

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr CHAN Lap Ming (Reg. No.: M13986)

Date of hearing: 24 July 2020 (Friday)

Present at the hearing

Council Members/Assessors: Dr CHOI Kin, Gabriel
(Chairperson of the Inquiry Panel)
Dr CHEUNG Chin-pang
Dr CHENG Chi-kin, Ashley
Mr CHAN Wing-kai
Mr POON Yiu-kin, Samuel

Legal Adviser: Mr Edward SHUM

Defence Solicitor representing the Defendant: Mr William CHAN of
Messrs. Mayer Brown

Senior Government Counsel (Ag.) representing the Secretary: Miss Camille SHEK

1. The charges against the Defendant, Dr CHAN Lap Ming, are:

“That in or about February 2018, he, being a registered medical practitioner, sanctioned, acquiesced in or failed to take adequate steps to prevent:

(a) the publication of promotional information about the provision of beauty service(s) and/or treatment(s) on a social media website, the Facebook page of his clinic, namely LM SKINCENTRE (“LM SKINCENTRE”), including the following statements:

- (i) “優惠由即日起至1月31日，數量有限”；
 - (ii) “半價優惠”；
 - (iii) “優惠期：12月31日至1月31日”；
 - (iv) “一月療程優惠，低至75折！”；
 - (v) “二月療程優惠，低至75折！”；
 - (vi) “Probably one of the best skin centre that I’ve been to in Hong Kong. Dr CHAN was very attentive to my skin problems a...”；
 - (vii) “Excellent services and professional advice. Dr CHAN, Carrie, and all staff are perfect.”； and
 - (viii) “Professional doctor, great customer service and wide range of treatments”； and/or
- (b) *the publication of statements which exaggerate the efficacy of aesthetic medical practice and/or treatment(s) on a social media website, the Facebook page of LM SKINCENTRE, including the following statements:*
- (i) “4cm² 探頭，大大減低治療發數；
 - (ii) “3D 振動，帶來最強舒適度”；
 - (iii) “收緊提升新突破”；
 - (iv) “Tighten up new breakthroughs!”； and
 - (v) “更快、更舒適”。

In relation to the facts alleged, either individually or cumulatively, he 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 3 July 2003 to present. His name has never been included in the Specialist Register.
3. The Defendant admits the factual particulars of the disciplinary charges against him.
4. Briefly stated, the Medical Council received a letter from one L C WONG on 12 February 2018 complaining the Defendant of practice promotion in the Facebook page of LM SKINCENTRE.

5. Attached to the complaint letter were relevant extracts from the said Facebook page; and copies of the same are placed by the Legal Officer before us today for our consideration.
6. The Legal Officer also adduced the company search result of LM SKINCENTRE as evidence to show that the Defendant was at the material time a director and shareholder of LM Skin Centre Limited. The registered office address of this company was the same as the business address of LM SKINCENTRE shown in the said Facebook page.
7. Indeed, the Defendant's name also appeared right next to the name LM SKINCENTRE in the said Facebook page.

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 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

10. 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.

11. There is no dispute that the Defendant had at the material time a professional relationship with LM SKINCENTRE. In our view, discount offers in the said Facebook page, which formed the subject of disciplinary charges (a)(i) to (v), were posted for the purpose of canvassing patients to LM SKINCENTRE and a form of impermissible promotion on behalf of the Defendant.
12. Publication of laudatory statements of the Defendant in the said Facebook page, which formed the subject of disciplinary charges (a)(vi) to (viii), was in our view also promotional of the Defendant's professional practice.
13. In this connection, it is clearly stated in the Code of Professional Conduct (2016 edition) (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.

...

5.2.2.1 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.

...

18.1 Medical and health products and services are offered by a variety of organizations. The Council does not have jurisdiction over such organizations. However, subject to section 18.2, disciplinary action will be taken against a doctor where an advertisement in the name of the organization is in effect promotion of the doctor's practice. In this respect, the Council will look at the actual effect of the advertisement.

18.2 *A doctor who has any kind of financial or professional relationship with, uses the facilities of, or accepts patients referred by, such an organization, must exercise due diligence (but not merely nominal efforts) to ensure that the organization does not advertise in contravention of the principles and rules applicable to individual doctors. Due diligence shall include acquainting himself with the nature and content of the organization's advertising, and discontinuation of the relationship with an organization which is found to be advertising in contravention of the principles and rules."*

14. For these reasons, we find the Defendant guilty of professional misconduct in respect of disciplinary charges (a)(i) to (viii).

15. Turning to disciplinary charges (b)(i) to (v), it is clearly stated in the Code 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;*
- (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:

- (a) be exaggerated or misleading;*
- (b) be comparative with or claim superiority over other doctors;*
- (c) claim uniqueness without proper justifications for such claim;*
- (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;*
- ..."*

16. It is evident to us that the statements, which formed the subject of disciplinary charges (b)(i) to (v), had exaggerated the efficacy of aesthetic medical practice and/or treatments to be offered by the Defendant at LM SKINCENTRE and claimed superiority over others. And in our view, not only were these statements unduly sensational and persuasive, they might even generate unrealistic expectations amongst the readers.
17. In sanctioning, acquiescing in and/or failing to take reasonable steps to prevent the publication in the said Facebook page of these offending statements, which formed the subject of disciplinary charges (b)(i) to (v), the Defendant has by his conduct fallen below the standards expected of registered medical practitioners in Hong Kong.
18. Accordingly, we also find the Defendant guilty of professional misconduct in respect of disciplinary charges (b)(i) to (v).

Sentencing

19. The Defendant has a clear disciplinary record.
20. In line with our published policy, we shall give the Defendant credit in sentencing for his frank admission and full cooperation throughout these disciplinary proceedings.
21. We bear in mind that the primary 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 the public confidence in the medical profession by upholding its high standards and good reputation.
22. 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.

23. We accept that the Defendant has learnt his lesson. We notice that the offending contents of the said Facebook page were quickly removed after he was notified of the complaint.

24. 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 in respect of all the disciplinary charges that the name of the Defendant be removed from the General Register for a period of 1 month. We further order that the removal order be suspended for a period of 12 months.

Dr CHOI Kin, Gabriel
Chairperson of the Inquiry Panel
The Medical Council of Hong Kong