

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr HO Tin Yee Tinny (何天儀醫生) (Reg. No.: M09467)

Date of hearing: 6 December 2019 (Friday)

Present at the hearing

Council Members/Assessors: Prof. Felice LIEH-MAK, GBS, CBE, JP
(Chairperson of the Inquiry Panel)
Dr WAI Yuk-chun, Veronica
Dr CHIU Shing-ping, James
Mr MUI Cheuk-nang, Kenny
Mr WOO King-hang

Legal Adviser: Mr Edward SHUM

Defence Solicitor representing the Defendant: Dr Bernard MURPHY of
Messrs. Howse Williams

Senior Government Counsel representing the Secretary: Miss Vienne LUK

1. The amended charges against the Defendant, Dr HO Tin Yee Tinny, are:-

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

(a) the use or appearance of her name, title, photographs and/or interview records/statements in the following websites which promoted the SkinCeuticals products:

- (i) article dated 21.8.2009 from <http://www.beautytalk.com.hk>; and/or
- (ii) article dated 19.2.2014 from <http://prochats.she.com>;

- (b) the use or appearance of her name, title, photographs and/or interview records/statements in the following websites which promoted the treatments of “Low Level Laser” or “Cold Laser” and/or “Ultherapy”:
 - (i) article dated 28.7.2012 from <http://blog.fashionguide.com.tw>;
 - (ii) article dated 24.9.2012 from <http://blog.onlylady.com>;
 - (iii) article dated 22.8.2013 from <http://cosmetic.pinnacle.darizi.com>;
 - (iv) news article dated 8.12.2010 from <http://www.metrohk.com.hk>; and/or
 - (v) news article dated 8.12.2010 from <http://orientaldaily.on.cc>;

- (c) the use or appearance of her name, title, photographs and/or interview records/statements in the following websites which promoted her professional services or practice:
 - (i) article dated 28.7.2012 from <http://blog.fashionguide.com.tw>;
 - (ii) article dated 24.9.2012 from <http://blog.onlylady.com>;
 - (iii) article dated 22.8.2013 from <http://cosmetic.pinnacle.darizi.com>;
 - (iv) news article dated 8.12.2010 from <http://www.metrohk.com.hk>; and/or
 - (v) news article dated 8.12.2010 from <http://orientaldaily.on.cc>;

- (d) in or about October 2016, the promotion in the website of www.skincentral.com of the skin care products and/or the treatments available at Skincentral Dermatology, Aesthetics & Lasers with which she had a financial and/or professional relationship; and/or

- (e) in or about October 2016, the quotation of the following qualifications in the website of www.skincentral.com which were not in the format approved by the Medical Council of Hong Kong:
 - (i) Bachelor of Medicine and Bachelor of Surgery (MBBS) (HK);
 - (ii) Member of the Royal Colleges of Physicians of the United Kingdom (MRCP) (UK); and/or
 - (iii) Fellow of the Hong Kong Academy of Medicine (FHKAM) (Med).

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 Defendant’s name has been included in the General Register from 6 June 1994 to present. Her name has been included in the Specialist Register under the Specialty of Dermatology & Venereology since 6 February 2002.

3. The Defendant admits the factual particulars of the amended disciplinary charges against her.
4. Briefly stated, the Secretary received on 28 May 2014 an e-mail complaining the Defendant of practice promotion. Attached to this e-mail were copies of news articles relating to interviews with the Defendant on the use of “cold laser” also known as “low level laser” for fat reduction and “ultherapy”. Also attached to this e-mail were copies of articles posted on the websites of <http://www.beautytalk.com.hk> and <http://prochats.she.com> relating to the Defendant’s participation in talks on anti-ageing and the impact of free radicals on skin respectively. The complainant further attached to this e-mail extracts from blog posts of photographs and/or description step by step of “ultherapy” that the Defendant gave to her patients and one of whom praised it as “unbelievable freezing age journey in Hong Kong”.
5. The Secretary subsequently downloaded from the internet and placed before us for our consideration the full version of each of the attachments to the complainant’s e-mail.
6. In response to the complaint against her, the Defendant apologized to the Preliminary Investigation Committee (“PIC”) of the Medical Council and further explained that she was not asked to review and approve the articles before their publication. Indeed, she never authorized the publication of her photographs in the website and blog posts. Nor had the bloggers given her any draft articles for consideration and approval before their publications in the websites.
7. According to the Defendant, her “motivation for providing the information, which forms the subject matter of [amended] charges (a) to (e) was for the purpose of public health education and for sharing knowledge of developments in certain treatments with colleagues. Unfortunately, the charges have resulted from [her] failing to ensure that all materials associated with those health related communications complied with the requirements of the Code of Professional Conduct (“the Code”) on practice promotion”. In this regard, although she was “unaware at the time of giving many of the interviews/talks that they would be published on third party websites”, the Defendant accepted that it was “her responsibility to ensure that the information she provided should not be published in a way which could be considered promotional.”

