

香港醫務委員會

The Medical Council of Hong Kong

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**DISCIPLINARY INQUIRY**  
**MEDICAL REGISTRATION ORDINANCE, CAP. 161**

Defendant: Dr PANG Sai Yau (彭世有醫生) (Reg. No.: M10587)

Date of hearing: 7 June 2016 (Tuesday)

Present at the hearing

Council Members/Assessors: Prof. Felice LIEH-MAK GBS CBE JP  
(Temporary Chairman)  
Dr LEUNG Chi-chiu  
Ms LAU Wai-yee, Monita  
Ms HUI Mei-sheung, Tennessy, JP  
Dr MOK Pik-tim, Francis

Legal Adviser: Mr Edward SHUM

Defence Solicitor representing the Defendant: Mr Jeffrey LI as instructed by Messrs.  
TUNG, NG, TSE & HEUNG Solicitors

Senior Government Counsel representing the Secretary: Mr William LIU

1. The charges against the Defendant, Dr PANG Sai Yau, are:

“That, in or about January 2011, he, being a registered medical practitioner, sanctioned, acquiesced in or failed to take adequate steps to prevent:

- (a) the use or appearance of his name, title, photograph and/or statements in an advertisement or article published on page E4 of “Apple Daily” dated 13 January 2011, promoting or endorsing medical product called “Sculptra”;
- (b) the use of the title “經驗醫學美容醫生”, which was not a quotable qualification approved by the Medical Council of Hong Kong, in an advertisement or article published on page E4 of “Apple Daily” dated 13 January 2011;

- (c) the use or appearance of his name, title, photograph and/or statements in an advertisement or article published on pages 118 and 119 of the Issue 807 of “Sudden Weekly” magazine in January 2011, promoting or endorsing the injection of Platelet-Rich Plasma; and
- (d) the use of the title “醫學美容醫生”, which was not a quotable qualification approved by the Medical Council of Hong Kong, in an advertisement or article published on pages 118 and 119 of the Issue 807 of “Sudden Weekly” in January 2011.

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

### **Facts of the case**

- 2. The Defendant was at all material times a registered medical practitioner. His name has been included in the General Register from 30 April 1996 to present.
- 3. There is no dispute that the Defendant’s name has never been included in the Specialist Register under the specialty of “Dermatology and Venereology”.
- 4. The Defendant admitted the particulars in respect of each of the above disciplinary charges against him.
- 5. Nevertheless, it is our responsibility to determine whether the Defendant’s conduct constitutes misconduct in a professional respect.

### **Burden and Standard of Proof**

- 6. 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.
- 7. There is no doubt each of the allegations made against the Defendant here is 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**

8. There is no dispute that the Defendant's name has never been included in the Specialist Register, let alone under the specialty of "Dermatology and Venereology".
9. In the Court of Appeal's decision of *Ng Kin Wai v The Dental Council of Hong Kong* (CACV 194/2010), Fok JA (as he then was) emphasized the importance of quoting only 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."
10. 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.
11. There is also no dispute that neither the title "經驗醫學美容醫生" nor "醫學美容醫生" was quotable qualification approved by the Council. Clearly, either of these titles implied that the Defendant specialized in the area of dermatology when in fact he was not.
12. In our view, publication of either of these titles in any of the media referred to in the particulars of the disciplinary charges (b) or (d) would serve to promote the professional advantage of the Defendant, and was no doubt a form of unauthorized practice promotion.
13. We wish to point out that there is a significant difference between speaking about the benefits of a drug or medical procedure and endorsing or promoting a particular brand of the drug or a medical procedure. Whilst the former will further the purpose of public health education as long as a balanced view of the advantages and disadvantages is provided, the latter will only further the commercial interest of the brand or medical procedure being promoted.

14. We agree with the unchallenged evidence of Dr AU, the Secretary's expert witness, that the beneficial effects of using of Platelet-Rich Plasma had yet to be scientifically proven. Hence, in failing to present a balanced view of the advantages and disadvantages of this medical procedure and by allowing his name, title, photograph and/or statements to be used or appeared in the subject advertisement or article in "Sudden Weekly", the Defendant was in effect endorsing the use or promoting the commercial interest of this medical procedure. Indeed, the Defendant admitted in his submission to the Preliminary Investigation Committee ("PIC") that he had not reviewed the final draft and layout of the article before its publication.
15. As to the medical product called "Sculptra", we accept that the Defendant had mentioned in the course of his interview with the Apple Daily that the use of this drug was an off-label one and might have certain side effects. However, the real point is that the article must be read as a whole and in its proper context. Actually, the company e-mail of the Defendant and price range for injection of this drug were listed under the column "enquiry" at the bottom of the article. In response to our question, the Defendant also admitted that the interview was arranged by his then employer company. Therefore, we have no doubt that the Defendant was in effect endorsing the use or promoting the commercial interest of this drug in the subject article.
16. For these reasons, we are satisfied on the evidence before us that the Defendant failed to take adequate steps to prevent the publication of the matters set forth in disciplinary charges (a) to (d). In our view, his conduct, either singularly or cumulatively, has fallen below the standard expected amongst registered medical practitioners in Hong Kong. Therefore, we also find him guilty of professional misconduct in respect of disciplinary charges (a) to (d).

### **Sentencing**

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

19. 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.
  
20. This is a case of obvious commercial promotion of drug and medical procedure. The subject advertisements or articles were published at different time and medium. In the course of mitigation, the Defendant also admitted through his counsel that both interviews were arranged by his former employer company with the media. The Defendant could not have believed that he was participating in public health education.
  
21. Having considered the nature and gravity of the disciplinary charges for which the Defendant is convicted and what we have heard in mitigation, we order that:
  - (1) in respect of charge (a), the Defendant's name be removed from the General Register for a period of 2 months;
  - (2) in respect of charge (b), the Defendant's name be removed from the General Register for a period of 1 month;
  - (3) in respect of charge (c), the Defendant's name be removed from the General Register for a period of 2 months;
  - (4) in respect of charge (d), the Defendant's name be removed from the General Register for a period of 1 month; and
  - (5) all of the above removal orders to run concurrently and be suspended for a period of 12 months.

Prof. Felice LIEH-MAK GBS CBE JP  
Temporary Chairman, Medical Council