

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 (陳凱旭醫生) (Reg. No.: M13020)

Date of hearing: 26 June 2020 (Friday)

Present at the hearing

Council Members/Assessors: Prof. LAU Wan-yee, Joseph, SBS
(Chairperson of the Inquiry Panel)
Dr CHOW Yu-fat
Prof. LEUNG Kai-shun, Christopher
Mr MUI Cheuk-nang, Kenny
Mr LAW Yu-wing

Legal Adviser: Mr Edward SHUM

Defence Solicitor representing the Defendant: Dr David KAN of
Messrs. Howse Williams

Senior Government Counsel representing the Secretary: Miss Vienne LUK

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

“That, in respect of an article published in the August 2016 No. 194 Issue of “JESSICA” magazine, he sanctioned, acquiesced in or failed to take adequate steps to prevent:

- (a) the publication of the promotional statement of “有多年兒童及皮膚診症經驗” in relation to his experience, skills and /or practice;
- (b) the publication of his name, title, photograph and/or experience which promoted the treatment(s) of “Hifu/Ulthera (Ultherapy)” and/or “微針射頻 Frozen V”; and/or

- (c) the use of the title “香港家庭科醫生”, 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 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’s name has been included in the General Register from 3 July 2001 to the present. His name has never been included in the Specialist Register.
3. Briefly stated, the Secretary of the Medical Council received an email on 20 September 2016 complaining the Defendant of “medical equipment brand promotion” and “claiming to have years of experience in treating children and patients with skin problems”. Attached to the email was a copy article (the “Article”) published in the August 2016 No. 194 issue of the “JESSICA” Magazine, the contents of which now formed the subject of disciplinary charges.
4. The Defendant admitted before us today that he failed to take adequate steps to prevent:
 - (a) the publication of the promotional statement of “有多年兒童及皮膚診症經驗” in relation to his experience, skills and/or practice;
 - (b) the publication of his name, title, photograph and/or experience which promoted the treatment(s) of “Hifu/Ulthera (Ultherapy)” and/or “微針射頻 Frozen V”; and/or
 - (c) the use of the title “香港家庭科醫生”, 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”.

5. The Defendant also indicated through his solicitor to us today that he is not going to contest the issue of professional misconduct.

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 that the allegations against the Defendant here are serious ones. 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 each of the disciplinary charges against him separately and carefully.

Findings of the Inquiry Panel

8. Although the Defendant has indicated through his solicitor to us that he is not going to contest the issue of professional misconduct, it remains for us to determine on the evidence before us whether his conduct has fallen below the standards expected of registered medical practitioners in Hong Kong.

9. It is clearly stated in the Code of Professional Conduct (the “Code”) that:-

“5.1.3 ... 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.

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

...

- (d) presented in a balanced manner (when referring to the efficacy of particular treatment, both the advantages and disadvantages should be set out).

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;
- (e) be used for commercial promotion of medical and health related products and services ... ;
- (f) be sensational or unduly persuasive;

...

- (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 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.

...

6.1 It is appropriate for a doctor to take part in bona fide health education activities, such as lectures and publications. However, he must not exploit such activities for promotion of his practice or to canvass for patients. Any information provided should be objectively verifiable and presented in a balanced manner, without exaggeration of the positive aspects or omission of the significant negative aspects.

- 6.2 A doctor should take reasonable steps to ensure that the published or broadcasted materials, either by their contents or the manner they are referred to, do not give the impression that the audience is encouraged to seek consultation or treatment from him or organizations with which he is associated. He should also take reasonable steps to ensure that the materials are not used directly or indirectly for the commercial promotion of any medical and health related products or services.
- 6.3 ... Doctors must not give the impression that they, or the institutions with which they are associated, have unique or special skills or solutions to health problems ...”
10. Quotation of the statement of “有多年兒童及皮膚診症經驗” in the Article was in our view promotional of the Defendant’s professional practice. This is particularly true when the quotation was made in the context of the beauty talk column of a commercial women’s magazine.
11. Publication of such a laudatory statement of the Defendant’s credential in this context was in our view a form of impermissible practice promotion. Accordingly, we find the Defendant guilty of disciplinary charge (a).
12. It is also evident to us from reading the Article that readers would be left an impression that the treatment(s) of “Hifu/Ulthera (Ultherapy)” and/or “微針射頻 Frozen V” were being promoted by the Defendant as more effective and superior in achieving anti-aging than conventional treatments.
13. Information about any treatment modality, particularly new treatment modality, must be presented to the public in a balanced manner by setting out the advantages and disadvantages. We agree with the Legal Officer that the Article had crossed the line of a balanced health education material.
14. In failing to take adequate steps to prevent promotion of the treatments of “Hifu/Ulthera (Ultherapy)” and/or “微針射頻 Frozen V” in the aforesaid manner, the Defendant’s conduct has in our view fallen below the standards expected of registered medical practitioners in Hong Kong. Accordingly, we find the Defendant guilty of disciplinary charge (b).

15. As regards the disciplinary charge (c), there is no dispute that the title of “香港家庭科醫生” was not a quotable qualification allowed by the Medical Council. There is also no dispute that the Defendant’s name has never been included in the Specialist Register under the Specialty of “Family Medicine”.
16. It is clearly stated in section 7 of the Code that:
- “...
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... such as “doctor in dermatology” ...”
17. In our view, the use of the title of “香港家庭科醫生” in the Article left the readers an impression that the Defendant specialized in the area of family medicine but when in fact he was not a Specialist in Family Medicine.
18. 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 (at paragraph 45 of the Judgment) 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.”
19. 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.
20. For these reasons, we also find the Defendant guilty of professional misconduct in respect of disciplinary charge (c).

Sentencing

21. The Defendant has two previous disciplinary records back in 2010 relating to unauthorized practice promotion and in 2018 relating to mistake in labelling of medication bags dispensed to a patient.
22. In accordance with our published policy, we shall give the Defendant credit in sentencing for admitting the disciplinary charges and not contesting the issue of professional misconduct before us today.

23. We bear in mind that the primary purpose of a disciplinary order is not to punish the Defendant. Rather, it is 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.
24. 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 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.
25. The Defendant should consider himself lucky in that he was dealt with leniently in 2010 by way of a warning letter when he was found guilty of professional misconduct for practice promotion by distributing outside the Diamond Hill MTR Station leaflets relating to his clinic.
26. We accept however that the Defendant did not sanction or acquiesce in the publication of the offending Article deliberately. The gravamen of his wrongdoing lies in the lack of vigilance in ensuring that the Article would be proper in all material aspects before publication.
27. Taking into consideration the nature and gravity of this case and what we have heard and read in mitigation, we shall make a global order that the Defendant's name be removed from the General Register for a period of 3 months. We further order that the removal order be suspended for a period of 36 months.
28. We wish to emphasize that this is 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.

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