

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr KWOK Yam Tat Jeremy (郭任達醫生) (Reg. No.: M01464)

Date of hearing: 6 May 2022 (Friday)

Present at the hearing

Council Members/Assessors: Prof. LAU Wan-ye, Joseph, SBS
(Chairperson of the Inquiry Panel)
Dr CHOW Yu-fat
Dr LAU Ho-lim
Mr HUNG Hin-ching, Joseph
Mr LUI Wing-cheung, Kenneth

Legal Adviser: Mr Edward SHUM

Defence Solicitor representing the Defendant: Ms Maureen LIU of
Messrs. Howse Williams

Government Counsel representing the Secretary: Mr Ryan LEE

The Defendant is not present.

1. The charges against the Defendant, Dr KWOK Yam Tat Jeremy, are:

“That he, being a registered medical practitioner, sanctioned, acquiesced in or failed to take adequate steps to prevent the publication of:

(a) the following information on the Facebook page of NIVANA in November 2017 which promoted or endorsed the product “Nivana” –

- (i) *his name, title and photograph;*
 - (ii) *the statement that “Dr Jeremy Kwok would carefully and patiently understand needs of patients, and then recommends NIVANA as THE ultimate anti-ageing TOTAL solution”; and*
 - (iii) *the statement that “Dr Jeremy Kwok highly recommends NIVANA”;*
- (b) *the following promotional statements in respect of his practice in association with Dr. Beauty (“the Company”) –*
- (i) *“銅會員 85 折；銀會員 8 折；金會員 75 折；白金以上 7 折” on the webpage <http://www.drbeauty.com.hk> in about April or May 2018; and*
 - (ii) *“而家購買水光療程，更有買 5 送 1 優惠” on the Facebook page of the Company in January 2018.*

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 7 October 1969 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 a complaint from one Mr YUEN alleging the Defendant of, amongst others, impermissible practice promotion for himself and/or his practice in association with Dr Beauty Aesthetic & Antiaging Centre Limited (“Dr Beauty”); and of commercial promotion for the beauty products of NIVANA.
4. Also attached to the complaint received from Mr YUEN were copy extracts downloaded by him from the Facebook pages of NIVANA and Dr Beauty; and from the webpage of Dr Beauty at <http://www.drbeauty.com.hk>, which now form the subjects of the disciplinary charges against the Defendant. Copies of the same were placed by the Legal Officer before us for consideration.

Burden and Standard of Proof

5. 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.
6. 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 disciplinary charges against him separately and carefully.

Findings of the Inquiry Panel

7. At the beginning of this inquiry, the Defendant admitted through his solicitor that he failed to take adequate steps to prevent the publication of:-
 - (a) the following information on the Facebook page of NIVANA in November 2017 which promoted or endorsed the product “Nivana” –
 - (i) his name, title and photograph;
 - (ii) the statement that “Dr Jeremy Kwok would carefully and patiently understand needs of patients, and then recommends NIVANA as THE ultimate anti-ageing TOTAL solution”; and
 - (iii) the statement that “Dr Jeremy Kwok highly recommends NIVANA”; and
 - (b) the following promotional statements in respect of his practice in association with Dr. Beauty ("the Company") -
 - (i) “銅會員 85 折；銀會員 8 折；金會員 75 折；白金以上 7 折” on the webpage <http://www.drbeauty.com.hk> in about April or May 2018; and

(ii) “而家購買水光療程，更有買 5 送 1 優惠” on the Facebook page of the Company in January 2018.

8. The Secretary’s case also is that the Defendant sanctioned and/or acquiesced in the publication of the offending promotional materials. There is however nothing in the evidence adduced by the Secretary to show that the Defendant had actually sanctioned the publication of the offending promotional materials. Moreover, we are unable to agree with the Legal Officer that it was open for us to infer from the fact that the offending promotional materials were published over a course of some 2 years that the Defendant had acquiesced in their publication.

9. 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.

10. It is stipulated in the Code of Professional Conduct (2016 edition) (“Code”) 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 doctors’ 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:-

...

(b) factual;

(c) objectively verifiable;

...

5.2.1.2 Such information must not:-

(a) be exaggerated or misleading;

...

- (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;*
- ...*

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.

...

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 ...”

11. In this connection, we note from reading the Facebook page of NIVANA to which disciplinary charges (a)(i) to (iii) relate that the products of “NIVANA” were said to be “*THE ultimate anti-ageing TOTAL solution*”. Such an exaggerated and sensational statement, which was neither factual nor objectively verifiable, was in our view made for the purpose of claiming uniqueness without proper justifications. This was no doubt a form of commercial promotion for the products of “NIVANA”.
12. And in our view, the appearance of the Defendant’s name, title and photograph in the said Facebook page of NIVANA together with the statements that “*Dr Jeremy Kwok would carefully and patiently understand needs of patients*” and that he “*highly recommends NIVANA*” would leave the readers with the impression that the products of “NIVANA” were endorsed by the Defendant.
13. For these reasons, in failing to take any or any adequate steps to prevent the publication of the offending materials which form the subjects of disciplinary charges (a)(i) to (iii) against him, the Defendant had in our view fallen below the standards expected of registered medical practitioners in Hong Kong.
14. Accordingly, we find the Defendant guilty of misconduct in a professional respect as per disciplinary charges (a)(i) to (iii).
15. We also noted from the extracts from the webpage and Facebook page of Dr Beauty to which disciplinary charges (b)(i) and (ii) relate that Dr Beauty was founded by the Defendant; and Dr Beauty could offer a wide range of cosmetic medical treatments to its members at discounted prices plus a limited time bonus offer of buy 5 get 1 free for “*水光療程*”.
16. There is no doubt in our minds that these unduly persuasive promotional offers were made with a view to encourage readers to seek consultation and/or cosmetic medical treatments from Dr Beauty, an organization with which the Defendant was associated. This was in our view a form of indirect practice promotion for the Defendant.
17. For these reasons, in failing to take any or any adequate steps to prevent the publication of the offending materials which form the subjects of disciplinary charge (b) against him, the Defendant had in our view fallen below the standards expected of registered medical practitioners in Hong Kong.

18. Accordingly, we find the Defendant guilty of misconduct in a professional respect as per disciplinary charges (b)(i) and (ii).

Sentencing

19. The Defendant has a previous disciplinary record relating to prescription and labelling of drugs back in 2019. We accept that the subject matters of the present disciplinary charges, which happened earlier in time, are of different nature.
20. In line with our published policy, we shall give the Defendant credit in sentencing for his admission and not contesting the disciplinary proceedings before us today.
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 public confidence in the medical profession by upholding its high standards and good reputation.
22. 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.
23. We are told in mitigation that the Defendant promptly asked NIVANA and Dr Beauty to remove the offending promotional materials after he became aware of their publication.
24. We are particularly concerned about the offer of discount and bonus offer of buy 5 get 1 free in the Facebook page of Dr Beauty. In response to the complaint, whilst claiming that he “*did not (and does not) perform the treatment “水光療程”*”, the Defendant admitted to the Preliminary Investigation Committee of the Council that he “*was engaged by Dr Beauty to provide medical services*”. But then again, the real point in our view is that the Defendant ought to take adequate steps to prevent the publication of such offending promotional materials, irrespective of whether he actually benefitted from them.

25. Taking into consideration 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 disciplinary charges (a)(i) to (iii) and (b)(i) and (ii) 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 36 months.

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