

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr CHAN Hoi Yuk (Reg. No.: M13020)

Date of hearing: 16 February 2024 (Friday)

Present at the hearing

Council Members/Assessors: Dr CHOI Kin, Gabriel (Chairperson of the Inquiry Panel)
Dr HO Pak-leung, JP
Prof. LAU Yu-lung, BBS, JP
Mrs BIRCH LEE Suk-yea, Sandra, GBS, JP
Mr YUEN Hon-lam, Joseph

Legal Adviser: Mr Edward SHUM

Legal Officer representing the Secretary: Mr Ryan LEE, Government Counsel of the
Department of Justice

The Defendant is Dr CHAN Hoi Yuk. He is absent and not legally represented.

1. The charges against the Defendant, Dr CHAN Hoi Yuk, was

“That in or around August 2021, he, being a registered medical practitioner, sanctioned, acquiesced in or failed to take adequate steps to prevent the use of the title “家庭科醫生”, which was not a quotable qualification approved by the Medical Council of Hong Kong and/or was misleading to the public that he was a specialist in family medicine, when in fact he had not been approved by the Medical Council of Hong Kong to have his name included in the Specialist Register under the specialty of “Family Medicine”, in an article titled “一分鐘正常心跳是多少? 醫生: 心跳過快 可大可小” published by “healthyD” .

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

Preliminary Issues

2. Before this inquiry began, the Legal Officer told us and we are satisfied upon reading the relevant affirmation of service that the Notice of Inquiry dated 6 November 2023 (together with a copy of the Medical Practitioners (Registration and Disciplinary Procedure) Regulation, Cap. 161E (the “Regulation”) and a copy of the Practice Directions on Disciplinary Inquiries issued by the Council (the “Practice Directions”) were duly served on the Defendant by post to his last known address in accordance with section 51 of the Regulation.
3. It is also evident to us from the correspondence subsequently exchanged between the Defendant and the Secretary of the Medical Council (the “Council”), copies of which were included in the Secretary’s bundle, that the Defendant decided on his own volition not to be present either by himself or by his legal representative despite he has been duly served with the Notice of Inquiry.
4. For these reasons, we decided to proceed with this inquiry in the absence of the Defendant.

Facts of the case

5. The name of the Defendant has been included in the General Register from 3 July 2001 to the present. His name has never been included in the Specialist Register.
6. Briefly stated, the Secretary received an email on 4 November 2021 complaining the Defendant of wrongfully quoting medical qualification not approved by the Council. Attached to the email was a hyperlink to an article published by “healthy D” and titled “一分鐘正常心跳是多少? 醫生:心跳過快 可大可小” (the “Article”), the contents of which now formed the subject of the disciplinary charge against the Defendant in this inquiry. A copy of the Article was downloaded by the Secretary and placed before us for our consideration.
7. The name of the Defendant appeared in the Article and was preceded by the title “家庭科醫生” . However, the Defendant’s name has never been included in the Specialist Register under the specialty of Family Medicine.

Burden and Standard of Proof

8. We bear in mind that the burden of proof is always on the Secretary and the Defendant does not have to prove his 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.

9. There is no doubt that the allegations against the Defendant here are serious. Indeed, it is always a serious matter to accuse a registered medical practitioner of misconduct in a professional respect. Therefore, we need to look at all the evidence and to consider and determine the disciplinary charge against him carefully.

Findings of the Inquiry Panel

10. Under the Medical Registration Ordinance, only registered medical practitioners whose names are included in the Specialist Register can lawfully use the specialist title; and it is a criminal offence for any person whose name is not included in the Specialist Register to use the specialist title.

11. The importance of quoting only the professional title which a registered medical practitioner is entitled to use is summarized by Fok JA (as he then was) in the case of *Ng Kin Wai v The Dental Council of Hong Kong* (CACV 194/2010); 14 October 2011 (at paragraph of 45 the Judgment):-

“Professional titles are important and members of the public are likely to rely on the expertise implied by those titles in choosing a dentist and submitting themselves to treatment by that dentist.”

