

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

1st Defendant: Dr YEUNG Chiu Yin Vincent (楊超賢醫生) (Reg. No.: M04508)

2nd Defendant: Dr FUNG Tin Cheung (馮天祥醫生) (Reg. No.: M14026)

Date of hearing: 7 January 2019 (Monday)

Present at the hearing

Council Members/Assessors: Prof. Felice LIEH-MAK GBS CBE JP
(Chairperson of the Inquiry Panel)
Dr WAI Yuk-chun, Veronica
Dr AU YEUNG Kam-chuen, Sidney
Ms HUI Mei-sheung, Tennessy MH JP
Ms CHUI Hoi-yee, Heidi

Legal Adviser: Mr Edward SHUM

Defence Solicitor representing the 1st Defendant: Mr Chris Howse of
Messrs. Howse Williams Bowers

2nd Defendant: Dr FUNG Tin Cheung (who is not legally represented)

Senior Government Counsel representing the Secretary: Miss Vienne LUK

1. The amended disciplinary charges against the 1st Defendant, Dr YEUNG Chiu Yin Vincent, are:

“That he, being a registered medical practitioner:

- (a) in or about August 2012, sanctioned, acquiesced in or failed to take adequate steps to prevent the use of the title “楊超賢醫生 皮膚科” [“Dr YEUNG Chiu Yin Dermatology”] in the website of <http://www.newtownmedical.com.hk/dermatology.php>, which was not a quotable qualification approved by the Medical Council of Hong Kong and/or was misleading to the public that he was a specialist in dermatology, when in fact he had not been approved by the Medical Council of Hong Kong to have his name included in the Specialist Register under the specialty of “Dermatology and Venereology”;
- (b) in or about November 2012, sanctioned, acquiesced in or failed to take adequate steps to prevent the use of the title “楊超賢醫生 皮膚科” [“Dr YEUNG Chiu Yin Dermatology”] in the website of <http://www.newtownmedical.com.hk/dermatology.php>, which was not a quotable qualification approved by the Medical Council of Hong Kong and/or was misleading to the public that he was a specialist in dermatology, when in fact he had not been approved by the Medical Council of Hong Kong to have his name included in the Specialist Register under the specialty of “Dermatology and Venereology”; and/or
- (c) in or about March 2014, sanctioned, acquiesced in or failed to take adequate steps to prevent the use of the title “楊超賢醫生 皮膚科文憑” [“Dr YEUNG Chiu Yin Diploma in Dermatology”] in the website of <http://www.newtownmedical.com.hk/dermatology.php>, which was not a quotable qualification approved by the Medical Council of Hong Kong and/or was misleading to the public that he was a specialist in dermatology, when in fact he had not been approved by the Medical Council of Hong Kong to have his name included in the Specialist Register under the specialty of “Dermatology and Venereology”;

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

2. The amended disciplinary charges against the 2nd Defendant, Dr FUNG Tin Cheung, are:

“That he, being a registered medical practitioner:-

- (a) in or about August 2012, sanctioned, acquiesced in or failed to take adequate steps to prevent the use of the title “馮天祥醫生 皮膚科” [“Dr FUNG Tin Cheung Dermatology”] in the website of <http://www.newtownmedical.com.hk/dermatology.php>, which was not a quotable qualification approved by the Medical Council of Hong Kong and/or was misleading to the public that he was a specialist in dermatology, when in fact he had not been approved by the Medical Council of Hong Kong to have his name included in the Specialist Register under the specialty of “Dermatology and Venereology”;
- (b) in or about November 2012, sanctioned, acquiesced in or failed to take adequate steps to prevent the use of the title “馮天祥醫生 皮膚科” [“Dr FUNG Tin Cheung Dermatology”] in the website of <http://www.newtownmedical.com.hk/dermatology.php>, which was not a quotable qualification approved by the Medical Council of Hong Kong and/or was misleading to the public that he was a specialist in dermatology, when in fact he had not been approved by the Medical Council of Hong Kong to have his name included in the Specialist Register under the specialty of “Dermatology and Venereology”.

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

Facts of the case

3. The 1st Defendant’s name was at all material times and still is included in the General Register. His name had never been included in the Specialist Register.
4. The 2nd Defendant’s name has been included in the General Register from 3 July 2003 to present. His name had never been included in the Specialist Register.

