香 港 醫 務 委 員 會

The Medical Council of Hong Kong

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr LEUNG Sik Chiu (梁錫超醫生) (Reg. No.: M03860)

Date of hearing: 4 May 2021 (Tuesday)

Present at the hearing

Council Members/Assessors: Prof. LAU Wan-yee, Joseph, SBS
(Chairperson of the Inquiry Panel)
Dr LEUNG Chi-chiu
Dr KONG Yim-fai, Albert, MH
Mr HUNG Hin-ching Joseph
Mr LAI Kwan-ho, Raymond

Legal Adviser: Mr Edward SHUM

Senior Government Counsel representing the Secretary: Miss Sanyi SHUM

The Defendant is not present.

1. The charges against the Defendant, Dr LEUNG Sik Chiu, are:

"That from about 2018 to 2020, he, being a registered medical practitioner, sanctioned, acquiesced in or failed to take adequate steps to prevent:

(a) the use or appearance of his name, title, photographs and/or interview records and statements in the article dated 17 April 2018 accessible at the website of <https://mp.weixin.qq.com/s/7muqyYw7HFSmXwrxeZgZ7w> ("the Article") which promoted the naturopathic medicine;

(b) the publication of the Article which promoted his practice in association with "賦活醫學" ("the Business") with which he had a professional relationship;

(c) the publication of promotional statements and/or information relating to his experience, skills and/or practice in the Article which canvassed for the purpose of obtaining patients and/or were not service information permitted to be published;

(d) the use or appearance of the following titles in the Article, which were not quotable qualifications approved by the Medical Council of Hong Kong at the material time:

(i) 自然医学博士;
(ii) 国际综合预防医学中心总监; and
(iii) 广东省医药企业管理协会专家委员会副主任委员;

(e) the publication of promotional information about his naturopathic medicine services in the video clip dated 26 June 2018 accessible at <https://www.youtube.com/wach?v=75RW8io19Gs> ("the Video") which canvassed for the purpose of obtaining patients and/or were not service information permitted to be published;

(f) the publication of the Video which promoted his practice in association with the Business with which he had a professional relationship;

(g) the publication of announcements of appreciation from grateful patients or related persons identifying him in the Video; and/or

(h) the promotion of his services by telephone by means of text messages sent by him or persons acting on his behalf or with his forbearance.

In relation to the facts alleged, either singularly or cumulatively, he has been guilty of misconduct in a professional respect."

Preliminary Issues

2. Before this inquiry began, the Legal Officer told us and we are satisfied upon reading the relevant Affirmation of Service that the Notice of Inquiry dated 8 February 2021 (together with a copy of the Medical Practitioners (Registration & Disciplinary Procedure) Regulation, Cap. 161E ("the Regulation") and a copy of the Practice Directions on Disciplinary Inquiries issued by the Council ("the Practice Directions") were duly served on the Defendant by post to his proper address in accordance with section 51 of the Regulation.

3. The Legal Officer also told us that the Defendant had written to the Secretary of the Council ("the Secretary"):-

(1) questioning the propriety of the disciplinary charges against him because "internet is not a public place" and dissemination in the internet does not amount to dissemination to the public;

(2) requiring inquiry panel members to answer him (a) which kind of COVID-19 vaccine they would recommend Hong Kong people to take; and (b) whether they have already received COVID-19 vaccination; and

(3) asking for a permanent stay of this inquiry if he cannot exercise his right to cross-examine the Complainant.

Copies of the correspondence exchanged between the Secretary and the Defendant from 7 April 2021 to 29 April 2021 were placed before us by the Legal Officer for our consideration.

4. We do not accept the Defendant's contention in his letters to the Secretary that this inquiry would be unfair to him and should not be held before all the questions raised by him have been answered. In our view, these questions can be handled in accordance with the procedures set out in Part IV of the Regulation by us today after the Notice of Inquiry is read out.

