

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr TONG Hoi Dik Eddie (Reg. No.: M13261)

Date of hearing: 27 July 2022 (Wednesday)

Present at the hearing

Council Members/Assessors: Prof. LAU Wan-ye, Joseph, SBS
(Chairperson of the Inquiry Panel)
Dr CHOW Yu-fat
Dr LEUNG Hon-fai, Henry
Ms HUI Mei-sheung, Tennessy, MH, JP
Mr YEUNG Chi-wai, Edwin, MH

Legal Adviser: Mr Stanley NG

Defence Counsel representing the Defendant: Mr Eddie NG as instructed by
Messrs. Edward LAU and Phoebe
NG Solicitors LLP

Government Counsel representing the Secretary: Miss Katrina CHAN

1. The amended charges against the Defendant, Dr TONG Hoi Dik Eddie, are:

“That in or about 2019 to 2020, he, being a registered medical practitioner, sanctioned, acquiesced in or failed to take adequate steps to prevent:

(a) the publication of his photo and promotional statements of his experiences and/or skills in relation to his practice at Cosmed (映匯醫學集團) (“Cosmed”) on the Instagram page of Cosmed;

(b) the publication of impermissible promotional and/or canvassing statement(s) on the said Instagram page :

- (i) “搵一個喺醫美行業經驗豐富、醫歷深、手勢好的香港註冊醫生” ;*
- (ii) “希望你吾好成為下一個要搵我哋顧問醫生拯救的一份子” ;*
and/or

(iii) “ #我們不是美容院 #顧問醫生 #二十年醫學經驗 #科研美肌 #不硬銷不取巧 #專業安全有效 #Cosmed #映匯醫學集團 #世上沒有免費午餐 #微創手術 #去眼袋 #吊線雙眼皮 #雙眼皮手術 #無痕去眼袋 ”;

(c) *the publication of the statement which exaggerates the efficacy of aesthetic medical practice and/or treatment(s) on the Facebook page of CosMed: “ 『Cosmed 無痕去眼袋療程』 適合所有眼袋類型，去除眼袋效果理想，做完比之後真實年齡更後生、更醒神。只需 30 分鐘，唔駛開刀，唔留疤痕，復原期短！ ” ; and/or*

(d) *the use of his photograph(s) and statements on the Facebook page of “Tommy Ko” which promoted or endorsed his aesthetic medical practice and/or treatment(s).*

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 3 July 2001 to the present. His name has never been included in the Specialist Register.
3. The Defendant acquired CosMed Group HK Limited (映匯醫學集團有限公司) (“Cosmed”) in December 2019. According to the Annual Return filed with the Companies Registry dated 14 June 2020, the Defendant was the sole shareholder and director of Cosmed. Since the acquisition, and at all material times, the Defendant has been in private practice as a medical practitioner at Cosmed.
4. The Medical Council received two complaints on 8 October 2020 and 10 January 2021 via emails against the Defendant of practice promotion. Attached to the emails were pages downloaded from the Instagram and Facebook pages of Cosmed and the Facebook page of a “Tommy Ko”.

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 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.

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 the disciplinary charges against him carefully.

Findings of the Inquiry Panel

7. The Defendant admitted to the factual particulars of Charges (a) to (d). It however remains for us to consider and determine on the evidence whether he is guilty of professional misconduct as charged.

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.*

...

5.2.1.1 *Any information provided by a doctor to the public or his patients must be:*

...

(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 ...;*

(f) *be sensational or unduly persuasive;*

...

(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.*

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.*

...

5.2.3.3

...

Letters of gratitude or announcements of appreciation from grateful patients or related persons identifying the doctor concerned should not be published in the media or made available to members of the public. A doctor should take all practical steps to discourage any such publications.”

Charge (a)

10. The Instagram page of Cosmed posted on 12 August 2020 clearly showed the name and photograph of the Defendant, with a description of him as “Our Consultant Doctor 我們的顧問醫生”. It also showed the address and telephone number of Cosmed. This page also contained the following statement “搵一個啲醫美行業經驗豐富、醫歷深、手勢好的香港註冊醫生”. This statement was repeated three times.
11. When looking at the overall layout of this page, clearly the said statement was referring to the Defendant, and was promotional of his experience and skills in relation to his practice at Cosmed. This amounted to practice promotion, which was not allowed under section 5.2.2.2 of the Code.
12. For these reasons, the Defendant has in our view by his conduct fallen below the standard expected of registered medical practitioners in Hong Kong. We find the Defendant guilty of charge (a).