8. But then again, the Defendant accepted that it was her fault not to take steps to remove from the website of www.skincentral.com, a company wholly owned by her, information of skin care products and/or treatments which were not permitted by the Code. The Defendant further admitted that she failed to quote her qualifications properly in the same website.

Burden and Standard of Proof

9. We bear in mind that the burden of proof is always on the Legal Officer 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.
10. There is no doubt that each of the allegations against the Defendant here is a serious one. 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 amended disciplinary charges against her separately and carefully.

Findings of the Inquiry Panel

11. We gratefully adopt as our guiding principle the following statement of the law by Ma CJHC (as he then was) in *Kwok Hay Kwong v Medical Council of Hong Kong* [2008] 3 HKLRD 524 at 540-542:-

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

...

32. *... 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.”*

12. In this connection, it is stipulated in the Code (both 2009 edition and 2016 edition) 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:-

...

- (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..."*

13. We acknowledge that patients need information about a doctor's service in order to make an informed choice of doctor and to make the best use of the medical services the doctor offers. However, practice promotion of the 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 high standards of medical care.
14. The Defendant rightly admitted that she needed to be on the alert of the use and publication of the information that she gave in interviews and talks might objectively speaking, constitute practice promotion on her behalf and/or commercial promotion for medical related products or services.
15. In this connection, we note from reading both articles relating to her participation in talks that there were photograph(s) depicting the Defendant in front of a backdrop on which medical skincare products of the commercial brand "SkinCeuticals" were prominently displayed. This left, in our view, the readers with an impression that the "SkinCeuticals" products were actually endorsed by the Defendant.
16. The same is also true in relation to the promotion in the website of www.skincentral.com of skin care products and/or treatments available at Skincentral Dermatology, Aesthetics & Lasers with which the Defendant had a financial and/or professional relationship. In this connection, we are particularly concerned about the unduly persuasive and imbalanced manner in which these products and treatments were promoted. For instance, "ultherapy" was claimed to be "a new skin tightening treatment, which effectively firms and lifts the contours of the face, while refining the skin"; and skin care products available at Skincentral were claimed to be "essentials apart from treatment" and "[u]sing the right homecare product is the first step in taking care of your skin. The dermatologists at Skincentral encourage the use of the following [skin care products]...".
17. In relation to the blog posts which contained laudatory comments on the Defendant's professional practice and services, the Defendant told us in her PIC submission that the bloggers explained to her that they would like to take some photographs during the treatment so that they could prepare articles to educate people on "ultherapy". Unlike the case where a doctor does not even know that someone is going to talk about her professional practice and services in the social

media, the Defendant ought in our view to take the proactive steps in the circumstances to remind her patients that the articles that they wrote on “ultherapy” would not be promotional of her professional practice and services and not to publish or post the articles and photographs without her prior consent and approval.

18. In failing to take any or any adequate steps to prevent promotion of the SkinCeuticals products and her professional practice and services as aforesaid, the Defendant’s conduct has fallen below the standards expected of registered medical practitioners in Hong Kong. Accordingly, we find her guilty of the amended disciplinary charges (a) to (d).
19. As regards the amended disciplinary charge (e), we acknowledge that the Defendant possessed all the professional qualifications that she quoted. According to the Medical Council’s Guidelines on Quoting of Qualifications (published in August 2014), it may constitute professional misconduct if the Defendant repeatedly failed to quote her professional qualifications in the format approved by the Medical Council. However, there is no evidence before us in this respect. Accordingly, we find her not guilty of the amended disciplinary charge (e).

Sentencing

20. The Defendant has a clear disciplinary record.
21. In accordance with our published policy, we shall give her credit for her frank admission and full cooperation throughout these disciplinary proceedings.
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 her lesson. However, we need to bear in mind that her misconduct spread over a relatively long period of time. We are particularly concerned about the blog posts. Once the patients had told her

that they were going to make use of the photographs and prepare articles to educate the public on “ultherapy”, the Defendant should have a higher level of suspicion that the information on “ultherapy” that she gave might be misused and/or misquoted. In our view, the gravamen of her misconduct lay in her lack of alertness and failure to take proactive steps to prevent this from happening.

24. Having considered 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) to (d) that:-

- (1) the Defendant’s name be removed from the General Register for a period of 3 months; and
- (2) the operation of the removal order be suspended for a period of 12 months.

Remark

25. The Defendant’s name is included in the Specialist Register under the Specialty of Dermatology & Venereology. 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. Felice LIEH-MAK, GBS, CBE, JP
Chairperson of the Inquiry Panel
The Medical Council of Hong Kong