 2014, he failed to conduct a proper abdominal examination for the Patient when the Patient complained of abdominal pain.

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

2. The amended charge against the 2nd Defendant, Dr BAN Chung Man John, is:

“That he, being a registered medical practitioner; disregarded his professional responsibility to his patient Madam NG Ka Man (“the Patient”), in that on or about 26 December 2014, he failed to conduct a proper abdominal examination or rectal examination for the Patient when the Patient returned for persistent abdominal pain.

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

3. The amended charge against the 3rd Defendant, Dr TO Kim Chung, is:

“That he, being a registered medical practitioner; disregarded his professional responsibility to his patient Madam NG Ka Man (“the Patient”), in that on or about 28 December 2014, he failed to conduct a proper abdominal examination or rectal examination for the Patient when the Patient returned for persistent abdominal pain.

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

Facts of the case

4. The name of the 1st Defendant was at all material times and still is included in the General Register. His name has been included in the Specialist Register under the specialty of Paediatrics since 4 March 1998.
5. The name of the 2nd Defendant has been included in the General Register from 3 November 1995 to the present. His name has been included in the Specialist Register under the specialty of Orthopaedics & Traumatology since 7 January 2009.
6. The name of the 3rd Defendant has been included in the General Register from 2 January 1996 to the present. His name has been included in the Specialist Register under the specialty of Urology since 1 March 2006.
7. Briefly stated, accompanied by her mother, the Patient attended the Out-Patient

Department of St. Teresa's Hospital ("STH") in the evening of 23 December 2014 with abdominal pain and fever.

8. According to medical records obtained from STH, the Patient was seen by the 1st Defendant, who was then a Resident Paediatrics Specialist of STH, later at around 22:32 hours.
9. According to the medical records obtained from STH, the 1st Defendant put down in his consultation summary the diagnosis of "*ABDOMINAL PAIN*". However, the 1st Defendant also put down in his consultation summary that "*[he] explained to mom uti (urinary tract infection) ddx (differential diagnosis) left renal angle tender [and] advised [the Patient] to come back if symptom worsen or fever increased*".
10. An intramuscular injection of Buscopan 15mg was given to the Patient before discharging her home with oral medications. Also, the Patient was advised by the 1st Defendant to undergo a urine culture test and to come back for the report later.
11. However, accompanied by her mother, the Patient attended the Out-Patient Department of STH again in the evening of 26 December 2014 owing to persistent abdominal pain.
12. According to the medical records obtained from STH, the Patient was seen by the 2nd Defendant, who was then a Resident Specialist of STH, at around 22:02 hours.
13. It is the unchallenged evidence of the Patient that despite her complaint of persistent abdominal pain, the 2nd Defendant did not carry out any abdominal examination for her.
14. And according to the medical records obtained from STH, the 2nd Defendant merely put down in his consultation summary the diagnosis of "*GASTROENTERITIS*" and repeated the prescription of medications, which were given by the 1st Defendant to the Patient on 23 December 2014.
15. Accompanied by her mother, the Patient returned to STH on 28 December 2014 and saw the 1st Defendant. The 1st Defendant told them that the urine culture report was negative for infection.

16. There is no dispute that accompanied by her mother, the Patient returned to STH and was seen by the 3rd Defendant later in the same day.
17. According to the medical records obtained from STH, the 3rd Defendant put down in his consultation summary the diagnosis of “*UTI (Urinary Tract Infection) / GE (Gastroenteritis)*” and he also put down:-
- “ ...
- Symptoms: first visit on 23 Dec 2014 for lower abdominal pain with difficulty in voiding and haematuria*
- ...
- persistent lower abdominal pain with haematuria*
- no dysuria*
- also watery diarrhoea+*
- no vomiting*
- P/E fever+*
- abdomen soft*
- no palpable bladder*
- no loin tenderness...”*
18. The Patient was discharged home with a course of oral antibiotics for 5 days.
19. After finishing the oral antibiotics, the Patient returned to see the 3rd Defendant on 3 January 2015, complaining of persistent symptoms of fever and abdominal pain. A pelvic mass was noticed upon a rectal examination. Pelvic abscess was suspected and emergency CT scan was done. A Resident Gynaecologist of STH was also consulted. The Patient was later informed of the plan of management to follow and her family decided to ask for referral to public hospital due to financial considerations.
20. On 4 January 2015, the Patient was discharged from STH. She was admitted to the Department of Obstetrics & Gynaecology of the Queen Elizabeth Hospital in the same day. Emergency operation was performed later in the evening during which it was found that the pelvic abscess was the result of perforated appendicitis with abscess formation. The Department of Surgery took over the operation and appendectomy was performed after drainage of the abscess and freeing of the adhesions and peritoneal lavage.

