

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr YAN Charlie Kam Sun (Reg. No.: M08484)

Date of hearing: 19 April 2021 (Monday)

Present at the hearing

Council Members/Assessors: Prof. TANG Wai-king, Grace, SBS, JP
(Chairperson of the Inquiry Panel)
Dr CHAN Yee-shing
Dr CHAN Nim-tak, Douglas
Mr WONG Hin-wing, Simon
Mr LUI Wing-cheung, Kenneth

Legal Adviser: Mr Stanley NG

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

Senior Government Counsel representing the Secretary: Miss Cindy LEUNG

1. The charge against the Defendant, Dr YAN Charlie Kam Sun, is:

“That in or about June 2016, he, being a registered medical practitioner, sanctioned, acquiesced in or failed to take adequate steps to prevent the publication of promotional information relating to his practice and/or provision of cosmetic treatment(s) in his name card, the signboard(s), notice(s) and/or advertisement(s) displayed at the exterior of his clinic situated at 香港新界元朗青山公路 21 號地下 2 號舖.

In relation to the facts alleged, 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 6 March 1992 to the present. His name has never been included in the Specialist Register.
3. At all material times, the Defendant was practising at his clinic under the name of “Dr. Yan Kam Sun Integrated Treatment Centre” situated at 香港新界元朗青山公路 21 號地下 2 號舖.
4. By a complaint letter received on 3 June 2016, the Medical Council was brought to the attention that the Defendant publicized promotional information relating to his practice and/or provision of cosmetic treatment(s) in his name card, the signboard(s), notice(s) and/or advertisement(s) displayed at the exterior of his clinic. A photograph of the exterior of the Defendant’s clinic and a photograph of both the Chinese and English versions of the Defendant’s visiting card were provided in the complaint letter.

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 allegation 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 the disciplinary charge against him carefully.

Findings of the Inquiry Panel

7. The legal officer told us that her case was only confined to the provision of cosmetic treatments.
8. The Defendant admits the factual particulars of the disciplinary charge against him but it remains for us to consider and determine on the evidence whether he is guilty of misconduct in a professional respect.

9. 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.”*

10. 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:*

...

(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.*

5.2.3 *Dissemination of service information to the public*

A doctor, whether in private or public service, may provide information about his professional services to the public (i.e. persons other than his patients as defined in section 5.2.4.1) only in the ways set out below ...

5.2.3.1 *Signboards*

Signboards include any signs and notices exhibited by a doctor to identify his practice to the public.

...

A signboard may carry only the following information:-

- (a) *Name of the doctor with the prefix Dr. (西醫 / 男西醫 / 女西醫) or the Chinese suffix “醫生 / 醫師”, and the title “registered medical practitioner” (註冊醫生 / 註冊西醫).*
- (b) *Name of the practice.*
- (c) *Quotable qualifications approved by the Council.*
- (d) *Specialist title approved by the Council.*

- (e) *Name and logo of the medical establishment with which the doctor is associated ...*
- (f) *Consultation hours.*
- (g) *Indication of the location of the practice in the building.*

A doctor should not allow his name to appear on any signboard which carries merchandise or service promotion. He should not allow the placement of his signboard in a way which gives the appearance that he is associated with other signboards which do not comply with section 5.2.

5.2.3.2 *Stationery*

Stationery (visiting cards, letterheads, envelopes, prescription slips, notices etc.) may only carry the following information:-

- (a) *Name of the doctor with the prefix Dr. (西醫/男西醫/女西醫) or the Chinese suffix “醫生/醫師”.*
- (b) *Name of the practice.*
- (c) *Names of partners, assistants or associates in the practice.*
- (d) *Quotable qualifications and appointments and other titles approved by the Council.*
- (e) *Specialist title approved by the Council.*
- (f) *Name and logo of the medical establishment with which the doctor is associated ...*
- (g) *Consultation hours.*
- (h) *Telephone, fax, pager numbers and e-mail address.*
- (i) *Address(es) and location map of the practice.”*

11. From the photograph showing the exterior of the Defendant’s clinic as provided in the complaint letter, it can be seen on the right side that there was a mobile display unit sitting next to the doorstep of the clinic. The mobile display unit featured a machine for cosmetic treatment(s), which was said to be personally operated by a medical doctor, and the benefits of the treatment(s). It also contained wordings such as “瘋魔全球 ... 第三代 HIFU 儀器”, “HIFU Cosmetic Beauty Centre”, “溶脂塑身，塑造滿意曲線”, etc. It also displayed at the top the face of a female model, and at the bottom a number of before-and-after treatment pictures.

12. On the left side of the same photograph showed a large signage displaying the medical services provided at the clinic. There was also displayed the face of a female model. Underneath heading “醫學美容”, there were these words:

“暗瘡治療
光學皮膚護理
皮膚疣治療
脫髮治療
減肥瘦身
肉毒桿菌去皺
瘦面
瘦小腿
透明質酸塑臉
儀容信心重整
V Line
埋線提升全面
HIFU 無創拉皮”

13. From the photograph provided in the complaint letter showing the Defendant’s visiting card, both the English and Chinese versions contained the services provided by the Defendant. Particularly, in the Chinese version, under heading “醫學美容”, there were these words:

“嚴重暗瘡、去疣、冷凍治療、激光療程、脫毛、肉毒桿菌、塑然雅及透明質酸、V 面全線提升、HIFU 無創拉皮、儀容信心重整。”

14. Clearly, the inclusion of descriptions of the cosmetic services offered in the aforesaid wordings as a whole, particularly the wordings “瘋魔全球 ... 第三代 HIFU 儀器”, “HIFU Cosmetic Beauty Centre”, “溶脂塑身, 塑造滿意曲線”, and “儀容信心重整”, and the showing of the faces of female models were promotional remarks and materials, which were only aimed at attracting patients. We have no doubt that these promotional remarks and materials were inconsistent with the professional reputation of the medical profession, and promoted the Defendant’s services as a commercial activity. Besides, we wish to point out that under section 5.2.3.2 of the Code, medical services are not allowed to appear on visiting cards.
15. We are satisfied that the Defendant’s conduct has fallen below the standards expected of registered medical practitioners in Hong Kong. Accordingly, we find him guilty of the charge.

Sentencing

16. The Defendant has a clear disciplinary record.
17. In line with published policy, we shall give credit to the Defendant in sentencing for his frank admission and full cooperation throughout these disciplinary proceedings.
18. 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.
19. 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.
20. In the Defendant's submission to the Preliminary Investigation Committee ("PIC") dated 19 July 2018, the Defendant said that in view of the complaint against him, he had re-arranged the content of his visiting card and the content of the signages at the exterior of his clinic. The Defendant had provided the PIC with photographs showing his re-arranged contents. However, we must say that from those photographs provided, he had yet to fully rectify the shortcomings. Having said that, in today's mitigation, we note that the Defendant has finally rectified all the shortcomings as appeared from the latest photographs as submitted showing the exterior of the clinic and his visiting card.
21. Having considered the gravity of the charge for which the Defendant is convicted, which related to practice promotion of cosmetic treatments in signboard and on visiting card, and what we have heard and read in mitigation, we order that the name of the Defendant be removed from the General Register for a period of 2 months and that the operation of the removal order be suspended for a period of 12 months.

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