Charge (b)

13. In addition to the statement mentioned in paragraph 10 above, the Instagram page also contained the following statements:

“希望你吾好成為下一個要搵我啲顧問醫生拯救的一份子”

“#我們不是美容院 #顧問醫生 #二十年醫學經驗 #科研美肌 #不硬銷不取巧 #專業安全有效 #Cosmed #映匯醫學集團 #世上沒有免費午餐 #微創手術 #去眼袋 #吊線雙眼皮 #雙眼皮手術 #無痕去眼袋”

14. These statements (at paragraphs 10 and 13 above) give readers the impression that Cosmed's consultant doctor, which was the Defendant, was very experienced and skillful in the field. The suggestion to readers was that the Defendant would be able to save (“拯救”) them, so they should consult him.
15. We have no doubt in our minds that the true intent and purpose of all these statements (at paragraphs 10 and 13 above) were to solicit and canvass for patients, which is not allowed. The Defendant was clearly in breach of section 5.2.1.2 of the Code.
16. For these reasons, the Defendant has in our view by his conduct fallen below the standard expected of registered medical practitioners in Hong Kong. We find the Defendant guilty of charge (b).

Charge (c)

17. The Facebook page of Cosmed posted on 3 September 2020 contained the following statement: “『Cosmed 無痕去眼袋療程』適合所有眼袋類型，去除眼袋效果理想，做完比之後真實年齡更後生、更醒神。只需 30 分鐘，唔駛開刀，唔留疤痕，復原期短！”
18. As provided for in section 5.2.1.1(d) of the Code, any information provided by a doctor to the public must be presented in a balanced manner, and when referring to the efficacy of a particular treatment, both the advantages and disadvantages should be set out.
19. The said statement published in the Facebook page of Cosmed did not set out any disadvantage of the treatment. The references to “適合所有眼袋類型” and “做完比之後真實年齡更後生、更醒神” gave readers the impression that the operation could apply to everybody and could achieve 100% successful results. In our view, there can never be any operation that can apply to everybody, and can never be any operation that can achieve 100% successful results. This is just common sense. These statements were nothing but exaggerating.
20. For these reasons, the Defendant has in our view by his conduct fallen below the standard expected of registered medical practitioners in Hong Kong. We find the Defendant guilty of charge (c).

Charge (d)

21. The Facebook page of Cosmed with posting date and time “5 月 30 日 07:00” shows that the team of Cosmed was invited by AIA Hong Kong to give a talk on aesthetic medical practice. There were two photographs in this page, showing the Defendant giving a talk with the backdrop written these words “醫美新趨勢”.

22. Tommy Ko in his Facebook page posted on 29 May 2020 shared similar photographs showing the presence of the Defendant at the event giving the talk, and with the backdrop with these words “醫美新趨勢”. Tommy Ko’s Facebook page also contained this statement “感謝醫美大師 Dr Tong 的分享，並提供高端醫療平台，合作愉快”. Clearly, this statement together with the photographs was referring to the Defendant.
23. Tommy Ko in his Facebook page posted on 12 June 2020 contained these statements: “Happy Friday, 雖然不能喝酒，但為了消滅個大眼袋，值得” and “感謝湯醫生的神手”.
24. We have no doubt in our minds that the references to “醫美大師 Dr Tong”, “提供高端醫療平台，合作愉快” and “感謝湯醫生的神手” in Tommy Ko’s Facebook pages only served to promote or endorse the aesthetic medical practice and/or treatment of the Defendant.
25. The Defendant said in his submission received by the Medical Council on 10 January 2022 that Tommy Ko was his patient and he was invited by Tommy Ko to give a talk at some event. The Defendant however said that he had no knowledge of the contents of Tommy Ko’s post in his Facebook page.
26. In our view, the Defendant was invited and he in fact gave a talk on aesthetic medical practice at the company’s event. Photographs were taken of him giving the talk. In one of the group photographs, he was seen sitting in the middle of the front row, holding some kind of a certificate or prize in his hand. It cannot be said that the Defendant did not know that he was photographed. This type of event and with photographs of him taken clearly called for caution that his name and photographs might be used by the entity inviting him, and which actually happened in this case. It is no excuse for the Defendant to simply say that he had no knowledge of Tommy Ko’s post. The Defendant should have taken proactive actions or forewarned Tommy Ko, but he had not done so.
27. For these reasons, the Defendant has in our view by his conduct fallen below the standard expected of registered medical practitioners in Hong Kong. We find the Defendant guilty of charge (d).

Sentencing

28. The Defendant has a clear disciplinary record.
29. In line with our published policy, we shall give the Defendant credit in sentencing for his frank admission and full cooperation throughout the disciplinary proceedings.

30. 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.
31. 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.
32. In mitigation, the Defendant told us that he had removed the offending statements from the Facebook and Instagram pages of Cosmed. The Defendant had also asked Tommy Ko to remove the posts from his Facebook page, which were subsequently removed. The Defendant also said he has repeatedly reminded his staffs not to post any statement not having first approved by him.
33. In our view, the unauthorised practice promotion in this case happened over a long period of time, and the Defendant had done nothing. There were not just one, but a number of incidents of unauthorised practice promotion. The gravamen of his misconduct was serious. We need to ensure that the Defendant will not commit the same or similar breach in future.
34. 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 charges (a) to (d) 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 24 months.

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