21. The Patient's mother later lodged this complaint against the 1st, 2nd and 3rd Defendants with the Medical Council.

Burden and Standard of Proof

22. We bear in mind that the burden of proof is always on the Legal Officer and the Defendants do not have to prove their 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.
23. There is no doubt that the allegations against the Defendants here are serious ones. Indeed, it is always a serious matter to accuse any registered medical practitioner of misconduct in a professional respect. Therefore, we need to look at all the evidence and to consider and determine the respective disciplinary charge(s) against the 1st, 2nd and 3rd Defendants separately and carefully.

Findings of the Inquiry Panel

1st Defendant (Dr MA Cheuk Hong Kenneth)

24. The 1st Defendant accepts the fact that he failed to conduct a proper abdominal examination for the Patient when the Patient complained of abdominal pain.
25. Abdominal pain is a common but non-specific symptom. This is also why proper abdominal examination of patients presenting with abdominal pain is essential in our view for identifying cause(s) and in coming up with the correct diagnose(s).
26. There is no dispute that one of the Patient's chief complaints during the consultation on 23 December 2014 was "*abdominal pain*". It is also the unchallenged evidence of the Patient that "*[d]uring the examination, [she] was sitting on a wheelchair. [The 1st Defendant] only pressed [her] front and rear abdomen once or twice using both hands at the same time gently. [The 1st Defendant] never asked [her] to lean back at a 45-degree angle to conduct the abdominal examination, nor did he ask [her] to lie on the bed to conduct the abdominal examination*".

27. In our view, the 1st Defendant's abdominal examination for the Patient in a sitting position during the consultation on 23 December 2014 was improper because this would run the risk of inaccurate or distorted findings.
28. In failing to conduct a proper abdominal examination for the Patient when she complained of abdominal pain during the consultation on 23 December 2014, the 1st Defendant had in our view by his conduct fallen below the standards expected of registered medical practitioners in Hong Kong. Accordingly, we find the 1st Defendant guilty of misconduct in a professional respect as charged.

2nd Defendant (Dr BAN Chung Man John)

29. The 2nd Defendant accepts the fact that he failed to conduct a proper abdominal examination for the Patient when the Patient returned for persistent abdominal pain. It remains for us to consider and determine on all the evidence before us whether he had by his conduct in this case fallen below the standards expected of registered medical practitioners in Hong Kong.
30. It is the unchallenged evidence of the Patient that the 2nd Defendant did not perform any abdominal examination for her.
31. It is also the unchallenged expert opinion of Dr HUI, which we accept, that:-

“... Urinalysis sent by [the 1st Defendant] to rule out UTI causing abdominal pain came back negative for infection. The clinical notes of [the 2nd Defendant] from STH on that visit were very brief, without mentioning any abdominal examination, or salient negative findings. This being a second visit by the Patient,..., with the history of persistent abdominal pain since 23 December 2014, and UTI unlikely after the urine test, a more detailed history and a detailed abdominal examination should have been warranted to rule out other causes for acute abdomen... Without a detailed abdominal examination, and taking a colleague's earlier history and similar treatment verbatim, without any personal input, leaves a lot to be desired...”

32. In failing to conduct a proper abdominal examination for the Patient when she returned for persistent abdominal pain on 26 December 2014, the 2nd Defendant had in our view by his conduct fallen below the standards expected of registered medical practitioners in Hong Kong. Accordingly, we find the

2nd Defendant guilty of misconduct in a professional respect as charged.