5. The 1st Defendant did not contest the amended disciplinary charges against him and admitted the factual particulars thereof.
6. Briefly stated, by a letter dated 3 September 2012, the Hong Kong College of Dermatologists complained to the Medical Council that the names of the 1st and 2nd Defendants were listed under the specialty of dermatology in the practice website of New Town Medical Group (“New Town Group”). Attached to the complaint letter was a copy printout from the practice website of New Town Group in which the names of the 1st and 2nd Defendants were categorized under the specialty of dermatology.
7. Then on 23 November 2012, the Medical Council received an e-mail from one Mr KWOK complaining that he was misled by the said listing in the practice website of New Town Group into thinking that the 2nd Defendant, whom he had consulted for skin disease, was a specialist in dermatology but when in fact he was not. Mr KWOK also attached to his e-mail a copy of the same printout from the practice website of New Town Group previously enclosed in the complaint letter from the Hong Kong College of Dermatologists.
8. The 2nd Defendant initially denied that he has sanctioned, acquiesced in or failed to take adequate steps to prevent the use of the title “馮天祥醫生 皮膚科” in the practice website of New Town Group. However, he admitted in the course of this inquiry after the close of the Secretary’s case that he should have known about the use of offending title if he looked at the practice website of New Town Group.

Burden and Standard of Proof

9. We bear in mind that the burden of proof is always on the Legal Officer and the 1st and/or 2nd Defendants do not have to prove their 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.

10. There is no doubt that each of the allegations against the 1st and/or 2nd Defendants 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 amended disciplinary charges against them carefully and separately.

Findings of the Inquiry Panel

11. There is no dispute that the names of the 1st and 2nd Defendants have never been included in the Specialist Register, let alone under the specialty of “Dermatology and Venereology”.
12. The use of the titles “楊超賢醫生 皮膚科” and/or “楊超賢醫生 皮膚科文憑” in the practice website of New Town Group implied in our view that the 1st Defendant specialized in the area of dermatology but when in fact he was not a specialist in dermatology. The same is true in respect of the 2nd Defendant for the use of the title “馮天祥醫生 皮膚科” in the practice website of New Town Group.
13. In the Court of Appeal’s decision of *Ng Kin Wai v The Dental Council of Hong Kong* (CACV 194/2010) 14 October 2011, Fok JA (as he then was) emphasized (at paragraph 45 of the Judgment) the importance of quoting only such professional title which a dentist is entitled because “[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.”
14. 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.
15. In our view, the use of the titles “楊超賢醫生 皮膚科” and/or “楊超賢醫生 皮膚科文憑” in the practice website of New Town Group would serve to promote the professional advantage of the 1st Defendant, and was no doubt a form of unauthorized practice promotion. The same is true in respect of the 2nd Defendant for the use of the title “馮天祥醫生 皮膚科” in the practice website of New Town Group.

16. It is clearly stated in paragraph 5.2.3.5 of the 2009 edition of the Code of Professional Conduct (the “Code”) that the practice website of a medical practice group to which a doctor belongs “... may carry only the service information which is permitted on doctors directories under section 5.2.3.7. The same rules on doctors directories in electronic format also apply to practice website...”
17. In this connection, a doctor has a personal responsibility to ensure that the service information about him in the practice website of a medical practice group to which he belongs is in compliance with the Guidelines on Doctors Directories set out in Appendix D of the Code. Whilst doctors may be categorized as specialist practitioners on the practice website of a medical practice group but their names must actually be registered under the relevant specialties in the Specialist Register or they will be in breach of paragraph 7.2 of the Code which expressly prohibits the use of misleading description or title implying specializing in a particular area such as “doctor in dermatology” or “皮膚醫生”. But then again, it is always a question of fact to be decided on the evidence of a particular case whether a doctor has discharged his personal responsibility to comply with the said Guidelines.
18. For these reasons, we are satisfied on the evidence before us that the 1st Defendant’s conduct in respect of amended disciplinary charge (a) has fallen below the standard expected amongst registered medical practitioners in Hong Kong and we find him guilty of professional misconduct as charged.
19. As to amended disciplinary charge (b), the 1st Defendant was under a duty to take adequate steps to prevent the use of offending titles in the practice website of New Town Group so long as he continued to work at its clinic. According to the 1st Defendant, whose evidence is not challenged by the Legal Officer, he ceased to work for New Town Group in or around September 2012. In our view, the 1st Defendant had a personal responsibility to take adequate steps to ensure that the offending titles would not continue to remain in the practice website of New Town Group after he left. Had the amended disciplinary charge (b) been laid for his failure at the time when he ceased to work for New Town Group in or around September 2012, we would have found him guilty of professional misconduct. However, it is not the charge that the 1st Defendant is facing. Accordingly, we find the 1st Defendant not guilty of professional misconduct in respect of amended disciplinary charge (b).