12. Although the appellant in the *Ng Kin Wai* case was a dentist, Fok JA’s observation is in our view equally apposite to quotation of professional title by a registered medical practitioner.

13. It is also provided in the Code of Professional Conduct (2016 edition) (the “Code”) that:-

“7.1 Only doctors on the Specialist Register are recognized as specialists, and can use the title of “specialist in a specialty”. A specialist can claim himself as a specialist only in the specialty under which he is included in the Specialist Register but not other specialties.

7.2 Doctors who are not on the Specialist Register cannot claim to be or hold themselves out as specialists. A non-specialist is not allowed to use any misleading description or title implying specialization in a particular area (irrespective of whether it is a recognized specialty), such as “doctor in dermatology” or “皮膚醫生”.

14. There is no dispute that the title “家庭科醫生” was and still is not a quotable qualification approved by the Council.

15. In response to the Notice of Meeting of the Preliminary Investigation Committee (“PIC”), the Defendant claimed in his email to the Secretary dated 29 January 2022 that the complainant was making another complaint against him, which related to something that happened before an inquiry was made into his use of the title “家庭科醫生”.
16. However that may be, we agree with the Legal Officer that the Defendant ought to ensure in the first place that quotation of his professional title would not be misleading to the public. Moreover, the Defendant ought in our view to have a higher index of suspicion about the use of the title “家庭科醫生” after the first complaint was made against him. But when being notified of the complaint in the present case, the Defendant never explained in his PIC submissions any and let alone adequate step(s) that he had ever taken to ensure that his professional title would not be misquoted in the Article.
17. In our view, the use of the title “家庭科醫生” in front of the Defendant’s name would connote to the readers of the Article that the Defendant specialized in Family Medicine but when in fact he was not a specialist in Family Medicine.
18. In sanctioning, acquiescing in or failing to take adequate steps to prevent the title “家庭科醫生” from being used in front of his name in the Article, the Defendant has by his conduct in the present case fallen below the standards expected of registered medical practitioners in Hong Kong.
19. For these reasons, we are satisfied on the evidence before us that the Defendant has been guilty of professional misconduct as charged.

Sentencing

20. The Defendant has three previous disciplinary records back in 2010 relating to unauthorized practice promotion for which a warning letter was issued to him; and in 2018 relating to mistake in labelling of medication bags dispensed to a patient for which he was reprimanded; and in 2020 relating to unauthorized practice promotion again for which his name was ordered to be removed from the General Register for a period of 3 months and the operation of the removal order was suspended for a period of 36 months. In 2020, the Inquiry Panel emphasized that this was the last chance for the Defendant and he may not expect any suspended removal order(s) if he were to be found guilty of disciplinary offence(s) in respect of practice promotion again.
21. We bear in mind that the primary purpose of a disciplinary order is not to punish the Defendant 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.

22. We are particularly concerned that despite he was found guilty on his own admission after due inquiry of, amongst others, for wrongful use of the title “香港家庭科醫生”, the Defendant still committed his breach in the present case during the suspension period of 36 months.
23. Having been informed by the Secretary of the Notice of Inquiry in the present case, the Defendant responded in his email dated 12 April 2023 by asking the Council to *“cancel all the complaints against me for saving your treasurable time as I am not a doctor now in Hong Kong... Thanks for offering me many times of visiting you and spending time for listening to my creative explanations in the past.”*
24. It is evident in our view that the Defendant showed no remorse and has no insight into his wrongdoings. We consider this is an appropriate case to activate the suspended removal order made by the Inquiry Panel on 26 June 2020.
25. Taking into consideration the nature and gravity of this case and the Defendant’s lack of remorse and insight into his repeated professional misconducts, we order in respect of the disciplinary charge in this case that the name of the Defendant be removed from the General Register for a period of 4 months. We further order that the removal order to run concurrently with the activated removal order of 3 months; and making a total of 4 months.

Dr CHOI Kin, Gabriel
Chairperson of the Inquiry Panel
The Medical Council of Hong Kong