

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr MA Chi Min Effinie (馬智勉醫生) (Reg. No.: M03381)

Date of hearing: 30 October 2020 (Friday)

Present at the hearing

Council Members/Assessors: Prof. TANG Wai-king, Grace, SBS, JP
(Chairperson of the Inquiry Panel)
Dr LUNG David Christopher
Dr MOK Pik-tim, Francis
Mr LAM Chi-yau
Ms NG Ka-man, Rendy

Legal Adviser: Mr Edward SHUM

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

Senior Government Counsel (Acting) representing the Secretary: Miss Sanyi SHUM

1. The charges against the Defendant, Dr MA Chi Min Effinie, are:

“That in or about February 2017, he, being a registered medical practitioner, sanctioned, acquiesced in or failed to take adequate steps to prevent:

(a) *the publication of the following information which is comparative with and / or claims superiority over other doctors in relation to the provision of medical treatment(s) by him and/or his medical practice on the website of New Medical Center <<http://www.tnmc.com.hk>>:*

(i) *“Graduated from University of Hong Kong in 1977 as one of the 4 distinction students in a class of 150”;*

- (ii) *“Proficient in the performance of procedures varying from”*;
- (iii) *“成績優異，150 人中考取首四名”*; and / or
- (iv) *“馬醫生同時也在以下方面有卓越的表現”*;

and / or

(b) *the publication of the following promotional information in respect of the provision of medical service(s) in relation to an insurance company, namely AIA, on the website of New Medical Center <<http://www.tnmc.com.hk>>*:

- (i) *“Easing the financial burden of medical treatment - by close co-operation with insurance company, we try to give the patients the highest standard of treatment with a minimal financial burden and by close co-operation with the patient’s insurance agent our experienced staff will help to make the claim procedure as fast and as uncomplicated as possible.”*; and / or
- (ii) *“減輕病人的醫療費用壓力-透過與指定的保險公司合作，相關的保險公司客戶可享有方便快捷的免找數服務，減輕病人因突發醫療費用帶來的經濟壓力。”*

In relation to the facts alleged, either individually 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 1 November 1978 to the present. His name has been included in the Specialist Register under the speciality of General Surgery since 4 March 1998.
3. Briefly stated, the Medical Council received on 24 April 2017 a letter from the President of the Hong Kong Medical Association complaining the Defendant of practice promotion and commercial promotion for an insurance company, namely AIA, in the website of his medical practice group, the New Medical Center, in breach of the Code of Professional Conduct (“the Code”) published in January 2016.
4. Attached to the complaint letter was relevant extracts downloaded from the website of the New Medical Center at <http://www.tnmc.com.hk/> (“the Website”). Copies of the same are placed by the Legal Officer before us today for our consideration.

5. There is no dispute that the Defendant was at all material times the Chief Executive Officer of the New Medical Center.

Burden and Standard of Proof

6. 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.
7. 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

8. The Legal Officer informed us at the beginning of the inquiry that the Secretary would offer no evidence against the Defendant in respect of disciplinary charge (a). Bearing in mind that the burden of proof is always on the Secretary, we find the Defendant not guilty of disciplinary charge (a).
9. The Defendant admitted the factual particulars of disciplinary charge (b) and indicated through his solicitor that he was not going to contest the present proceedings. However, it remains for us to consider and determine on the evidence before us whether the Defendant has been guilty of misconduct in a professional respect.
10. It is clearly stated in the Code of Professional Conduct (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:-*

- (a) accurate;*
- (b) factual;*
- (c) objectively verifiable;*
- (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:-*

- (a) be exaggerated or misleading;*
- ...*
- (d) aim to solicit or canvass for patients;*
- (e) be used for commercial promotion of medical and health related products and services...;*
- ...*

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.”*

11. We need to point out that a doctor providing information to the public or his patients must comply with the provisions of section 5.2 of the Code governing the principles and rules of good communication and information dissemination.

12. It is evident to us that the information, which formed the subject of disciplinary charge (b), was used in commercial promotion of medical insurance services provided by AIA and aimed to solicit or canvass for patients for the New Medical Center. It was also a form of indirect practice promotion for the Defendant. Moreover, this would mislead the public into thinking that owing to the close co-operation between the New Medical Center and AIA, the Defendant was able to offer through his team of doctors “*to give the patients the highest standard of treatment with a minimal financial burden*” without hassle in making claims from AIA.
13. In sanctioning, acquiescing in and/or failing to take reasonable steps to prevent the publication in the Website of the information, which formed the subject of disciplinary charge (b), the Defendant has by his conduct fallen below the standards expected of registered medical practitioners in Hong Kong.
14. Accordingly, we find the Defendant guilty of professional misconduct in respect of disciplinary charge (b).

Sentencing

15. The Defendant has a clear disciplinary record.
16. In accordance with our published policy, we shall give him credit in sentencing for his frank admission and not contesting the present proceedings before us today.
17. 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 the public confidence in the medical profession by upholding its high standards and good reputation.
18. 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.

19. We accept that the Defendant has learnt his lesson. We are however particularly concerned that the published information served to promote not only his professional practice but also medical insurance services provided by AIA.
20. Having considered the nature and gravity of the disciplinary charge for which the Defendant was found guilty and what we have heard and read in mitigation, we order that the Defendant's name be removed from the General Register for a period of 1 month. We further order that the operation of the removal order be suspended for a period of 12 months.

Remark

21. The Defendant's name is included in the Specialist Register under the Specialty of General Surgery. We shall leave it to the Education and Accreditation Committee to decide on whether anything may need to be done to his specialist registration.

Prof. TANG Wai-king, Grace, SBS, JP
Chairperson of the Inquiry Panel
The Medical Council of Hong Kong