

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr MAK Oi Ki Ankie (麥皚淇醫生) (Reg. No.: M16605)

Date of hearing: 13 July 2021 (Tuesday)

Present at the hearing

Council Members/Assessors: Dr CHOI Kin, Gabriel
(Chairperson of the Inquiry Panel)
Dr CHEUNG Chin-pang
Dr CHIU Shing-ping, James
Mr WONG Hin-wing, Simon, MH
Mr HUI Man-kit, Patrick

Legal Adviser: Mr Stanley NG

Defence Solicitor representing the Defendant: Miss Sally WONG of Messrs.
Mayer Brown

Senior Government Counsel (Ag.) representing the Secretary: Miss Christine WONG

1. The amended charges against the Defendant, Dr MAK Oi Ki Ankie, are:

“That she, being a registered medical practitioner, in respect of her practice in association with “CosDerma Medical Centre” (“the Centre”), sanctioned, acquiesced in or failed to take adequate steps to prevent:

- (a) between August 2017 to February 2018, the publication of advertisement on the Centre’s Facebook page, offering special prices on products and/or treatments available at the Centre;*
- (b) between December 2017 to January 2018, the publication of the statement on the Centre’s Facebook page, namely “CosDerma 駐場醫生會藉著這突破性的療程手法密碼，先從不同角度評估*

全臉，而非單單只看局部位置，及後分析患者的缺陷密碼，針對臉上缺陷的密碼，為患者度身建立一個屬於她的治療方案，優化整體面部輪廓，使整個人看起來彷彿年輕了，更平易近人、更具吸引力、更自然及理想的效果。” which was promotional and/or exaggerated;

- (c) between September 2018 to June 2019, the publication of the statement of “先後於新加坡、美國、台灣等地深造醫學美容之有效療法，為殿堂級皮膚科醫生 Dr. Zein Obagi 的門生，不時受邀參與世界各地的國際性醫美會議，並積極參加各地的學術研討。” in the following articles on the website of She.com, which claimed superiority over other doctors:
 - (i) Article dated 24 September 2018;
 - (ii) Article dated 3 June 2019;
- (d) in or about April 2020, the promotion of products and/or treatments available at the Centre in the website of cosderma.com; and/or
- (e) in or about April 2020, the publication of her name, photograph(s) and practice address on the Facebook page, namely, “麥體淇醫生 Dr. Ankie Mak” which promoted herself or her practice.

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 name of the Defendant has been included in the General Register from 1 July 2011 to the present. Her name has never been included in the Specialist Register.
3. Briefly stated, the Medical Council received a letter dated 12 February 2018 complaining the Defendant of practice promotion. Attached to the complaint letter were pages downloaded from the Facebook pages of the Centre on various dates.
4. There is no dispute that at all material times the Defendant was in private practice as a medical practitioner at the Centre. In fact, the Defendant started the Centre in 2015 and has been practicing there full-time ever since.

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 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.
6. There is no doubt that the allegations against the Defendant here are serious. 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 her separately and carefully.

Findings of the Inquiry Panel

7. The Defendant admits the factual particulars of all the disciplinary charges against her but it remains for us to consider and determine on the evidence of each of the charges whether she is guilty of misconduct in a professional respect.
8. 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 541-542:

“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.”

9. 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.

...

5.2.1.2 Such information must not:

(a) be exaggerated or misleading;

(b) be comparative with or claim superiority over other doctors;

...

(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.*

...

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 ...*

10. From the Centre's Facebook pages, the Centre had on various occasions between August 2017 and February 2018 advertised their products and/or treatments and offered special prices on them, as follows:-

