

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr Oliver James Alan (Registration no : M09843)

Date of hearing: 26 April 2016

Present at the hearing

Council Members/Assessors: Prof. LAU Wan-yee, Joseph, SBS (Chairman)
Miss CHAU Man-ki, Mabel MH
Dr CHENG Chi-man
Dr CHEUNG Hon-ming
Dr LI Tak-lai, Theresa
Dr KHOO Lai-san, Jennifer
Dr KONG Wing-ming, Henry

Legal Adviser: Mr Edward SHUM

Defence Solicitor representing the Defendant : Mr Chris Howse of Messrs.
Howse Williams Bowers

Senior Government Counsel representing the Secretary : Mr Mark CHAN

1. The charges against the Defendant, Dr Oliver James Alan, are :

“That in or around 2013 to 2014, he, being a registered medical practitioner:

- (a) sanctioned, acquiesced in or failed to take adequate steps to prevent the quotation of the qualification “Cert AvMed” in the website of <https://www.islandhealth.com.hk>, which is not a quotable qualification approved by the Medical Council of Hong Kong for use;
- (b) sanctioned, acquiesced in or failed to take adequate steps to prevent the quotation of the following qualifications in the letters issued by him, which are not quotable qualifications approved by the Medical Council of Hong Kong for use:
 - (i) Cert AvMed;
 - (ii) Dip AvMed Hong Kong AME; and

- (c) claimed that he has a diploma in aviation medicine (Dip AvMed) which he did not have.”

Facts of the case

2. The Defendant was at all material times and still is a registered medical practitioner. His name has been included in the General Register from 1 November 1994 to the present and his name has never been included in the Specialist Register.
3. Upon referral by one of its Approved Medical Assessors, the Civil Aviation Department lodged a complaint with the Medical Council about the use of the aforesaid non-quotable qualifications by the Defendant in his professional communication with the Civil Aviation Department.
4. The Defendant admitted the factual particulars of the disciplinary charges against him. Nevertheless, it is our responsibility to determine whether the Defendant’s conduct constitutes professional misconduct.

Burden and Standard of Proof

5. We bear in mind that the burden of proof is always on the Legal Officer 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.
6. There is no doubt each of the allegations made against the Defendant here are serious. Indeed, it is always a serious matter to accuse any registered medical practitioner of misconduct in a professional respect. We need to look at all the evidence and to consider and determine each of the disciplinary charges against him separately.

Findings of the Council

7. There is no dispute that “Cert AvMed” was and still is not a quotable qualification approved by the Medical Council. There is also no dispute that the Defendant did not have a diploma in aviation medicine.

8. In the Court of Appeal's decision in *Ng Kin Wai v The Dental Council of Hong Kong* (CACV 194/2010), Fok JA (as he then was) emphasized the importance of quoting such professional title which a dentist is entitled because "[p]rofessional 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."
9. 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 titles by registered medical practitioners.
10. In our view, the Defendant's use of the non-quotable qualifications would not only serve to promote his professional advantage but was also a form of unauthorized practice promotion. This was aggravated by the fact that the Defendant did not even have a diploma in aviation medicine.
11. In his submission to the Preliminary Investigation Committee ("PIC"), the Defendant sought to explain that he did not notice that the stamp chop bearing the title "Dip AvMed" was affixed on his professional correspondence with CAD because the font size was very small.
12. It is clearly stated in paragraph 5.2.3.2 of the Code of Professional Conduct (2009 edition) that a registered medical practitioner's "[s]tationery may only carry... (d) Quotable qualifications... and other titles approved by the Council". In our view, it was the Defendant's duty to make sure the information contained in his stamp chop should comply with the requirement of paragraph 5.2.3.2 of the Code before using in his professional practice.
13. We are satisfied on the evidence before us that the Defendant's conduct in respect of charges (a) to (c), either singularly or cumulatively, has fallen below the standard expected amongst registered medical practitioners in Hong Kong. Therefore, we find him guilty of professional misconduct in respect of charges (a) to (c).

Sentencing

14. The Defendant has a clear record.
15. In accordance with our published policy, we shall give the Defendant credit for his frank admission and cooperation both at the preliminary investigation stage as well as the hearing before us today.

16. In July 2006, the Medical Council issued a clear warning that all future cases of unauthorized practice promotion would be dealt with by removal from the General Register for a short period with suspension of operation of the removal order, and in serious cases the removal order would take immediate effect. The same warning was repeated in subsequent disciplinary decisions of the Medical Council.
17. We appreciate that the Defendant had completed a number of post-graduate studies in aviation medicine overseas. However, the fact remains that none of the aforesaid qualifications had been vetted by the Education and Accreditation Committee and let alone approved by the Medical Council as quotable qualifications.
18. We accepted that the Defendant did not use the aforesaid qualifications deliberately for the purpose of practice promotion. However, the Defendant had actually claimed that he had a diploma in aviation medicine which he did not have.
19. Having considered the nature and gravity of the disciplinary charges for which the Defendant is convicted and what we have heard and read in mitigation, we order that:
 - (1) in respect of charges (a) and (b), a warning letter be issued to the Defendant;
 - (2) in respect of charge (c), the Defendant's name be removed from the General Register for a period of 1 month; and
 - (3) the operation of the removal order be suspended for a period of 12 months.

Prof. LAU Wan-yee, Joseph, SBS
Chairman, Medical Council