Inquiry of the Chiropractors Council
Respondent: Dr. YAM Wai Keung William

Hearing Date: 2 December 2008

1. The Respondent, Dr. YAM Wai Keung William, is charged that:-

   "He, being a registered chiropractor, -
   (a) failed to provide within a reasonable time the medical records of Mr. X ('the patient') despite repeated requests by the patient in October 2006 and January 2007;
   (b) in response to the patient's request for a copy of his medical records, repeatedly demanded payment for a medical report in October 2006, both via the nurse and by way of letter, despite the fact that the patient never asked for a medical report and clarified that he was not asking for a medical report.

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

2. We first set out the facts which are the common ground of both the Legal Officer and the Respondent.

3. The patient received chiropractic treatment from the Respondent from late September to early October in 2006. He then decided to seek treatment from other doctors. On 6 October 2006, he telephoned the Respondent's clinic and requested a copy of the medical notes and records of his illness and treatment. The clinic assistant told the Respondent about the patient's request. The Respondent said that he would not provide the medical records but would provide a medical report upon payment of a fee. When the clinic assistant relayed the Respondent's message to the patient over the telephone, the patient clarified that he did not need the Respondent to compile a medical report and required only a copy of the medical notes and records which he was entitled to.

4. The clinic assistant again told the Respondent of the patient's request, and the Respondent repeated the same message that he would not provide the medical records but would provide a medical report for a fee. On 9 October 2006, the clinic assistant again relayed the same message to the patient over the telephone. The patient told the clinic assistant to tell the Respondent that if the Respondent

refused to provide copy of the medical records he would have no alternative but to complain to the relevant authorities.

5. On 11 October 2006, the patient wrote a letter to the Respondent setting out the history of events. In the letter, he also referred to his legal right to the medical records under the Personal Data (Privacy) Ordinance, and stated that he was prepared to pay the photocopying charges. He repeated his request for the medical records, as he was urgently in need of the medical records for further orthopaedic and chiropractic consultation.

6. On 17 October 2006, the Respondent issued a letter to the patient saying that he would provide a report to the patient and there would be a reasonable fee for the report.

7. On 16 November 2006, the patient wrote a further letter to the Respondent. In the letter, he categorically emphasized that he did not require a report to be compiled by the Respondent, but only needed a copy of the existing medical notes and records. He protested against the Respondent's insistence on a fee for a report which he did not need. He again indicated that he was prepared to pay the photocopying charges for the medical records. However, the Respondent did not respond at all.

8. On 11 January 2007, the patient made a formal data access request in accordance with the Personal Data (Privacy) Ordinance. Under the statutory provision, the Respondent must provide the personal data requested within 40 days, i.e. by 21 February 2007. However, the Respondent did not respond at all.

9. After the 40-day limit had expired, the patient complained to the Privacy Commissioner for Personal Data. Upon the intervention of the Privacy Commissioner, the Respondent sent a copy of the medical records without charge to the patient on 29 March 2007.

10. These facts set out above were not disputed by either side. The only dispute on the facts are (i) whether the Respondent explained to the patient the reasons for his refusal to provide the medical records as requested and insisting on a medical report; and (ii) whether the Respondent mentioned the amount of fee for the medical report.

11. Upon being questioned for the reason for waiting a month before writing the letter in November 2006, the patient explained that he was so ill that he had to leave his employment in late October 2006 and had to rest for a few months before resuming work.

12. The patient said that he did not remember whether the clinic assistant told him the reason for the Respondent's refusal to provide the medical records. However, the clinic assistant did tell him that a fee of about $1,000 would be payable for the medical report.

13. On the other hand, the Respondent's two clinic assistants gave evidence that the Respondent only said that a small fee would be payable for the medical report, but never mentioned the actual amount. They said it was explained to the patient over the telephone that the medical records would not be useful to the patient as the handwriting was illegible and abbreviations and medical terms were used.

14. It is not necessary for us to resolve the issue in respect of the amount of the fee for the medical report as it is not an element of the charges. The case is not about whether the fee demanded for the medical report is reasonable. The case is about whether the Respondent in discharge of his professional duty to the patient is entitled to demand payment for a medical report which the patient categorically refused to obtain. If the Respondent is not entitled to do so, his conduct would be inappropriate even if the actual amount for the medical report was not specified.

15. As to the issue on the explanation of the Respondent's reasons for refusing to provide the medical records to the patients, the patient fairly accepted that the explanation could have been given although he had no impression of it. In the circumstances, we make our determination on the basis that the clinic assistant did explain to the patient the Respondent's reasons.