5. In any event, we fail to see how our stance on COVID-19 vaccination may reflect on our suitability to remain on the Inquiry Panel.

6. It is evident to us from reading the correspondence exchanged between the Defendant and the Secretary that the Defendant decided on his own volition not

to be present either by himself or by his legal representative despite he has been duly served with the Notice of Inquiry dated 8 February 2021.

7. For these reasons, we decide to proceed with this inquiry in the absence of the Defendant.

8. In response to our enquiry, the Legal Officer confirmed that the Secretary would not call the complainant to give oral evidence in this inquiry because the complainant insisted to remain anonymous.

9. We accept that fairness to the Defendant requires, in principle, that he would be allowed the opportunity to cross-examine the complainant. However, save for disciplinary charge (h), the proof of which hinges on the veracity of the complainant's allegations, proof of the Secretary's case against the Defendant in respect of disciplinary charges (a) to (g) turns on what we shall find in the Article and the Video. In this connection, the Defendant was fully aware of the Secretary's case and he never disputed in his correspondence with the Secretary that the Article and the Video could be downloaded from the hyperlinks, which now form the subjects of disciplinary charges (a) and (e) respectively.

10. Accordingly, we do not accept the Defendant's contention that this inquiry should be permanently stayed if he cannot exercise his right to cross-examine the Complainant. But then again, we must also exercise our discretion to exclude the complainant's allegations from the evidence in support of the Secretary's case in respect of disciplinary charge (h).

Facts of the case

11. The name of the Defendant was at all material times and still is included in the General Register. His name had never been included in the Specialist Register.

12. Briefly stated, the Secretary received a letter complaining the Defendant of practice promotion. Attached to this complaint letter were the hyperlinks from which the Article and the Video could be downloaded.

13. The Defendant was quoted in the Article as Dr LEUNG Sik Chiu "*自然医学博士*", "*国际综合预防医学中心总监*"; and "*广东省医药企业管理协会专家委*

员会副主任委员". The Defendant's photograph was prominently displayed in the Article. And the Defendant was quoted in the Article as the founder of *"赋活医学"*, who looked for a super highway to help patients to achieve good treatment results at the shortest time with minimal medical costs.

14. The first part of the Video talked about "*自然医学*" and *"赋活医学"*. And the second part of the Video contained interviews with persons who claimed to be patients of "梁醫生". During these interviews, "梁醫生" was praised for his special skills in treating his patients.

Burden and Standard of Proof

15. 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.

16. 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 disciplinary charges against him separately and carefully.

Findings of the Inquiry Pane

17. At the beginning of this Inquiry, the Legal Officer informed us that the Secretary is not going to adduce evidence against the Defendant in respect of disciplinary charges (b) and (h). Since the burden of proof is always on the Secretary, we must find the Defendant not guilty of disciplinary charges (b) and (h).

18. The Defendant argued in his correspondence with the Secretary that his freedom of expression should not be restricted. However, freedom of expression is not absolute.

19. We gratefully adopt as our guiding principle the following statements of the law by the Court of Appeal in *Dr Kwok-Hay Kwong v The Medical Council of Hong Kong* [2008] 3 HKLRD 524:-

> *"29. The freedom of expression includes the right to advertise and this is so even where the intention is for personal financial gain…*
>
> *32. Next, 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.*
>
> *36. The paramount theme in the Code [of Professional Conduct published by the Medical Council] is the public interest…*

40. ...within the confines of the provision of good communication and the provision of objectively verifiable information, practice promotion is, as a matter of principle, permitted for doctors…

69. ...The aim of the restrictions is the protection of public health and the reputation of the profession…

