

香港醫務委員會

The Medical Council of Hong Kong

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr AU Yum To Otto (歐鑫濤醫生) (Reg. No.: M00671)

Date of hearing: 3 July 2018 (Tuesday)

Present at the hearing

Council Members/Assessors: Prof. LAU Wan-yee, Joseph, SBS
(Chairperson of the Inquiry Panel)
Dr Hon Pierre CHAN
Dr MOK Pik-tim, Francis
Mr HUNG Hin-ching, Joseph
Mr WONG Hin-wing

Legal Adviser: Mr Edward SHUM

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

Senior Government Counsel representing the Secretary: Ms Vienne LUK

The Defendant is not present.

1. The amended charges against the Defendant, Dr AU Yum To Otto, are:

“That, in the period from about 2008 to 2014, he, being a registered medical practitioner, sanctioned, acquiesced in or failed to take adequate steps to prevent the use or appearance of the following:

A. the title of “*Diplomate American Board Plastic Surgery*” in the following:

- (i) Hong Kong Medical Diary (i.e. Vol. 13 No. 7 July 2008 issue);
- (ii) Hong Kong Medical Diary (i.e. Vol. 14 No. 4 April 2009 issue); and/or

(iii) the medical report dated 27 December 2012 prepared by him jointly with Dr CHOW Sik Kuen (“the joint report”);

which was an untrue or misleading quotation in that:

- (a) he was only awarded by the American Board of Plastic Surgery (“ABPS”) in respect of the quotation or title of “*Diplomate with a Special Foreign Certificate awarded by the American Board of Plastic Surgery*” (“DSFCABPS”) in around 1963;
- (b) DSFCABPS were discontinued in 1978;
- (c) DSFCABPS would have been revoked if he had returned to US or Canada to practice or applied for citizenship in US;
- (d) he was never listed as Board Certified by ABPS; and/or
- (e) the title of DSFCABPS was not a quotable qualification approved by the Medical Council of Hong Kong in any event;

B. the untrue or misleading quotation of the title of “美國整形外科專科院士” in the joint report;

C. the title of “Diplomate Am. Board Plastic Surgery” in the biographical information of Marquis Who’s Who LLC, which information was accessible by the public through the website of Marquis Who’s Who LLC, which was an untrue or misleading quotation in that:

- (a) he was only awarded by ABPS in respect of the quotation or title of “DSFCABPS” in around 1963;
- (b) DSFCABPS were discontinued in 1978;
- (c) DSFCABPS would have been revoked if he had returned to US or Canada to practice or applied for citizenship in US;
- (d) he was never listed as Board Certified by ABPS; and/or
- (e) the title of DSFCABPS was not a quotable qualification approved by the Medical Council of Hong Kong in any event.

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 2 April 1964 to present and

his name has been included in the Specialist Register under the specialty of Plastic Surgery since 4 July 2001.

3. Briefly stated, the Council received a complaint from an insurance company through its solicitors by a letter dated 11 April 2013 accusing the Defendant of misrepresentation about his professional qualifications. The complaint case was subsequently referred to the Council for inquiry into the aforesaid disciplinary charges against the Defendant.
4. The Defendant admitted the factual particulars relating to disciplinary charge A against him. The Defendant also admitted in relation to disciplinary charge B that quotation of the title of “美國整形外科專科院士” in the said joint report was misleading in that this was not the correct Chinese translation of the title of Special Foreign Certificate of the American Board of Plastic Surgery which he possessed. The Defendant further admitted his failure to take adequate steps at the material times to prevent the 2 offending titles from being quoted.
5. Whilst the Defendant accepted it was his responsibility to ensure that a qualification he was not entitled to quote or which he did not possess should not be included in his name block in any qualification or document, he denied that he had intentionally included reference to the title of “Diplomate, the American Board of Plastic Surgery” in either the said articles published in the Hong Kong Medical Diary (the official publication for the Federation of Medical Societies of Hong Kong) or in the said joint medical report. The Defendant further submitted that these errors resulted from his failure to check his name block in the said articles in the Hong Kong Medical Diary and the said joint medical report before they were published or sent out.
6. The Defendant denied having knowledge of anything particularized under disciplinary charge C. The Defendant believed that sometime in late 1940s and then again after completing training as a plastic surgeon in the early 1960s, he received a request from Marquis Who’s Who LLC (“Marquis”) to provide them with his biographical information. Since he never received a hard copy of any directory from Marquis, the Defendant was unable to confirm what biographical information of his, if any, was published. The Defendant also vaguely recalled that sometime in the late 1960s or early 1970s he received a questionnaire from Marquis asking for his biographical information. The Defendant could not recall whether he would have filled out the questionnaire but he did not believe he had ever received a hard copy of any directory from Marquis.

