

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

1st Defendant: Dr YIP Wai Lun (葉煒麟醫生) (Reg. No.: M12053)
2nd Defendant: Dr CHAN Kin Chun (陳健進醫生) (Reg. No.: M11016)

Date of hearing: 13 August 2024 (Tuesday)

Present at the hearing

Council Members/Assessors: Prof. FOK Tai-fai, SBS, JP
(Chairperson of the Inquiry Panel)
Dr Pierre CHAN
Dr HSU Yung-chak
Mr LAM Chi-yau
Mr LI Chun-tak

Legal Adviser: Mr Edward SHUM

Defence Solicitor representing the 1st Defendant: Mr David KAN of
Messrs. Howse Williams

Defence Counsel representing the 2nd Defendant: Ms Ann LUI as instructed
by Messrs. Kennedys

Senior Government Counsel representing the Secretary: Miss Esther CHAN

1. The charge against the 1st Defendant, Dr YIP Wai Lun, is:

“That in or about October 2017, he, being a registered medical practitioner, disregarded his professional responsibility to his patient [REDACTED] (“the Patient”), in that he made a transcription error in the histopathology report dated 31 October

2017, in which the word “hyperplasia” under “Diagnosis” should be written as “dysplasia”.

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

2. The charges against the 2nd Defendant, Dr CHAN Kin Chun, are:

“That in or about 2017, he, being a registered medical practitioner, disregarded his professional responsibility to his patient [REDACTED] [REDACTED] (“the Patient”), in that he:

- (a) failed to detect the inconsistency between the term “dysplasia” under the section “Microscopic Description” and the term “hyperplasia” under the section “Diagnosis” and/or the inconsistency between the terms “hyperplasia” and “stromal invasion” under the section “Diagnosis” in the histopathology report dated 31 October 2017 prepared by Dr YIP Wai Lun (“the Report”), causing delay in diagnosis of the Patient’s malignant lesion; and*
- (b) failed to arrange a follow-up appointment and/or properly explain the Report findings to the Patient after receipt of the Report on 1 November 2017.*

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

Facts of the case

- 3. The name of the 1st Defendant has been included in the General Register from 16 July 1998 to the present. His name has been included in the Specialist Register under the specialty of Pathology since 2 February 2005.
- 4. The name of the 2nd Defendant has been included in the General Register from 31 August 1996 to the present. His name has been included in the Specialist Register under the specialty of General Surgery since 3 May 2006.

5. The Patient's daughter lodged this complaint against the 1st and 2nd Defendants with the Secretary of the Medical Council on 16 October 2018.
6. Briefly stated, the Patient first consulted the 2nd Defendant at the Outpatient Department of the Baptist Hospital ("BH") on 4 August 2015 complaining of epigastric distention, bloating and right upper quadrant pain for one week.
7. On 5 August 2015, the 2nd Defendant performed an oesophagogastroduodenoscopy ("OGD") on the Patient at BH; and mild gastritis and a 3 mm cardia polyp were found.
8. The Patient subsequently returned to see the 2nd Defendant on 18 August 2015; and was told that (i) the histopathology report confirmed that the cardia polyp was consistent with fundic gland polyp; (ii) blood tests were normal; and (iii) no abnormality was detected from abdominal CT scan.
9. On 23 October 2017, the Patient consulted the 2nd Defendant at his clinic, complaining again of epigastric distention and bloating. The Patient also complained of having a "holding up" sensation i.e. a feeling that something was sticking before it could be digested.
10. Upon the recommendation of the 2nd Defendant, the Patient was admitted to BH on 29 October 2017 for a colonoscopy and OGD to be performed on the following day.
11. The subsequent gastroscopy report showed no abnormal findings except for gastritis and bulging measuring slightly under 1 cm at the oesophagogastric junction ("OGJ"). And the colonoscopy only showed internal haemorrhoids. The 2nd Defendant verbally explained to the Patient these findings and discharged her home with the advice that she needed not return for follow up unless her symptoms persisted.
12. Meanwhile, specimens from cardia biopsy and antral biopsy taken during OGD were sent for histopathology reporting.

13. It is not disputed that the 1st Defendant noted in his histopathology report dated 31 October 2017 the following in respect of the specimen from cardia biopsy:-

“Microscopic Description

1. Section shows multiple pieces of cardiac and gastro-oesophageal junction mucosa. They show mild activity and mild chronic inflammation. In one of the tissue pieces, there are branched and closely packed glands. These glands are lined by columnar-shaped cells with moderate to marked degree of nuclear pleomorphism. Many mitotic figures are found. In places, these glands are fused with adjacent mildly inflamed stroma. Features are those of severe glandular dysplasia with foci suspicious of stromal invasion...

Diagnosis

- 1. Gastric cardia biopsy*
- Severe glandular hyperplasia with foci suspicious of stromal invasion...”

