

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr WONG Tin Hau (黃天厚醫生) (Reg. No.: M15327)

Date of hearing: 6 April 2020 (Monday)

Present at the hearing

Council Members/Assessors: Prof. LAU Wan-ye, Joseph, SBS
(Chairperson of the Inquiry Panel)
Dr CHENG Chi-man
Prof. CHAN Anthony Tak-cheung
Ms HUI Mei-sheung, Tennessy, MH, JP
Ms CHOW Anna M W

Legal Adviser: Mr Edward SHUM

Defence Solicitor representing the Defendant: Ms Alison SCOTT of
Messrs. Howse Williams

Senior Government Counsel representing the Secretary: Miss Vienne LUK

1. The charges against the Defendant, Dr WONG Tin Hau, are:

First Case (MC 16/154)

“That in or about May 2016, he, being a registered medical practitioner, sanctioned, acquiesced in or failed to take reasonable steps to prevent:

- (a) the quotation of the following qualifications and/or appointments in the invitation card which promoted the commercial product “瑞士醫學微整全能水系列” and/or the commercial brand “D//.Lab”, which were not

quotable qualifications and/or appointments approved by the Medical Council of Hong Kong at the material time:

- (i) 品牌顧問;
 - (ii) 香港美容醫療協會科學委員;
 - (iii) 香港醫療美容醫生協會教學委員; and/or
- (b) the publication of his name, title, photograph, qualifications and/or appointments in the invitation card which promoted the commercial product “瑞士醫學微整全能水系列” and/or the commercial brand “D//.Lab”.

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

Second Case (MC 16/164)

“That in or about May 2016, he, being a registered medical practitioner, sanctioned, acquiesced in or failed to take reasonable steps to prevent:

- (a) the use of the title of “專業皮膚科醫生” in an advertisement on the social media which promoted the commercial product “瑞士醫學微整全能水系列” and/or the commercial brand “D//.Lab”, which was misleading to the public that he was a specialist in dermatology, when in fact his name was not included in the Specialist Register under the specialty of “Dermatology and Venereology” at the material time; and/or
- (b) the publication of his name, title, and/or photograph in an advertisement on the social media which promoted the commercial product “瑞士醫學微整全能水系列” and/or the commercial brand “D//.Lab”.

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 Defendant’s name has been included in the General Register from 1 July 2007 to present. His name has never been included in the Specialist Register.

3. Upon the direction of the Chairperson of the Inquiry Panel, inquiry into the above-mentioned disciplinary charges against the Defendant was consolidated into one pursuant to section 16 of the Medical Practitioners (Registration and Disciplinary Procedure) Regulation.

First Case (MC16/154)

4. Briefly stated, the Medical Council received on 12 May 2016 from one Madam HUI a complaint by way of e-mail. Attached to this e-mail was a copy invitation card for the product release conference of “瑞士醫學微整全能水系列” scheduled to be held on 11 May 2016. Apart from the impermissible quotation of qualification(s) and/or appointment(s) and the publication of offending materials which constituted the disciplinary charges (a) and (b) in the First Case, medical skincare products of the commercial brand “D//.Lab” were prominently displayed in the invitation card.
5. There is no dispute that neither “品牌顧問”, “香港美容醫療協會科學委員” nor “香港醫療美容醫生協會教學委員” are quotable appointments approved by the Medical Council.
6. In response to the complaint against him, the Defendant explained through his solicitors to the Preliminary Investigation Committee (“PIC”) of the Medical Council by letter dated 20 August 2018 that he was invited to take part in a talk by one Mr CHENG of D. Lab “to discuss ingredients and vitamins used in skincare products from a medical perspective generally for educational purposes”. Prior to the talk, Mr CHENG did not inform the Defendant “any materials would be published, whether on an invitation card or at all”. During the course of dealing with Mr CHENG, “there was no mention of any specific commercial / skincare products”; and the Defendant “specifically informed Mr CHENG that he is not a specialist in dermatology”. Moreover, when the Defendant read from the draft profile, which he thought would be used to introduce him verbally at the talk, that he was referred to as “品牌顧問”, “香港美容醫療協會科學委員” and “香港醫療美容醫生協會教學委員”, he asked Mr CHENG to have them removed and the latter agreed.
7. However, the Defendant accepted in his PIC submission that “he failed to take adequate steps which could have prevented the publication of his name, title, photograph, qualifications and the appointments in the invitation card”; and these

steps “could have prevented the misuse of such information for indirect promotion of the commercial product”.