70. What is or is not proportionate restriction upon any fundamental right is always a matter of context… The interests of patients and potential patients are the overwhelming consideration. What we are concerned with, and indeed are the doctors, is the protection of the public in a realm in which that public is vulnerable… It is the standing of the profession and the assumed expertise of each member that renders the patient or potential patient highly susceptible to persuasion… Doctors do not dispense standardized products but, rather, they 'render professional services of almost infinite variety and nature, with the consequent enhanced possibility for confusion and deception if they were to undertake certain kinds of advertising'… and there is a duty upon, let alone a right in, the medical profession to guard against commercialism and exploitation… There is in other words a powerful interest 'in restricting the advertising of health-care services to those which are truthful, informative and helpful to the potential consumer in making an intelligent decision'…

71. With such considerations at play, restrictions on advertising by doctors will not be difficult to justify. But there is a countervailing consideration, with the same interests in view, namely, the right of members of the public to receive information with which to make an informed choice on a matter of such individual importance. ***The question then becomes one of balance: how to provide an informed choice whilst at the same time protecting the most vulnerable from influence that may be detrimental; detrimental where it is misleading****, or lures the individual from a secure and competent existing relationship, or* ***provides false hope****, or confuses in its language* ***or by competing claims****, or because "the doctor most successful at achieving publicity may not be the most appropriate to consult" ...* [**Our emphasis**]

20. In *Medical Council of Hong Kong v Helen Chan* (2010) 13 HKCFAR 248, Bokhary PJ (with whom the rest of the Court of Final Appeal agreed) also held that:-

> "*74. Article 27 of the Basic Law entrenches and guarantees 'freedom of speech'. And art. 39 of the Basic Law entrenches the Bill of Rights. Paragraph (2) of art 16 of the Bill of Rights provides that everyone shall have 'freedom of expression'. And para. (3) of this article provides that restrictions on this freedom*
>
> *'shall only be such as are provided by law and necessary:*
>
> *(a) for respect of the rights or reputations of others; or*
>
> *(b) for the protection of national security or of public order (order public), or of public health or morals'.*
>
> *80. A constitutional right or freedom must always be protected with anxious care. This is so even when it is one like freedom of commercial speech rather than freedom of political speech. The position of a person facing a charge must also always be protected with anxious care… All of this is so even when the aim of the restriction on the right or freedom and of the bringing of the charge is to protect something as vital as public health…*
>
> *81. Upon such considerations, I find myself in respectful agreement with the conclusion reached by the learned judges of the Court of Appeal on this part of the case. The speech involved was commercial rather than political speech, and the restriction thereon was necessary for the protection of public health. It was proportionate to that need.*
>
> *82. Having regard to the realities of the circumstances, the finding that what Dr Chan did constituted misconduct in a professional respect is not unfair, contrary to natural justice, incompatible with free speech or with legal certainty. After all, the sort of professional misconduct alleged against Dr Chan can only be established if the governing body of her profession is satisfied, after a full and fair hearing, that what she did was contrary to a consensus within her profession on what the ethics of that profession demand. And there is a right of appeal to the judiciary. It is not unconstitutional that, under the safeguards of a fair system of adjudication and appeal, persons are held to the customary ethics of their profession unless the particular rule of ethics involved is irrational. This one is by no means irrational.*"

21. In that case, Dr Helen Chan found guilty by the Medical Council of professional misconduct in that she had breached a "*long-established rule that doctors are prohibited from public endorsement or promotion of a commercial brand of medical or health-related products*." On appeal, Le Pichon JA in dealing with the submission that Dr Chan, "*(1)…as a doctor, is permitted to engage in business activities…; (2) she is free to refer to her qualification as a doctor when she does so; (3) it is not alleged that she was promoting her own practice; and (4) it is not alleged that any statements she made was misleading"*, had this to say in her Judgment (with whom the rest of the Court of Appeal agreed):-