14. It is unchallenged evidence of the Patient that she experienced dysphagia again in July 2018. The Patient then consulted one Dr TUNG, who performed OGD on her on 23 July 2018 and found a suspected mass in her cardia.
15. Upon the referral of Dr TUNG, the Patient consulted one Dr LEUNG of BH, who performed an OGD and endoscopic ultrasonography (“EUS”) for her on 6 August 2018. Dr LEUNG found on OGD abnormal mucosa and bulging of about 2 cm at her cardia just below the OGJ. Specimens from cardia biopsy taken during OGD were sent for histopathology reporting. Dr LEUNG also found on EUS a tumor mass at her cardia measuring about 3.1 cm x 2 cm with suspected invasion through gastric wall serosa. Specimen taken during the EUS was sent for cytology examination.
16. In his histopathology report dated 6 August 2018, the 1st Defendant noted under the section “*Microscopic Description*” that the specimen from stomach tumour FNA [Fine Needle Aspiration] showed features of

“moderately differentiated adenocarcinoma”; and that the findings on the Stomach tumour biopsy was *“[c]onsistent with minimal involvement by adenocarcinoma”*.

17. In his cytology report dated 6 August 2018, the 1st Defendant further noted under the section *“Microscopic Description”* that:-

“The gastric tumour aspirate shows a few clusters of suspicious cells. These suspicious cells display moderately pleomorphic oval nuclei, small distinct nucleoli and moderate amount of cytoplasm. Occasional mitotic figures are seen. Coupled with the findings in the gastric FNA histological specimen..., features are compatible with adenocarcinoma.”

18. It is not disputed that on 6 August 2018, the 1st Defendant amended his histopathology report dated 31 October 2017 by replacing the word *“hyperplasia”* with *“dysplasia”* in the section of *“Diagnosis”*.

19. It is also the unchallenged evidence of the Patient that she did not know that the 1st Defendant’s histopathology report dated 31 October 2017 was with the 2nd Defendant’s clinic until sometime on or around 6 August 2018 when her husband received a phone call from the 2nd Defendant’s clinic assistant asking her to return to see the 2nd Defendant for there was something unusual with the histopathology report.

20. Upon the referral of Dr LEUNG, the Patient then consulted one Professor LAW of the Queen Mary Hospital, who performed a proximal radical gastrectomy with double reconstruction for her on 20 August 2018. The Patient had an uneventful recovery and was discharged home on 28 August 2018. The Patient was subsequently referred to an oncologist for postoperative adjuvant chemotherapy.

Burden and Standard of Proof

21. 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.

22. 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 and 2nd Defendants separately and carefully.

Findings of the Inquiry Panel

23. The 1st and 2nd Defendants admit the factual particulars of the respective disciplinary charge against them; and indicate through their legal representatives that they are not going to contest the issue of professional misconduct. It remains for us to consider and determine on all the evidence whether they have been guilty of misconduct in a professional respect.

1st Defendant (Dr YIP Wai Lun)

24. The 1st Defendant admits that he made a transcription error in the histopathology report dated 31 October 2017, in which the keyword “*hyperplasia*” under the section “*Diagnosis*” should be written as “*dysplasia*”.
25. We appreciate that the use of the word “*hyperplasia*” was a transcription error on the part of the 1st Defendant. But then again, the results of microscopic examination clearly indicated that the cardia biopsy specimen was suspicious of malignancy; and in our view a specialist in pathology exercising reasonable skill and care in preparing the histopathology report would not commit such a mistake had he proofread the whole text of the one-page report carefully before issuing it.
26. For these reasons, the 1st Defendant has in our view by his conduct in this case fallen below the standard expected of a registered medical practitioner in Hong Kong. Accordingly, we find the 1st Defendant

guilty of misconduct in a professional respect as charged.

2nd Defendant (Dr CHAN Kin Chun)

27. Patients are entitled to, and they often do, rely on doctors to exercise reasonable care and diligence when interpreting the results of pathological investigation of operation specimens and their implications on future treatment plan, if any.
28. In our view, the inconsistency between the use in the 1st Defendant's histopathology report dated 31 October 2017 of the term "*Severe glandular dysplasia*" under the section "*Microscopic Description*" and the term "*Severe glandular hyperplasia*" under the section "*Diagnosis*"; and the inconsistency between the terms "*hyperplasia*" and "*stromal invasion*" under the section "*Diagnosis*" would be obvious to any doctor, who had exercised reasonable care and diligence when going through the whole text of the one page report. This is particularly true when the keyword "*hyperplasia*" was immediately followed by the words "*with foci suspicious of stromal invasion*".
29. It is the unchallenged evidence of the Secretary's expert, Dr WONG, which we accept, that not only did the 2nd Defendant overlooked the significance of the presence of "*stromal invasion*", which suggested "*malignant or cancerous condition*", but also "*he did not insist to find and see the [P]atient to collect and explain the result*".
30. Whilst we agree with Dr WONG that the Patient's "*tumor likely required surgical excision... even [if] it [was] diagnosed in 2017*", the real point in our view is that in failing to detect the inconsistency between the term "*dysplasia*" under the section "*Microscopic Description*" and the term "*hyperplasia*" under the section "*Diagnosis*" and/or the inconsistency between the terms "*hyperplasia*" and "*stromal invasion*" under the section "*Diagnosis*" in the histopathology report dated 31 October 2017 prepared by the 1st Defendant, the 2nd Defendant had caused delay in diagnosis of the Patient's malignant lesion.
31. For these reasons, the 2nd Defendant has in our view by his conduct in this case fallen below the standard expected of registered medical practitioners in Hong Kong. Accordingly, we find the 2nd Defendant

guilty of misconduct in a professional respect as per the disciplinary charge (a) against him.

