

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr LAM Lin Mei Alice (林連美醫生) (Reg. No.: M13353)

Date of hearing: 7 April 2017 (Friday)

Present at the hearing

Council Members/Assessors: Prof. Felice LIEH-MAK, GBS CBE JP
(Temporary Chairman)
Dr LAI Kit-lim, Cindy, JP
Dr LI Tak-lai, Theresa
Dr TSE Hung-hing, JP
Mr YU Kwok-kuen, Harry
Dr LAI Sik-to, Thomas
Mr Kwong Cho-shing, Antonio, MH

Legal Adviser: Mr Edward SHUM

Defence Solicitor representing the Defendant: Ms Phyllis CHIU of Messrs.
Mayer Brown JSM

Government Counsel representing the Secretary: Ms Carmen SIU

1. The charges against the Defendant, Dr LAM Lin Mei Alice, are :

“That in or about November 2010, she, being a registered medical practitioner:

- (a) sanctioned, acquiesced in or failed to take adequate steps to prevent the use or publication of her name, title, qualifications, photograph and/or interview records or statements in an advertisement or article published in the 18 November 2010 issue of Headline Daily (“Advertisement”), promoting or endorsing (directly or indirectly) the product “Lanakeloid-E”;
- (b) failed to quote or to take adequate steps to ensure the quotation of the qualification entitling her to registration as a medical practitioner, i.e. 香港醫務委員會執照, as the first qualification to be shown in the Advertisement, contrary to the “Advice in regard to qualifications that are acceptable to the Council for use on signboards, letter-heads, visiting cards etc.” issued by the Medical Council of Hong Kong in June 2009; and

- (c) sanctioned, acquiesced in or failed to take adequate steps to prevent the publication of the qualifications of “加拿大達爾侯斯大學醫學博士”, “加拿大達爾侯斯大學劑藥學學士” and “加拿大醫務委員會執照” in the Advertisement, which are not quotable qualifications approved by the Medical Council of Hong Kong.

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 was at all material times a registered medical practitioner. Her name has been included in the General Register from 2 January 2002 to present and her name has never been included in the Specialist Register.
3. According to the Defendant, sometime in or around October 2010, a sales representative of a pharmaceutical company by the name of Hang Lung Trading (H.K.) Company (“Hang Lung”) came to her clinic and asked her to write an article about treatment of scar for public health education purpose. The Defendant had met this sales representative a few times before as she sometimes ordered medical products from Hang Lung.
4. During the interview, an active ingredient, namely, Centella Asiatica Phytosome, Vitamin E, was mentioned by Hang Lung’s sales representative and the Defendant expressed her view that this was good for healing and reduction of scar formation. The Defendant also agreed to write a short article on scar management and wound healing process for education purpose.
5. According to the Defendant, a few days after the interview, a piece of short script in the format of a dialogue between her and her patient (the “Draft Article”) was sent to her for review and approval. Reference was made in the dialogue to Centella Asiatica Phytosome, Vitamin E and its effect on wound healing. Also included in the Draft Article were the name, title, qualifications and photograph of the Defendant.
6. The article approved by the Defendant [the “Approved Article”] subsequently appeared in an advertisement published in the 18 November 2010 issue of Headline Daily (the “Advertisement”). Immediately below the Approved Article was the promotional material for a medical product under the trade name “Lanakeloid-E” [the “Product”]. In the Advertisement, the ingredient of the Product, namely, Centella Asiatica Phytosome, Vitamin E, was prominently displayed and the Product was stated to be strongly recommended by specialists in dermatology over the world.
7. There is no dispute that the Advertisement was placed by Hang Lung for promotion of the Product in Hong Kong.
8. The Medical Council subsequently received the present complaint against the Defendant on 22 November 2010.

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 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 the allegations made against the Defendant here are serious ones. 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 the disciplinary charges against the Defendant separately and carefully.

Findings of the Council

11. In our view, the Advertisement taken as whole would lead the readers into thinking that the Defendant was endorsing and/or promoting the Product. The fact that the trade name of the Product had not been mentioned in the Approved Article was of no consequence.
12. The Defendant sought to convince us that she did not know that the Approved Article would be published together with the Advertisement.
13. Section 6 of the Code of Professional Conduct (2009 edition) [the “Code”] provides that:-
 - “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 from him... He should also take reasonable steps to ensure that the materials are not used directly or indirectly for the commercial promotion of any medical... products...”
14. The Defendant ought to ensure that the information that she gave in an interview was not to be used in such a manner that would be regarded as commercial promotion for any medical products. The crux of the matter therefore lies in whether the Defendant had already exercised due diligence to prevent this from happening.
15. It is clear from the evidence that the Defendant never asked Hang Lung how

and where the Approved Article would be published. Given her knowledge that Hang Lung was a pharmaceutical company in Hong Kong, the Defendant should have asked for a written undertaking from Hang Lung that (1) the Approved Article would not be published in a manner which might reasonably be regarded as suggesting her endorsement of any medical products; and (2) the Approved Article would not be placed in close proximity to any advertisement for medical products.