> "*46. But when a person who belongs to the medical profession is permitted to engage in other activities, it does not follow that he would be free to carry on that activity free from all ethical or professional constraints. Rather, it is to be expected that if the doctor's status, qua doctor, is engaged or involved when carrying out that other activity, ethical or professional constraints could arise. While the two roles can coexist, the Council has drawn the line at the coupling of the defendant's profession with her wider commercial interests: the public endorsement, qua doctor, of the brand of which her company is the manufacturer. Such an endorsement plainly could give rise to a conflict of interest. Inherent in the dual capacities is a risk of the views being proffered not being wholly impartial, balanced and objective. There is also the risk that permitting such an endorsement would have the effect of denigrating the profession into a business.*
>
> *47. In my view, the court should refrain from second-guessing the Council as to where precisely the line falls to be drawn when, as a matter of law, the constraint is "prescribed by law". In Koo Kwok Ho v Medical Council of Hong Kong (unrep., CACV 23/1988, [1988] HKLY 798), Cons J considered that the best judges of whether there has been a 'falling short of standards' are the doctors themselves since what was expected of a doctor in the given circumstances was something which the doctors of the Council would know from their own professional experience. Ma CHJC recently echoed those sentiments in Kwok Hay Kwong v Medical Council of Hong Kong [2008] 3 HKLRD 524 at para. 22:*
>
> > *"... the courts have consistently recognized that medical regulatory bodies (such as [the Council]) are the best placed to determine the boundaries of medical professional conduct.*"

22. In our view, restrictions in the Code against publication to the public of information about a doctor's medical practice and his commercial promotion of any medical and health related products or services, is legitimate and proportionate in maintaining the balance between the freedom of expression and other aspects of the public interest alluded to in the Court of Appeal's decision in the *Dr Kwok-Hay Kwong* case.

23. In this connection, it is stipulated in the Code (2016 edition) 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 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.*
>
> *5.2.1.2 Such information must not:-*
>
> *(b) be comparative with or claim superiority over other doctors*
>
> *...*
>
> *(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.

6.2 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."

24. Turning to disciplinary charge (a), it is evident to us that naturopathic medicine was promoted in the Article. The Defendant argued in his correspondence with the Secretary that the title he used in the Article was "*自然医学博士*". From this the Defendant argued that it is beyond the purview of the Council to regulate the publication of information contained in the Article. We disagree.

25. In *Helen Chan v Medical Council of Hong Kong*, the Court of Final Appeal quoted with approval the following passage in the 2000 edition of the Professional Code and Conduct:-

"*Misconduct in a professional respect' can be broadly defined as 'If a medical practitioner in the pursuit of his profession has done something which will be reasonably regarded as… unethical… by his professional colleagues of good repute and competency, then it is open to the Medical Council of Hong Kong, if that be shown, to say that he has been guilty of professional misconduct*".

26. In our view, the real question is whether the use or appearance of the Defendant's name, title, photographs and/or interview records and statements in the Article was done "*in the pursuit of his profession*" as a registered medical practitioner. Put in another way, whether the Defendant made use of his status as a registered medical practitioner to promote or endorse naturopathic medicine.

27. In this connection, we note from reading the Article the following passages:-

"*梁锡超博士也把主流医学的优点加入其中，例如需采用高新科技才能实现的干细胞疗法、针对性的营养修复等，结合多种管道*

帮助患者以最短的时间、最低的费用而能重获健康。”
“ 梁锡超博士对症下药，采用静脉滴注的方案，为对方排除身体毒素 ”

28. It is evident to us that the Defendant was practicing conventional Western medicine when he offered these treatments to his patients.

29. Regardless of what is meant by “naturopathic medicine”, we are firmly of the view that the use or appearance of the Defendant’s name, title, photographs and/or interview records and statements in the Article also engaged or involved his status as a registered medical practitioner.