32. Also, in failing to arrange a follow-up appointment and/or properly explain the 1st Defendant's histopathology report dated 31 October 2017 to the Patient after receipt of the same on 1 November 2017, the 2nd Defendant has again in our view by his conduct in this case fallen below the standard expected of registered medical practitioners in Hong Kong. Accordingly, we also find the 2nd Defendant guilty of misconduct in a professional respect as per the disciplinary charge (b) against him.

Sentencing

33. 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.
34. In line with our published policy, we shall give the Defendants credit in sentencing for their frank admission and cooperation throughout these disciplinary proceedings.

1st Defendant (Dr YIP Wai Lun)

35. The 1st Defendant has a clear disciplinary record.
36. We are told in mitigation that the 1st Defendant has since the incident reviewed his practice and taken remedial measures to prevent any transcription error from happening again. In particular, the 1st Defendant would review at the end of each working day the diagnosis sections of all reports authorized on the day to ensure correctness. In addition, for unexpected pathological findings, the 1st Defendant would inform the referring doctors by telephone to alert them and explain the findings. Furthermore, for other important and significant findings not listed under the section "*Diagnosis*", the 1st Defendant would add a reminder in the histopathology report to remind the referring doctors and to alert them of his findings under the section "*Microscopic Description*".

37. We accept that the 1st Defendant has learned his lesson. Given his acceptance of responsibility at the first opportunity and his insight into his shortcomings and the remedial measures taken by him after the incident, we believe that the chance of the 1st Defendant committing the same or similar breach in the future would be low.
38. Taking into consideration the nature and gravity of the disciplinary charge for which we find the 1st Defendant guilty and what we have read and heard in mitigation, we order that a warning letter be issued to the 1st Defendant; and we further order that our order shall not be published in the Gazette.

2nd Defendant (Dr CHAN Kin Chun)

39. The 2nd Defendant has a clear disciplinary record.
40. In his submission to the Preliminary Investigation Committee through his solicitors' letter dated 25 November 2019, the 2nd Defendant sought to explain that:-

“7. In terms of catching the error of “hyperplasia” which should instead have been written as “dysplasia”, we wish to submit that there was little other indication at the time that the Patient might have had a pre-cancerous condition. There was no significant or material worsening of the Patient’s condition between 2015 and 2017 (and she had in fact experienced symptomatic relief during this period of time), all tests and cancer indicators were negative, and the nodule itself, upon examination by our client, did not have the presentation of a malignant lesion.”

41. The whole point of arranging specimens for histopathology investigation after biopsy was to assist the 2nd Defendant in reaching an early and accurate diagnosis for the Patient. Needless to say, findings of microscopic examination of the specimens would in our view be more accurate than that of visual examination of the excised nodule by the 2nd Defendant’s naked eyes.
42. It is the unchallenged evidence of the Secretary’s expert that the 2nd Defendant overlooked the significance of the presence of “stromal

invasion”; and this had resulted in delay in diagnosis of the Patient’s malignant lesion.

43. Also, we are particularly concerned about the 2nd Defendant’s failure to arrange a follow-up appointment and/or properly explain the findings in the histopathology report to the Patient after receiving the same on 1 November 2017.
44. We are told in mitigation that the 2nd Defendant has updated the policy in relation to handling pathology reports in his clinic. In particular, to ensure all reports are explained to patients, the 2nd Defendant has asked his clinic assistants to input every pathology test or scan ordered for patients into the computer system, which would generate a daily report by close of business every day. Based on the daily report, the 2nd Defendant would instruct his clinic assistants to carry out appropriate follow-up actions. The 2nd Defendant also required his clinic assistants to stamp an action chop on every pathology report or scan report received. The 2nd Defendant would check their contents at least one day prior to the date of the scheduled follow-up consultation; and every patient would be asked to sign on a record sheet confirming receipt of the pathology report or scan report.
45. We wish to remind the 2nd Defendant that the best system of work still requires the vigilance of those who put it into practice.
46. Taking into consideration the nature and gravity of the disciplinary charges for which we find the 2nd Defendant guilty and what we have read and heard in mitigation, we order that:-
 - (i) in respect of disciplinary charge (a) the name of the 2nd Defendant be removed from the General Register for a period of 1 month; and
 - (ii) in respect of disciplinary charge (b) the name of the 2nd Defendant be removed from the General Register for a period of 3 months.

We further order that the removal orders to run concurrently, making a total of 3 months; and be suspended for 24 months.

Remark

47. The names of the 1st Defendant and the 2nd Defendant are included in the Specialist Register under the Specialty of Pathology and General Surgery respectively. It is for the Education and Accreditation Committee to consider whether any action should be taken in respect of their specialist registrations.

Prof. FOK Tai-fai, SBS, JP
Chairperson of the Inquiry Panel
The Medical Council of Hong Kong