

香港醫務委員會

The Medical Council of Hong Kong

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr CHAN Chun Kwong Jane (陳真光醫生) (Reg. No.: M08895)

Date of hearing: 23 March 2020 (Monday)

Present at the hearing

Council Members/Assessors: Prof. LAU Wan-ye, Joseph, SBS
(Chairperson of the Inquiry Panel)
Dr WAI Yuk-chun, Veronica
Dr AU-YEUNG Kam-chuen, Sidney
Mrs BIRCH LEE Suk-ye, Sandra, GBS, JP
Mr WOO King-hang

Legal Adviser: Mr Edward SHUM

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

Senior Government Counsel representing the Secretary: Miss Vienne LUK

1. The amended charges against the Defendant, Dr CHAN Chun Kwong Jane, are:

“That from about 2014 to 2016, she, being a registered medical practitioner, sanctioned, acquiesced in or failed to take adequate steps to prevent:

(a) the publication of promotional statements and/or information in the following sections of the website of <http://www.drjanechan.com> (“the Website”) which canvassed for the purpose of obtaining patients and/or were not service information permitted to be published in a practice website:

- (i) *“What our patients say... ”;*
 - (ii) *“Professional awards”;*
 - (iii) *“Training and Expertise”;*
 - (iv) *“Current professional positions”;*
 - (v) *“Key publications”;*
 - (vi) *“Spectrum of patients seen at our clinic”;*
 - (vii) *“Invited lectures during the past decade”;* and/or
 - (viii) *“Press Corner”;*
- (b) *the quotation of the following qualifications in the Website, which were not quotable qualifications approved by the Medical Council of Hong Kong:*
- (i) *B.A. (Yale) 1978; and/or*
 - (ii) *California Board of Medical Assurance (G060776) since 1987;*
- (c) *the quotation of the following appointments in the Website, which were not quotations allowed by the Medical Council of Hong Kong:*
- (i) *Regent, American College of Chest Physicians, Hong Kong & Macau Chapter, since 2009;*
 - (ii) *Member, SARS Trust Fund Committee, Hong Kong SAR Government, since 2009;*
 - (iii) *Director, Board of the Hong Kong Museum of Medical Sciences Society, since 2009;*
 - (iv) *Co-opted Executive Member, Hong Kong Federation of Medical Societies of HK, since 2009;*
 - (v) *Guest editor, Hong Kong Medical Diary, Nov 2009;*
 - (vi) *President, Hong Kong Institute of Allergy, since 2008;*
 - (vii) *Vice President, North American Medical Association, since 2007; and/or*
 - (viii) *Founding Council Member, Hong Kong Lung Foundation, since 1996;*
- (d) *the publication of the following information in respect of her practice in association with the lung function laboratory and/or 813 Medical Centre Limited in the Website:*

- (i) *range of procedures available in the lung function laboratory; and/or*
- (ii) *address and telephone numbers of the lung function laboratory.*

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

Facts of the case

2. The name of the Defendant has been included in the General Register from 8 January 1993 to present. Her name has been included in the Specialist Register under the specialty of Critical Care Medicine from 4 March 1998 to 6 July 2004 and the specialty of Respiratory Medicine since 7 July 2004.
3. Briefly stated, the Secretary received on 15 May 2014 a letter complaining the Defendant of using *“the internet illegally against medical council bylaw to advertise herself”*. Attached to this letter were copy extracts downloaded the website of <http://www.drjanechan.com> (“the Website”).
4. In response to the complaint against her, the Defendant apologized through her solicitors in their submission to the Preliminary Investigation Committee (“PIC”) of the Medical Council dated 18 January 2017 for *“her Website containing information not allowed to be placed on a medical practitioner’s practice website.”*
5. The Defendant explained to the PIC that she was *“unaware that the information was not allowed to be placed on a medical practitioner’s practice website”* and there was *“no intention on her part to infringe the rules governing what information may be placed on a medical practitioner’s practice website”*. The Defendant also explained that *“[t]he practice of Respiratory Medicine hinges upon making the correct clinical, anatomical, and physiological diagnosis”* and *“[t]he incorporation of a lung function laboratory in the practice of a respiratory doctor is the ultimate dream of the respiratory doctor (as these equipment (sic) are rather costly).”*
6. There is no dispute that quotations of the qualifications and appointments mentioned in charges (b) and (c) respectively were never approved by the Medical Council.

Burden and Standard of Proof

7. We bear in mind that the burden of proof is always on the Secretary and the Defendant does not have to prove her 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.
8. There is no doubt that each of the allegations 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 amended charges against her separately and carefully.

Findings of the Inquiry Panel

9. The Defendant admits the factual particulars of the amended charges against her but it remains for us to determine on the evidence before us whether she has been guilty of misconduct in a professional respect.
10. We gratefully adopt as our guiding principles the following statements of the law by the Court of Appeal in *Dr Kwok-Hay Kwong v The Medical Council of Hong Kong* [2008] 3 HKLRD 524:

29. *The freedom of expression includes the right to advertise and this is so even where the intention is for personal financial gain...*

...