Second Case (MC 16/164)

8. Briefly stated, the Medical Council received a letter on 18 May 2016 complaining the Defendant of using the title of Specialist in Dermatology when in fact he was not. Attached to this letter was a copy advertisement for the product release conference of “瑞士醫學微整全能水系列”. Apart from the wrongful use of the title of “專業皮膚科醫生” and publication of offending materials which later formed the basis of the disciplinary charges (a) and (b) in the Second Case against the Defendant, medical skincare products of the commercial brand “D//.Lab” were prominently displayed in the advertisement.
9. There is no dispute that the Defendant’s name has never been included in the Specialist Register under the specialty of “Dermatology and Venereology”.
10. In response to the complaint against him, the Defendant explained through his solicitors to the PIC by letter dated 20 August 2018 that “he had no knowledge the offending material would be published or uploaded onto social media until he received the PIC Notice in May 2017”; and he “had no prior knowledge at all that any offending material would be published referring to him, with his name, the title of “專業皮膚科醫生” and his photograph in the offending material and uploaded on to social media without his knowledge or approval”. Moreover, the Defendant “had no intention to facilitate the promotion of the commercial product “瑞士醫學微整全能水系列”.
11. However, the Defendant accepted in his PIC submission that “he should have exercised more caution than he did... in view of all the circumstances”. The Defendant further adopted his PIC submission in response to the First Case on steps which he could have taken.

Burden and Standard of Proof

12. We bear in mind that the burden of proof is always on the Legal Officer 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.

13. 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 Panel

14. The Defendant admits that he failed to take reasonable steps to prevent the impermissible quotation of qualifications and/or appointments and publication of the offending materials, particulars of which are set out in the disciplinary charges against him in the First Case. The Defendant also admits that he failed to take reasonable steps to prevent the wrongful use of the title of “專業皮膚科醫生” and the publication of the offending materials, particulars of which are set out in the disciplinary charges against him in the Second Case. However, it remains for us to determine on the evidence before us whether he has been guilty of misconduct in a professional respect.
15. 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 a 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 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”...

16. In our view, restrictions in the Code against publication to the public of information about a doctor, which is not only promotional but also untrue or misleading, 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.

17. In this connection, it is stipulated in the Code (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...

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 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.

...

- 6.1 It is appropriate for a doctor to take part in bona fide health education activities, such as lectures and publications. However, he must not exploit such activities for promotion of his practice or to canvass for patients. Any information provided should be objectively verifiable and presented in a balanced manner, without exaggeration of the positive aspects or omission of the significant negative aspects.
 - 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.
 - 6.3 ... Doctors must not give the impression that they, or the institutions with which they are associated, have unique or special skills or solutions to health problems...”
18. The Defendant rightly admitted in our view that he needed to exercise more caution than he did on the use of information regarding him as a speaker in the talk which might be misquoted and/or objectively speaking, constitute promotion for commercial products “瑞士醫學微整全能水系列” and/or the commercial brand “D//.Lab”. In this connection, we note from reading both the invitation card and the advertisement on the social media that the photograph of the Defendant appeared side by side with the photograph of medical skincare products of the commercial brand “D//.Lab”. This left, in our view, the readers with an impression that they were actually endorsed by the Defendant.
 19. We agree with the Legal Officer that the Defendant should have exercised due diligence to prevent the impermissible quotations and publication of the offending materials in the First Case. In our view and bearing in mind that the Defendant was dealing with the person responsible for a commercial brand, his failure to take

reasonable steps in the circumstances has fallen below the standards expected of registered medical practitioners in Hong Kong. Accordingly, we find him guilty of misconduct in a professional respect as charged in the First Case.

20. The same is also true in relation to the wrongful use of the title of “專業皮膚科醫生” and the publication of the offending materials in the Second Case. We acknowledge that the Defendant never intended to mislead the public. However, the use of the title of “專業皮膚科醫生” in the advertisement on the social media was likely in our view to mislead the public into thinking that the Defendant was a specialist in dermatology when in fact he was not.
21. In this connection, it was held by the Court of Appeal in *Ng Kin Wai v The Dental Council of Hong Kong* (unreported) CACV 194/2010; per Fok JA at para. 45 that “[p]rofessional titles are important and members of the public are likely to rely on the expertise implied by those titles in choosing a dentist and submitting themselves to treatment by that dentist.” Although the appellant in the *Ng Kin Wai* case was a dentist, Fok JA’s observation is in our view equally apposite to quotation of professional titles by registered medical practitioners. Viewed from this perspective, the use of the title of “專業皮膚科醫生” in the advertisement on the social media would serve to promote the professional advantage of the Defendant, and was no doubt a form of unauthorized practice promotion on his behalf or with his forbearance.
22. For these reasons, we also find him guilty of misconduct in a professional respect as charged in the Second Case.

Sentencing

23. The Defendant has a clear disciplinary record.
24. In line with our published policy, we shall give him credit in sentencing for his frank admission and full cooperation throughout these disciplinary proceedings.
25. In 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 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.

26. We accept that the Defendant has learnt his lesson. We also accept that the Defendant did not promote his professional practice and services deliberately.
27. Having considered the nature and gravity of the disciplinary charges for which the Defendant is convicted and what we have heard and read in mitigation, we shall make a global order in respect of the First and Second Cases 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 12 months.

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