30. As the Court of Appeal pointed out in the *Helen Chan* case:-

> “*46. But when a person who belongs to the medical profession is permitted to engage in other activities, it does not follow that he would be free to carry on that other activity free from all ethical or professional constraints. Rather, it is to be expected that if a doctor’s status, qua doctor, is engaged or involved when carrying out that other activity, ethical or professional constraints could arise. While the two roles can coexist, the Council has drawn the line at the coupling of the defendant’s profession with her wider commercial interests: the public endorsement, qua doctor, of the brand which her company is the manufacturer. Such an endorsement plainly could give rise to a conflict of interest. Inherent in the dual capacities is a risk of the views being proffered not being wholly impartial, balanced and objective. There is also the risk that permitting such an endorsement would have the effect of denigrating the profession into a business.*”

31. The Defendant also argued in his correspondence with the Secretary that the disciplinary charges against him were improper because “internet is not a public place” and it followed that there was no “dissemination of information to the public”. Although there was no mention of the case name, the Defendant seemed to rely on the Court of Final Appeal’s decision in *HKSAR v Chan Yau Hei*; FACC 3/2013; 7 March 2014 to support his argument.

32. In our view, the case of *HKSAR v Chan Yau Hei* is distinguishable from the present case. The principal question raised in that appeal was whether the

common law offence of outraging public decency could be committed by posting a message on an internet discussion forum.

33. The Court of Final Appeal unanimously held that "*the offence must be committed in public in the sense of being done in a place to which the public has access or in a place where what is done is capable of public view*"; and "*the public nature of the offence can only be satisfied if the act is capable of being seen by two or more persons who are actually present, even if they do not actually see it*". The Court of Final Appeal went on to consider whether the public element of the offence required the act to be committed in a physical, tangible place. It was in this context that the Court of Final Appeal observed that "*the internet is properly to be regarded as a medium and not a place for the purposes of the offence*".

34. We do not accept the Defendant's contention that publication of the Article in the internet would not constitute "*dissemination to the public*".

35. By failing to take adequate steps to prevent the use or appearance of his name, title, photographs and/or interview records and statements in the Article which promoted the naturopathic medicine, the Defendant has in our view by his conduct fallen below the standards expected of registered medical practitioners in Hong Kong. Accordingly, we find the Defendant guilty of misconduct in a professional respect as per disciplinary charge (a).

36. Turning to disciplinary charge (c), it is essential in our view for the Secretary to prove on the evidence before us that canvassing was done for the purpose of obtaining patients for the Defendant "*in pursuit of his profession*" as a registered medical practitioner. We are however unable to conclude from reading the Article that it was for the purpose of canvassing patients for conventional Western medicine. Since the burden of proof is always on the Secretary, we must find the Defendant not guilty of disciplinary charge (c).

37. The same reasoning applies to disciplinary charge (d). Again, we are not satisfied on the evidence before us that the subject qualifications were quoted for the Defendant "*in pursuit of his profession*" as a registered medical practitioner. Accordingly, we must find the Defendant not guilty of this disciplinary charge too.

38. Turning to disciplinary charge (e), unlike the Article, we are unable to identify

the Defendant from viewing the Video. Although the second part of the Video contained interviews with persons who claimed to be patients of "梁醫生". During these interviews, "梁醫生" was praised for his special skills in treating his patients.

39. We need to remind ourselves that the burden of proof is always on the Secretary. Since we are not satisfied from viewing the whole Video that the reference to "梁醫生" in the second part of the Video was actually about the Defendant, we must find the Defendant not guilty of this disciplinary charge.

40. The same reasoning applies to disciplinary charges (f) and (g). Again, we are not satisfied from viewing the whole Video that the reference to "梁醫生" in the second part of the Video was actually about the Defendant, we must find the Defendant not guilty of these disciplinary charges.

Sentencing

41. The Defendant has one previous disciplinary record in 2004. We acknowledge that the disciplinary charges for which the Defendant were found guilty are of different nature.

42. In June 2006, the Medical Council issued a clear warning that all future cases 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.

43. Taking into consideration the nature and gravity of disciplinary charge (a), we order that the Defendant's name be removed from the General Register for a period of 3 months. We further order that the removal order be suspended for 24 months.

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