16. We have been referred to the provisions of the Personal Data (Privacy) Ordinance governing compliance with a data access request. We note that section 19(3)(c) provides that the copy of personal data to be supplied shall as far as practicable be intelligible, unless the copy is a true copy of a document which contained the data and is unintelligible on its face. The medical records fall into this category of document which contains the data. We do not agree that it is necessary for the Respondent to provide the data in the form of a medical report in order to make the data intelligible. We have seen the medical records, which

are in clear handwriting and we have no difficulty in reading them. Even if the Respondent wished to make the data intelligible, all that was required would be a typescript of the medical records together with a legend to the abbreviations. As to the medical terms, it would not be necessary for the Respondent to provide any explanation to the patient as a layman, as the medical records are meant to be reference for other medically trained personnel providing subsequent treatment to the patient. In the patient's letter dated 11 October 2006, it was clearly stated that the medical records were required for further orthopaedic/chiropractic treatment.

17. In any case, we are concerned about the Respondent's professional duty as a registered chiropractor. We are not deciding on his legal duty under the Personal Data (Privacy) Ordinance.

18. We are satisfied that the patient's request was for the medical records but not a medical report was clearly and repeated clarified to the Respondent. There was no room for misunderstanding. In fact, the reasons given by the Respondent to his clinic assistant show that he clearly understood the patient's request.

19. The patient made the request for the medical records on 6 October 2006, and the Respondent did not provide them until almost six months later on 29 March 2007. The request was repeated three times by telephone and three more times in writing. Furthermore, the Respondent did not respond to the patient's request at all since 17 October 2006 until the Privacy Commissioner intervened in March 2007. It was entirely unreasonable for the Respondent to have behaved in that manner to the patient, in particular that the patient made it clear that he was urgently in need of the medical records for further medical/chiropractic treatment.

20. We are satisfied that the Respondent's conduct in respect of failing to provide the medical records until 6 months later has fallen below the standard expected amongst registered chiropractors. We are satisfied that this constituted professional misconduct. We find him guilty of charge (a).

21. As to charge (b), there was no reasonable excuse for him to insist on payment for a medical report when the patient clearly refused to obtain a medical report. While it is open for the Respondent to suggest to the patient that a medical report would be beneficial, he has no right to demand that the patient gets a medical

report instead of the medical records. The Respondent may advise the patient, but he may not decide on behalf of the patient. The patient's decision after advice has been given must be respected.

22. We are satisfied that the Respondent's conduct in respect of demanding payment for a medical report which the patient has clearly refused has fallen below the standard expected amongst registered chiropractors. We are satisfied that this constituted professional misconduct. We find him guilty of charge (b).

23. The Respondent's counsel argued that under section 28(5) of the Personal Data (Privacy) Ordinance, a data user may refuse to comply with a data access request unless and until any fees imposed by the data user for complying with the request has been paid. It is clear from the evidence that the patient has never refused to pay for the photocopying charges for the medical records. To the contrary, he clearly indicated in his letters dated 11 October 2006 and 16 November 2006 that he was prepared to pay for the photocopying charges. However, we feel obliged to point out that the provision is in the personal data context. We are dealing with professional ethics in the context of patient's health. Chiropractors should bear in mind that patients' health should always take precedence over a chiropractor's financial interest.

Sentencing

24. The Respondent has a clear record.

25. We have regard to the fact that the patient has not suffered because of the Respondent's delay in providing the medical records. We accept that the Respondent could have been motivated by his misguided belief that it would be in the patient's interest for him to get a medical report instead of just the medical records. To put it in his counsel's words, stubbornness for the patient to have a full appraisal of his conditions.

26. While we bear in mind that the Personal Data (Privacy) Ordinance was at the relevant time a relatively recent legislation the provisions of which were not easy to fully understand and comply with, we must remind the Respondent that it is his professional duty rather than the legal duty which is in question. Focus on the legal duty alone may often distract his attention from the professional duties. We hope he will bear this in mind in his future practice.

27. We accept that he has learned a lesson from this incidence, and it is unlikely that the same mistake will be repeated.

28. Having regard to the low gravity of the case and the mitigation factors, we order that a warning letter be issued to the Respondent. In accordance with the provisions of section 21 of the Chiropractors Registration Ordinance, the order will be published in the Chinese and English newspapers in due course.

Dr. NG Shu Yan
Chairman
Chiropractors Council