16. For these reasons, we are satisfied on the evidence that the Defendant's conduct as particularized under charge (a) had fallen below the standards reasonably expected of registered medical practitioners in Hong Kong. Accordingly, we find the Defendant guilty of charge (a).
17. In June 2009, the Medical Council issued to registered medical practitioners in Hong Kong an advice in regard to qualifications that are acceptable for use on signboards, letter-heads, visiting cards, etc. [the "Advice"] drawing their attention to section 5 of the Code which dealt with professional communication and information dissemination. In it, advice was given *inter alia* that the first qualification shown must be the one entitling the holder to registration and followed by additional post-graduate qualifications when held.
18. The Defendant did not deny that she had failed to quote or to take adequate steps to ensure the quotation of 香港醫務委員會執照 as her first qualification in the Advertisement. However, the burden of proof is still on the Legal Officer to establish that (1) the Advice was wide enough to cover the present situation; and (2) failure to follow the Advice on one occasion would constitute misconduct in a professional respect.
19. The Legal Officer's case is that use of the word "etc." after "signboards, letter-heads, visiting cards" was intended to extend the Advice to cover all forms of communication and information dissemination. However that may be, we have reservation whether failure to quote the first qualification entitling the holder to medical registration in Hong Kong on one occasion could amount to misconduct in a professional respect. Accordingly, we find the Defendant not guilty of charge (b).
20. It remains for us to decide on the evidence whether the Defendant's conduct as particularized under charge (c) amounts to misconduct in a professional respect.
21. The Defendant admitted that she had sanctioned, acquiesced in or failed to take adequate step to prevent publication in the Advertisement the qualifications mentioned in charge (c) above, which were at the material time not quotable qualifications approved by the Medical Council.
22. The scheme of quotable qualifications was set up by the Medical Council to regulate the quoting of qualifications by doctors in their communication of practice information to the public. The regulation was considered necessary to maintain public confidence in the medical profession and to protect the public from misleading information. A List of Quotable Qualifications (the

“List”) was established to include only those qualifications which the Medical Council was satisfied to be directly related to medical practice and of an acceptable standard and reflected significant improvement to a doctor’s medical competence over and beyond his basic training.

23. Section 5.2.2.1 of the Code provides that:-

“Practice promotion means publicity for promoting the professional services of a doctor... Practice promotion in this context will be interpreted by the Medical 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.”

24. Section 5.2.2.2 also provides that:-

“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.”

25. There is no dispute that reference was made to the Defendant’s qualifications in circumstances other than those permitted under section 5.2.3 of the Code. Moreover, none of the qualifications mentioned in charge (c) were quotable qualifications.

26. For these reasons, we are satisfied on the evidence that the Defendant’s conduct particularized under charge (c) had fallen below the standards reasonably expected of registered medical practitioners in Hong Kong. Accordingly, we find the Defendant guilty of charge (c).

Sentencing

27. The Defendant has a clear disciplinary record.

28. We bear in mind that the 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 the high standards and good reputation of the profession.

29. We shall give the Defendant full credit for her cooperation at the preliminary investigation stage and her appearance before us today.

30. We appreciate that the Defendant had obtained the qualifications mentioned in charge (c) from studies and/or examinations overseas. However, the fact remains that none of these qualifications had been approved by the Medical Council as quotable qualifications.

31. We accept that the Defendant did not use the aforesaid unquotable qualifications deliberately for the purpose of practice promotion.
32. But then again, the Medical Council has issued repeated warnings that cases of product promotion would be dealt with by removal from the General Register for a short period with suspension of the removal order; and in serious cases the removal orders would take effect immediately.
33. Having considered 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 charges (a) and (c) that the Defendant's name be removed from the General Register for a period of one month. We further order that the removal order be suspended for a period of one year.

Prof. Felice LIEH-MAK, GBS CBE JP
Temporary Chairman
The Medical Council of Hong Kong