- (i) On 7 August 2017, it advertised and offered discounts on "TULIP HIFU", "XEOMIN" and "BOTOX" at 40% off; "Ultherapy HIFU 聚焦超聲波緊緻拉提自療" at 20% off (for one person) and at 30% off (for two persons); "Geneo+ 加氧動能射頻科技", "Spectra XT 第五代激光淨白嫩膚治療" and "OPT 彩光嫩膚美白治療" at 52% off plus offering a gift; "JUVÉDERM 透明質酸 (配合 MD Codes 注射手法)" starting at 61% off; and "LightSheer 無痛激光脫毛" at 70% off.
- (ii) On 29 November 2017 and 22 December 2017, as Christmas promotion, it advertised and offered special try-out prices until 31 December 2017 on "JUVÉDERM®VYCROSS 透明質酸", "BOTOX 肉毒桿菌", "Tulip Hifu 聚焦超聲波緊緻塑形治療 (身體)", "Tulip Hifu 聚焦超聲波緊緻拉提自療 (面部)", "Mesohyal 專業滲透療程 (雞尾酒療法)" and "Spectra XT 第五代激光淨白嫩膚治療". It also had a hashtag in both advertisements saying those prices were unprecedented discount prices.
- (iii) On 11 January 2018, it advertised and offered special try-out prices until 31 January 2018 on "BOTOX" and "JUVÉDERM®VYCROSS". It also published the following statement "CosDerma 駐場醫生會籍著這突破性的療程手法密碼，先從不同角度評估全臉，而非單單只看局部位置，及後分析患者的缺陷密碼，針對臉上缺陷的密碼，為患者度身建立一個屬於她的治療方案，優化整體面部輪廓，使整個人看起來彷彿年輕了，更平易近人、更具吸引力、更自然及理想的效果。" ("the Statement")

- (iv) On 29 January 2018, it advertised about a bridal make-up artist having gone through their Tulip HIFU Jaw Line treatment and offered a try-out price for such lifting treatment.
- (v) On 8 February 2018, it advertised and offered a buy-two-and-get-one-free price for their “Cosderma JUVÉDERM®VOLITE 保濕針”.
11. Clearly these were advertisements over a period of time offering special prices on products and/or treatments available at the Centre, with which the Defendant had a financial and/or professional relationship. There is no doubt in our minds that these were promotions of medical and health related products and services, which were not allowed, and were provision of medical care as if it were a commercial activity. The Defendant had a positive duty under the Code to ensure the Centre’s advertising materials do not contravene the rules of information dissemination and practice promotion, but she had failed to do so. These advertisements were in contravention of paragraphs 5.1.3 and 5.2.1.2(e) of the Code. We are satisfied on the evidence before us that the Defendant’s conduct as such had fallen below the standard expected of registered medical practitioners in Hong Kong. We find the Defendant guilty of charge (a).
12. The Statement appears in the Centre’s Facebook pages dated 11 December 2017 and 11 January 2018. The Statement itself, and particularly these wordings “... 突破性的療程手法 ... 使整個人看起來彷彿年輕了，更平易近人、更具吸引力、更自然及理想的效果” are nothing but advertising appeals and remarks to influence consumers. These are exaggerating, and aimed only at soliciting and/or canvassing patients to try out the promotional products and/or treatments of BOTOX and JUVÉDERM®VYCROSS at a special price. We have no doubt that the Statement promoted the medical services of the Centre as if it were a commercial activity, which was in contravention of the Code. The Statement is in contravention of paragraphs 5.1.3 and 5.2.1.2 (a) of the Code. We are satisfied on the evidence before us that the Defendant’s conduct as such had fallen below the standard expected of registered medical practitioners in Hong Kong. We find the Defendant guilty of charge (b).
13. From the Secretary’s online research materials, there were two articles, respectively dated 24 September 2018 and 3 June 2019, published on the website of She.com. The author of both articles was the Defendant. Both articles contain this description of the Defendant “先後於新加坡、美國、台灣等地深造醫學美容之有效療法，為殿堂級皮膚科醫生 Dr. Zein Obagi 的門生，不時受邀參與世界各地的國際性醫美會議，並積極參加各地的學術研討。” (“the Description”)

