

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr HA Kwok Leung (Reg. No.: M13884)

Date of hearing: 29 December 2021 (Wednesday)

Present at the hearing

Council Members/Assessors: Prof. LAU Wan-ye, Joseph, SBS
(Chairperson of the Inquiry Panel)
Dr Hon Pierre CHAN
Dr MOK Pik-tim, Francis
Mr HUNG Hin-ching, Joseph
Ms CHOW Anna M W

Legal Adviser: Mr Edward SHUM

Defence Solicitor representing the Defendant: Mr Michael CHAO of
Messrs. Mayer Brown

Government Counsel representing the Secretary: Miss Jacqueline HUNG

The Defendant is absent.

1. The amended charges against the Defendant, Dr HA Kwok Leung, are:

“That in or about July 2015, he, being a registered medical practitioner, sanctioned, acquiesced in or failed to take adequate steps to prevent the publication of his name, title, photograph and/or promotional information, which promoted his practice and/or the product of “Cleviel” offered by Face It, in internet blogs, namely:

- (a) <http://seller.weshare.hk/issiyi/articles/4544101;>
- (b) [http://yobi.blogspot.com/2015/07/face-it-rejuvenation-solutions-cleviel.html.](https://www.beautyexchange.com.hk/blog/%E6%96%B0%E4%B8%80%E4%BB%A3%E5%BE%AE%E6%95%B4%E5%BD%A2Face%20it%E2%80%93%20Rejuvenation%20Solutions%E3%80%90CLEVIEL%20%E9%9F%93%E5%9C%8B%20%E3%80%91/146096; and/or(c) <a href=)

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 name of the Defendant has been included in the General Register from 3 July 2003 to the present. His name has never been included in the Specialist Register.
3. Briefly stated, the Secretary of the Medical Council (the “Council”) received two complaint emails from one Madam FUNG accusing the Defendant of professional misconduct. In support of her complaint, Madam FUNG also provided the Secretary with hyperlinks to 3 internet blogs and copy extracts of the blog posts.
4. The Secretary subsequently downloaded on 15 April 2019, 20 April 2020 and 20 April 2020 respectively via the hyperlinks provided by Madam FUNG and placed before us for our consideration the full version of the blog posts, which now form the subjects of the disciplinary charges (a), (b) and (c) against the Defendant.
5. In response to the complaint, the Defendant admitted in his written submission to the Preliminary Investigation Committee (“PIC”) that he was invited by the local distributor of the product of “Cleviel” *“to perform a demonstration of filler injection on a blogger (“the Event”)... and was told that bloggers would attend and write about the Event...”*.
6. The Defendant also told the PIC that the Event was subsequently held on 14 July 2015 at the Causeway Bay Clinic of Face It Limited (“FACE IT”); and he was at all material times an employee of FACE IT.

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 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.
8. 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

9. At the beginning of this inquiry, the Defendant admitted through his solicitor that he failed to take adequate steps to prevent the publication of his name, title, photograph and/or promotional information, which promoted his practice and/or the product of “Cleviel” offered by FACE IT, in internet blogs, which form the subjects of the amended disciplinary charges (a), (b) and (c) against him.

10. It remains for us to consider and determine on the evidence whether the Defendant’s conduct had fallen below the standards expected of registered medical practitioners in Hong Kong.

11. In this connection, it is stipulated in the Code of Professional Conduct (2016 edition) (“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:*

...

(d) *aim to solicit or canvass for patients;*

(e) *be used for commercial promotion of medical and health related products and services ...;*

...

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.

5.2.2.2 Practice promotion by individual doctors, or by anybody acting on their behalf or with their forbearance, to people who are not their patients is not permitted except to the extent allowed under section 5.2.3.

...

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...

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.

...

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 ..."

12. The Defendant was at all material times an employee of FACE IT; and the Defendant was fully aware that bloggers would attend the Causeway Bay Clinic of FACE IT and write about the Event.

13. We note from reading the blog posts downloaded from the hyperlinks to which the amended disciplinary charges (a), (b) and (c) relate that the product of "Cleviel" was claimed to be of superior quality and provided user with a lasting filler. There was however no mention of disadvantages about treatment by filler injections. Moreover, a 20% discount was offered for readers of the blog

posts to which the disciplinary charges (a) to (c) relate. There is no doubt in our minds that these blog posts were a form of commercial promotion for the product of “Cleviel” offered by FACE IT.

14. And readers of these blog posts would be left with an impression that the Defendant was knowledgeable of the product of “Cleviel” and skillful in administering filler injections. This is in our view also a form of practice promotion for the Defendant.
15. In failing to take any or any adequate steps to prevent the publication of his name, title, photograph and/or promotional information, which promoted his practice and/or the product of “Cleviel” offered by FACE IT, in internet blogs, which form the subjects of the amended disciplinary charges (a), (b) and (c) against him, the Defendant had in our view fallen below the standards expected of registered medical practitioners in Hong Kong.
16. Accordingly, we find the Defendant guilty of misconduct in a professional respect as charged.

Sentencing

17. The Defendant has a clear disciplinary record.
18. 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 public confidence in the medical profession by upholding its high standards and good reputation.
19. On 23 June 2006, the 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 Council.
20. We are told in mitigation that the Defendant did not receive any financial gain from attending the Event; and the Defendant did not have any intention to promote himself or his practice. But then again, there is no dispute that the Defendant was at all material times an employee of FACE IT.
21. We are particularly concerned about the offer of discount in the blog posts. In his PIC submission, the Defendant mentioned that “*he did not realize that images of him taken at the Event were posted by the bloggers in the articles until he received the 2nd PIC Notice*” dated 9 July 2021. This illustrated in our view that the Defendant did not bother to find out what the bloggers had written about the Event.

22. We accept that the gravamen of his misconduct lay in his lack of vigilance in ensuring that the blog posts would not transgress into the prohibitions under the Code. However, we need to ensure that the Defendant would not commit the same or similar breach in future.
23. Taking into consideration the nature and gravity of the amended 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 the amended disciplinary charges (a), (b) and (c) that:
- (1) the Defendant's name be removed from the General Register for a period of 6 months; and
 - (2) the operation of the removal order be suspended for a period of 24 months.

Prof. LAU Wan-ye, Joseph, SBS
Chairperson of the Inquiry Panel
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