32. *Next, it is important also to recognize the following facets of advertising...*

(1) *The public interest as far as advertising is concerned lies in the provision of relevant material to enable informed choices to be made...*

(2) *The provision of relevant material to enable informed choices to be made includes information about latest medical developments, services or treatments...*

33. *In contrast to these what may be called the advantages of advertising just highlighted, it is, however, also important to bear in mind the need to protect the public from the disadvantages of advertising. Misleading medical advertising must of course be guarded against. In Rocket v Royal College of Dental Surgeons (Ontario), McLachlin J referred (at p.81g) to the danger of “misleading the public or undercutting professionalism”. In Stambuck v Germany, the European Court of Human Rights said, “nevertheless, it [advertising] may sometimes be restricted, especially to prevent unfair competition and untruthful or misleading advertising”. There were references made in both cases to the need to limit commercialism to enable high standards of professionalism to be maintained.*
- ...
36. *The paramount theme in the Code [of Professional Conduct published by the Medical Council] is the public interest...*
40. *...within the confines of the provision of good communication and the provision of objectively verifiable information, practice promotion is, as a matter of principle, permitted for doctors...*
69. *...The aim of the restrictions is the protection of public health and the reputation of the profession...*
70. *What is or is not proportionate restriction upon any fundamental right is always a matter of context... The interests of patients and potential patients are the overwhelming consideration. What we are concerned with, and indeed are the doctors, is the protection of the public in a realm in which that public is vulnerable... It is the standing of the profession and the assumed expertise of each member that renders the patient or potential patient highly susceptible to persuasion... Doctors do not dispense standardized products but, rather, they ‘render professional services of almost infinite variety and nature, with the consequent enhanced possibility for confusion and deception if they were to undertake certain kinds of advertising’ ... and there is a duty upon, let alone a right in, the medical profession to guard against commercialism and exploitation... There is in other words a powerful interest ‘in restricting the advertising of health-care services to those which are truthful, informative and helpful to the potential consumer in making an intelligent decision’...*

71. *With such considerations at play, restrictions on advertising by doctors will not be difficult to justify. But there is a countervailing consideration, with the same interests in view, namely, the right of members of the public to receive information with which to make an informed choice on a matter of such individual importance. **The question then becomes one of balance: how to provide an informed choice whilst at the same time protecting the most vulnerable from influence that may be detrimental; detrimental where it is misleading, or lures the individual from a secure and competent existing relationship, or provides false hope, or confuses in its language or by competing claims, or because doctor most successful at achieving publicity may not be the most appropriate to consult...*** [Our emphasis]

11. In our view, restrictions in the Code against publication to the public of information about a doctor, which is not only promotional but also claims superiority over other doctors, is legitimate and proportionate in maintaining the balance between the freedom of expression and other aspects of the public interest alluded to in the Court of Appeal's decision in the *Dr Kwok-Hay Kwong* case.

12. In this connection, it is stipulated in the Code (2009 edition) that:

“5.1.3 *Persons seeking medical service for themselves or their families can nevertheless be particularly vulnerable to persuasive influence, and patients are entitled to protection from misleading advertisements. Practice promotion of doctor's medical services as if the provision of medical care were no more than a commercial activity is likely both to undermine public trust in the medical profession and, over time, to diminish the standard of medical care.*

...

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

...

5.2.1.2 *Such information must not:*

...

(b) be comparative with or claim superiority over other doctors

...

(d) aim to solicit or canvass for patients

...

(h) generate unrealistic expectations...

5.2.2. *Practice promotion*

5.2.2.1 *Practice promotion means publicity for promoting the professional services of a doctor, his practice or his group... Practice promotion in this context will be interpreted by the Medical Council in its broadest sense, and includes any means by which a doctor or his practice is publicized, in Hong Kong or elsewhere, by himself or anybody acting on his behalf or with his forbearance (including the failure to take adequate steps to prevent such publicity in circumstances which would call for caution), which objectively speaking constitutes promotion of his professional services, irrespective of whether he actually benefits from such publicity.*

...

5.2.3.3

Other announcements

Letters of gratitude or announcements of appreciation from grateful patients or related persons identifying the doctor concerned should not be published in the media or made available to members of the public. A doctor should take all practical steps to discourage any such publications.

...”

13. We need to point out that a doctor providing information to the public or his patients must comply with the principles set out in the Code. But then again, while the Code provides guidance in certain areas of professional conduct, it is not a complete code of professional ethics.

14. Persons seeking medical service for themselves or their families can be particularly vulnerable to persuasive influence from practice promotion. By publishing information which claims superiority over other doctors, particularly in terms of credentials, a doctor may leave the public or his patients with the impression that he has unique or special skills or solutions to their health problems. This may even generate unrealistic expectations in their minds.
15. Publication of the promotional statements and/or information about the Defendant in the Website was no doubt a form of practice promotion. Whilst the Defendant may not intend to claim superiority over other doctors, the impression that the laudatory statements from her patients and/or reference to her association with a lung function laboratory which offered a wide range of procedures may bear upon the public or her patients about her medical skill and expertise should not be underestimated.
16. In our view, the Defendant's quotations of qualifications and appointments not approved by the Medical Council were potentially misleading. And such quotations might provide her patients or the public with false hope about her medical skill and expertise.
17. For these reasons, we are satisfied on the evidence before us that the Defendant's conduct has fallen below the standards expected of registered medical practitioners in Hong Kong. Accordingly, we also find her guilty of misconduct in a professional respect as charged.

Sentencing

18. The Defendant has a clear disciplinary record.
19. In line with our published policy, we shall give her credit in sentencing for her frank admission and full cooperation throughout these disciplinary proceedings.
20. In June 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 of time 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.
21. We appreciate that the Defendant had an unblemished and distinguished career serving the medical profession and volunteered in public services for many years.

22. We accept that the Defendant has learnt her lesson. We also accept that the Defendant did not promote her professional practice and services deliberately.
23. 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 shall make a global order in respect of amended charges (a) to (d) that:
 - (1) the Defendant's name be removed from the General Register for a period of 1 month; and
 - (2) the operation of the removal order be suspended for a period of 6 months.

Remark

24. The Defendant's name is included in the Specialist Register under the Specialty of Respiratory Medicine. We shall leave it to the Education and Accreditation Committee to decide on whether anything may need to be done to her specialist registration.

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