14. In the Defendant's submission to the Preliminary Investigation Committee via a letter from Messrs. Mayer Brown, her Solicitors, dated 4 November 2020 ("PIC Submission"), the Defendant said that the Description in both articles was not written by her, but by the editor of She.com for the purpose of introducing her as the author. The Defendant was however aware of the Description when the articles were published on She.com.
15. Despite what the Defendant said in the PIC Submission that all the information contained in the Description was factually true, the Description when reading it as a whole still gives the impression to readers that the Defendant was claiming superiority over other doctors. The words “*殿堂級*” were used in the articles to describe Dr. Zein Obagi. Given that the Defendant was described in the articles to be the apprentice of Dr. Zein Obagi, the impression to readers must be that the Defendant was also somehow more superior than other doctors. In the PIC Submission, the Defendant agreed that the Description might give the impression of superiority over other doctors. We are satisfied on the evidence that the Defendant had sanctioned, acquiesced in or failed to take adequate steps to prevent the publication of the Description in the two articles, which claimed superiority over other doctors. The Description was in contravention of paragraph 5.2.1.2(b) of the Code. The Defendant's conduct as such had fallen below the standard expected of registered medical practitioners in Hong Kong. We therefore find the Defendant guilty of charge (c).
16. Also from the Secretary's online research materials, there are a number of pages downloaded in or about April 2020 from the website of cosderma.com, which is the website of the Centre. These pages advertised the following products and/or treatments: “Scarlet RF 凹凸洞修復療程”, “Lightsheer 激光脫毛療程”, “ZO 皮膚治療方案”, “CosDerma/Botox 保妥適肉毒桿菌去皺療程” and “CosDerma/MD Codes 美感密碼透明質酸療程”.
17. Again, these were advertisements promoting products and/or treatments available at the Centre, which were not allowed. The Defendant had a positive duty under the Code to ensure the Centre's advertising materials do not contravene the rules of information dissemination and practice promotion, but she had failed to do so. These advertisements are in contravention of paragraph 5.1.3 and 5.2.1.2(e) of the Code. We are satisfied on the evidence before us that the Defendant's conduct as such had fallen below the standard expected of registered medical practitioners in Hong Kong. We find the Defendant guilty of charge (d).
18. From the Secretary's online research materials, there are Facebook pages of the Defendant posting her names “*麥皚淇醫生 Dr. Ankie Mak*”, photographs and practicing address. The information was posted on a few dates in April 2018

which promoted the Defendant's practice. The photographs showed the Defendant dressed in doctor's gown with a stethoscope. There were also personal photographs of the Defendant and other people. Clearly these amounted to practice promotion which were not allowed and in contravention of what can only be allowed to publish in practice websites under paragraph 5.2.3.5 of the Code. In the PIC Submission, the Defendant also agreed that she should not have disseminated information about herself and her practice through her Facebook page. We are satisfied that the Defendant's conduct as such had fallen below the standard expected of registered medical practitioners in Hong Kong. We find the Defendant guilty of charge (e).

Sentencing

19. The Defendant has a clear disciplinary record.
20. In line with published policy, we shall give credit to the Defendant in sentencing for her frank admission and full cooperation throughout these disciplinary proceedings.
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 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 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. In mitigation, the Defendant told us that the posts offering special prices and the Statement were no longer available to the public since July 2018. She had also taken steps to permanently delete the Centre's Facebook page on 11 September 2020. The Defendant also told us that she had requested She.com to remove the Description and her photograph from all the articles on She.com. She said she had stopped writing articles for She.com. As to the Centre's website, she had asked IT company to reconstruct it in accordance with the rules of practice websites as set out in section 5.2.3.5 and Appendix D of the Code. We accept that the Defendant had taken remedial actions. We also give credit to the community work and social services performed by the Defendant.

24. We accept that the Defendant should have learnt her lesson. However, we are particularly concerned about the extensive promotion of her practice and products and/or treatments via different social media over a period of time. The Defendant told us that her transgression of the Code was only inadvertent, which we cannot accept. We must stress that as a medical practitioner she has a positive duty to ensure that at all times her advertising materials do not contravene the rules on information dissemination and practice promotion.
25. Taking into consideration the nature and gravity of the disciplinary charges for which we find the Defendant guilty and what we have heard and read in mitigation, we shall make a global order in respect of all the charges (a) to (e) that the Defendant's name be removed from the General Register for a period of 2 months. We further order that the operation of the removal order be suspended for a period of 12 months.

Remarks

26. In the Defendant's PIC submission, we notice that there is a photograph showing the signage of the Centre with the words “全科及皮膚治療中心” which may raise concern about proper description of the Centre as a specialty centre. Similarly, on the webpage of the Centre submitted, there are references to these words “醫學美容” and “皮膚治療”, which may be misleading to the public. The Defendant should look into these matters or consider seeking her own legal advice.

Dr CHOI Kin, Gabriel
Chairperson of the Inquiry Panel
The Medical Council of Hong Kong