

香港醫務委員會

The Medical Council of Hong Kong

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr POON Tung Ping Ronnie (潘冬平醫生) (Reg. No.: M07737)

Date of hearing: 27 February 2020 (Thursday)

Present at the hearing

Council Members/Assessors: Prof. LAU Wan-yee, Joseph, SBS
(Chairperson of the Inquiry Panel)
Dr LAU Chor-chiu, GSM, MH, JP
Dr FUNG Ho-wang
Mr CHAN Wing-kai
Mr CHAN Hiu-fung, Nicholas, MH

Legal Adviser: Mr Edward SHUM

Defence Solicitor representing the Defendant: Mr David KAN of
Messrs. Howse Williams

Senior Government Counsel representing the Secretary: Ms Jess CHAN

1. The amended charge against the Defendant, Dr POON Tung Ping Ronnie, is:

“That in or about October 2015, he, being a registered medical practitioner, sanctioned, acquiesced in or failed to take adequate steps to prevent the publication of the following statements in the article about himself in the practice website of Hong Kong Integrated Oncology Centre, <http://www.hkioc.com.hk/en/our-team/specialists/prof-ronnie-poon>:

(a) Prof. POON is an internationally renowned expert in the field of hepatobiliary and pancreatic surgery;

- (b) *In particular, he pioneered the development of novel treatments for liver cancer-including new techniques in surgical resection, thermal ablation, transarterial chemoembolization, and molecular targeted therapy for different stages of liver cancer;*
- (c) *In 2001, Prof. POON was the first to introduce radiofrequency ablation to the management of early liver cancer in Hong Kong;*
- (d) *He also led the development of minimally invasive surgery for liver cancer at Queen Mary Hospital;*
- (e) *He also led a group of expert clinicians in liver cancer to develop a consensus guideline for the treatment of liver cancer in Hong Kong;*
- (f) *Prof. POON has received several local and international awards for his clinical research accomplishments, including the G.B. Ong Travelling Fellowship in 2001, Outstanding Young Researcher Award of the University of Hong Kong in 2003, the International Guest Scholarship of the American College of Surgeons in 2006, Outstanding Researcher Award of the University of Hong Kong 2007 and the James IV Travelling Fellowship in 2007.*

which were promotional and/or claimed superiority over other doctors and/or contained information that was impermissible under paragraph 5 of the Code of Professional Conduct.

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 17 July 1990 to present. His name has been included in the Specialist Register under the specialty of General Surgery since 3 April 2002.

3. Briefly stated, the Secretary received on 3 October 2015 an e-mail complaining the Defendant of making “a superiority claim” in the website of his medical practice group, Hong Kong Integrated Oncology Centre (“HKIOC”). Attached to this e-mail was a link to the website of <http://www.hkioc.com.hk/en/our-team/our-specialists/prof-roonie-poon.html>.
4. The Secretary subsequently downloaded via the said link and placed before us for our consideration the full version of the Defendant’s profile posted in the website of HKIOC.
5. In response to the complaint against him, the Defendant admitted in his submission to the Preliminary Investigation Committee (“PIC”) of the Medical Council dated 31 March 2017 that he was “affiliated to HKIOC”. He also told the PIC that:

“When I was asked to provide a brief introduction of myself in the HKIOC website, I provided my academic biography that I used when I was serving in the University of Hong Kong with minor amendment. The biography focused on my academic background and research interests, which are all factual, and it is a typical biography of our Department. I did not and had no intention to, under any circumstances, make any superiority claim...”

6. Through his solicitors, the Defendant further submitted to the PIC by letter dated 6 September 2018 that:

“...Upon joining HKIOC in 2015 as medical director, Dr. Poon was asked to provide a biography with his academic background and it was understood that the purpose was to introduce him as the medical director of HKIOC and not for promotion of his clinical practice. He, therefore, provided his previous academic biography... and HKIOC published the biography on its website.

...At the time of providing the biography to HKIOC, Dr Poon had mistakenly believed that publication of a brief biography in websites was permitted after having observed profiles of other medical practitioners which are commonly published on their websites. Dr Poon wishes to explain to the PIC the reason for his misunderstanding by referring to this and it is not an attempt to justify the publication. He now fully understands that publication of his biography is impermissible and he fully regrets allowing the publication at HKIOC website.

...It was not Dr. Poon's intention, under any circumstances, to promote his practice or claim superiority over his fellow colleagues with regard to his qualifications or clinical expertise.

...Upon receipt of the Notice of the PIC Meeting in January 2017, Dr. Poon took remedial action immediately by requesting and ensuring that his biography was removed from the website. Beyond that, Dr. Poon also gave explicit instructions to the senior management of HKIOC that references to his academic experience and achievements must not be made in any materials or information published by HKIOC..."

Burden and Standard of Proof

7. 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.
8. There is no doubt that the allegation 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 the amended disciplinary charge against him carefully.

Findings of the Inquiry Panel

9. The Defendant does not contest the amended disciplinary charge against him but it remains for us to determine on the evidence before us whether he has been guilty of misconduct in a professional respect.
10. 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, as 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 commercialisation 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]

11. In our view, restrictions in the Code against publication to the public of information about a doctor, which is not only promotional but also claims superiority over other doctors, are 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.

12. In this connection, it is stipulated in the Code (2009 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 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.”

13. We need to point out that a doctor providing information to the public or his patients must comply with the principles set out in the Code. Whilst academic biography of a doctor may be published in medical literature and the like, it does not necessarily follow the same information, albeit factually accurate and objectively verifiable, can be provided to the public without modification through the practice website of a doctor or the website of his medical practice group.
14. In our view, persons seeking medical service for themselves or their families can be particularly vulnerable to persuasive influence from practice promotion. By publishing information, which claims superiority over other doctors, a doctor may leave the public or his patients with the impression that he has unique or special skills or solutions to their health problems. This may even generate unrealistic expectations in their minds.

15. The publication of the Defendant's profile in the website of HKIOOC was no doubt a form of practice promotion. Whilst the Defendant may not intend to claim superiority over other doctors, the impression that the laudatory statements about his credentials may bear upon the public or his patients should not be underestimated.
16. For these reasons, we are satisfied on the evidence before us that the Defendant's conduct has fallen below the standards expected of registered medical practitioners in Hong Kong. Accordingly, we also find him guilty of misconduct in a professional respect as charged.

Sentencing

17. The Defendant has a clear disciplinary record.
18. In accordance with our published policy, we shall give him credit for his frank admission and full cooperation throughout these disciplinary proceedings.
19. 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.
20. We appreciate that the Defendant had an unblemished and distinguished career serving the medical profession for 30 years. He has earned tremendous support from his professional colleagues and patients.
21. We accept that the Defendant has learnt his lesson and he immediately removed his profile from the website of HKIOOC upon receipt of the Notice of the PIC Meeting.
22. Having considered the nature and gravity of the disciplinary charge for which the Defendant is convicted and what we have heard and read in mitigation, we order that:
 - (1) the Defendant's name be removed from the General Register for a period of 1 month; and

(2) the operation of the removal order be suspended for a period of 6 months.

Remark

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