7. The Defendant further recalled in preparation for an intended conference with US plastic surgeons in 1998, he made reference in a letter to them of having trained with the American Board of Plastic Surgeons for a diplomate. However, he only came to know the publication of the said offending title by Marquis online after he was notified of the present complaint case against him.

Burden and Standard of Proof

8. 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.
9. There is no doubt that the allegation made against the Defendant here is a serious one. 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 and carefully.

Findings of the Inquiry Panel

10. As mentioned above, the Defendant did not dispute disciplinary charges A and B against him. The Defendant also admitted his failure to take adequate steps to prevent the 2 offending titles from being quoted. However, it remains for us to decide on the evidence whether the Defendant's conduct as particularized under disciplinary charges A and B amounted to misconduct in a professional respect.
11. Persons seeking medical services often relied upon professional qualifications to make an informed choice of doctors. Therefore, information provided by doctors about their professional qualifications should always be accurate and not misleading.
12. The scheme of quotable qualifications was set up by the Council to regulate the quoting of qualifications by doctors in their communication of practice information to the public. The regulation was considered necessary to maintain

public confidence in the medical profession and to protect the public from misleading information. A List of Quotable Qualifications (the “List”) was established to include those qualifications which the Council was satisfied to be directly related to medical practice and of an acceptable standard and reflected significant improvement to a doctor’s medical competence over and beyond his basic training.

13. It was also stated in the Code of Professional Conduct (the “Code”) (2009 edition) that:

“5.2.1 A doctor providing information to the public or his patients must comply with the principles set out below.

5.2.1.1 Any information provided by a doctor to the public or his patients must be:

- (a) accurate,
- (b) factual,
- (c) objectively verifiable...

5.2.1.2 Such information must not:

- (a) be exaggerated or misleading...

5.2.3.2 ...

Stationery (visiting cards, letterheads, envelopes, prescription slips, notices etc.) may only carry the following information:

...

- (d) Quotable qualifications and appointments and other titles approved by the Council...”

14. In our view, quotation of the offending titles in the circumstances particularized under disciplinary charges A and B was clearly in breach of the said requirements under the Code.

15. For these reasons, we are satisfied on the evidence that the Defendant’s conduct particularized under disciplinary charges A and B had fallen short of the standards expected amongst registered medical practitioners in Hong Kong. Therefore, we also find him guilty of disciplinary charges A and B.

16. As to disciplinary charge C, the Defendant did not deny that he gave Marquis his biographical information sometime in between the late 1940s to the late 1960s or early 1970s. However, the Defendant denied having knowledge about the publication of the said offending title by Marquis online before he was notified of the present complaint case against him.
17. In our view, the burden of proof is always on the Legal Officer to establish on the evidence each and every element of disciplinary charge C. In particular, the Legal Officer should prove on the evidence that the source of the offending title of “Diplomate Am. Board Plastic Surgery” was actually from the Defendant. We would expect the Legal Officer to obtain written confirmation from Marquis. And yet, nothing was done in this connection. Accordingly, we find the Defendant not guilty of disciplinary charge C.

Sentencing

18. The Defendant has a clear disciplinary record.
19. In accordance with our published policy, we shall give him credit in sentencing for his frank admission and cooperation throughout the disciplinary proceedings.
20. We bear in mind that the 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 good reputation and high standards.
21. We accept that this was not a case involving practice promotion. We appreciate the Defendant’s past contribution to the medical profession. We also accept the Defendant’s explanation that these errors resulted from his failure to check his name block before the articles and medical report were published or sent out.
22. In our view, the Defendant has learnt his lesson and the chance of his committing the same or similar breach in future would be low.
23. Having considered the nature and gravity of this case and what we have heard and read in mitigation, we order that:
 - (i) in respect of disciplinary charges A and B, a warning letter to be issued to the Defendant; and
 - (ii) the said order be published in the Gazette.

Remark

24. The Defendant's name is included in the Specialist Register under the Specialty of Plastic Surgery. It is for the Education and Accreditation Committee to consider whether any action should be taken in respect of his specialist registration.

Prof. LAU Wan Yee, Joseph, SBS
Chairperson of the Inquiry Panel
The Medical Council of Hong Kong