3rd Defendant (Dr TO Kim Chung)

33. The 3rd Defendant accepts the fact that he failed to conduct a proper abdominal examination for the Patient when the Patient returned for persistent abdominal pain. It remains for us to consider and determine on all the evidence before us whether he had by his conduct in this case fallen below the standards expected of registered medical practitioners in Hong Kong.
34. There is no dispute that one of the Patient's chief complaints during the consultation on 28 December 2014 was "*abdominal pain*". It is also the unchallenged evidence of the Patient that "*[the 3rd Defendant] never asked [her] to lean back at a 45-degree angle to conduct the abdominal examination when [she] was sitting, nor did he ask [her] to lie on the bed to conduct the abdominal examination*".
35. In our view, the 3rd Defendant's abdominal examination for the Patient in a sitting position during the consultation on 28 December 2014 was improper because this would run the risk of inaccurate or distorted findings.
36. Also, it is the unchallenged expert opinion of Dr HUI, which we accept, that:-
- "[The 3rd Defendant] saw the Patient for the first time on 28 December 2014... with a history of abdominal pain persisting since 23 December, and after three separate previous consultations at STH... UTI was ruled out after... urine tests for her at the early date of 24 December 2014... With that background in mind, and a young patient in pain for 6 days, [the 3rd Defendant] did not focus on the abdominal complaint...*
- ... Taking into account that the Patient ha[d] the complaint of abdominal pain for 6 days prior to being seen by [the 3rd Defendant], it certainly would warrant more attention and [the 3rd Defendant] should be more vigilant and consider and watch out for other DDXs [differential diagnoses] and/or to conduct rectal examination that [might] give rise to the Patient's current clinical picture and presentation".*
37. In failing to conduct a proper abdominal examination for the Patient when she returned for persistent abdominal pain on 28 December 2014, the 3rd Defendant

had in our view by his conduct fallen below the standards expected of registered medical practitioners in Hong Kong. Accordingly, we find the 3rd Defendant guilty of misconduct in a professional respect as charged.

Sentencing

38. We bear in mind that the purpose of a disciplinary order is not to punish the Defendants but to protect the public from persons who are unfit to practise medicine and to maintain public confidence in the medical profession by upholding its high standards and good reputation.
39. In line with our published policy, we shall give the Defendants credit in sentencing for not contesting the respective amended charge against them.
40. We appreciate that the eventual diagnosis of appendicitis could only be made during the emergency operation at the Queen Elizabeth Hospital. We should not speculate whether a proper abdominal examination by either of the Defendants would make any difference.

1st Defendant (Dr MA Cheuk Hong Kenneth)

41. The 1st Defendant has a clear disciplinary record.
42. We note with agreement the unchallenged expert opinion of Dr HUI that:-

“... but for the wrongly performed abdominal examination on the wheelchair..., [the 1st Defendant] could have said to [have] acted reasonably on this first visit of the Patient”.
43. But then again, the improper manner in which the 1st Defendant conducted the abdominal examination for the Patient reflects in our view his lack of vigilance at the material time.
44. Taking into consideration the nature and gravity of his misconduct and what we have read and heard in mitigation, we order that a warning letter be issued to the 1st Defendant. We further order that our order be published in the Gazette.

2nd Defendant (Dr BAN Chung Man John)

45. The 2nd Defendant has a clear disciplinary record.

46. Despite the Patient's complaint of persistent abdominal pain, the 2nd Defendant failed to conduct proper abdominal examination for the Patient. We are particularly concerned that he merely put down in his consultation the diagnosis of "GASTROENTERITIS" and repeated the medications previously prescribed by the 1st Defendant without making further investigation to identify the underlying cause(s) of the Patient's persistent abdominal pain.
47. Taking into consideration the nature and gravity of his misconduct and what we have read and heard in mitigation, we order that the name of the 2nd Defendant be removed from the General Register for a period of 1 month. We further order that the operation for the removal order be suspended for 6 months.

3rd Defendant (Dr TO Kim Chung)

48. The 3rd Defendant has a clear disciplinary record.
49. We accept that the 3rd Defendant had physically examined the Patient. We are however particularly concerned that despite the Patient's complaint of persistent abdominal pain for almost a week, the 3rd Defendant failed to conduct proper abdominal examination for the Patient. This reflected his lack of vigilance at the material time.
50. Taking into consideration the nature and gravity of his misconduct and what we have read and heard in mitigation, we order that a warning letter be issued to the 3rd Defendant. We further order that our order be published in the Gazette.

Remark

51. The names of the 1st, 2nd and 3rd Defendants are included in the Specialist Register under the respective Specialties of Paediatrics, Orthopaedics & Traumatology and Urology. It is for the Education and Accreditation Committee to consider whether any actions should be taken in respect of their specialist registrations.

Dr LUNG David Christopher MH
Chairperson of the Inquiry Panel
The Medical Council of Hong Kong