20. As to amended disciplinary charge (c), the Legal Officer conceded that there was nothing in the evidence to show when the offending title “楊超賢醫生 皮膚科文憑” first appeared in the practice website of New Town Group. Bearing in mind that the burden of proof is always on the Legal Officer, we are unable to satisfy ourselves on the evidence before us that the 1st Defendant was still under a personal duty in or around March 2014 to prevent the use of the offending title in the practice website of New Town Group. Accordingly, we also find the 1st Defendant not guilty of professional misconduct in respect of amended disciplinary charge (c).
21. The 2nd Defendant explained in his submission to the Preliminary Investigation Committee (“PIC”) that he began to work as a part time doctor for New Town Group once a week for 1 hour in mid 2012. Then in late 2012, the 2nd Defendant noticed that the new signboard of the clinics in Yuen Long and Tsim Sha Tsui showed his name under “皮膚科” and he had repeatedly asked New Town Group to change this description but in vain. Instead, New Town Group displayed a notice in the registration counter of the clinics informing patients that the 2nd Defendant was a doctor with diplomas in dermatology and not a specialist in dermatology.
22. It is not entirely clear to us from reading the correspondence exchanged between him and New Town Group as to when the 2nd Defendant first became aware of the categorization of his name under the specialty of dermatology in the practice website of New Town Group. However, the Legal Officer’s case against the 2nd Defendant is that he should have known about the use of the offending title “馮天祥醫生 皮膚科” in the practice website of New Town Group. This is particularly true when, according to the 2nd Defendant, the same offending title was used along with the domain name www.newtownmedical.com.hk in the signboards of both clinics he worked in.
23. Given the 2nd Defendant’s admission that he should have known about the use of offending title “馮天祥醫生 皮膚科” if he looked at the practice website of New Town Group, we have no hesitation in finding that his conduct had fallen below the standard expected of registered medical practitioners in Hong Kong. Accordingly, we find the 2nd Defendant guilty of professional misconduct in respect of amended disciplinary charges (a) and (b).

Sentencing

24. The 1st Defendant has one previous disciplinary record back in 2003 relating to the conviction under the Dangerous Drugs Regulations, Cap 134. We accept the present disciplinary proceedings against the 1st Defendant are of different nature.
25. In accordance with our published policy, we shall give the 1st Defendant credit for his frank admission and cooperation before us today.
26. In July 2006, the 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 Council.
27. We accept that the 1st Defendant did not use the offending titles deliberately for the purpose of practice promotion. In our view, the gravamen of his misconduct lay in the failure to take adequate steps to prevent the use of the offending titles.
28. Having considered the nature and gravity of the amended disciplinary charge for which the 1st Defendant is convicted and what we have read and heard in mitigation, we order in respect of amended disciplinary charge (a) that:-
 - (1) the 1st 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.
29. The 2nd Defendant has a clear record.
30. We appreciate that the 2nd Defendant realized the importance of using only quotable and non-misleading titles on signboards. In our view, the 2nd Defendant should have adopted the same vigilance in ensuring that offending titles would not be used in the practice website of New Town Group.

31. But then again, we accept that the 2nd Defendant did not use the offending titles deliberately for the purpose of practice promotion.

32. Having considered the nature and gravity of the amended disciplinary charges for which the 2nd Defendant is convicted, we make a global order in respect of amended disciplinary charges (a) and (b) that:-
 - (1) the 2nd 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. Felice LIEH-MAK, GBS, CBE, JP
Chairperson of the Inquiry Panel
The Medical Council of Hong Kong