

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr YIP Wai Man (Reg. No.: M09657)

Date of hearing: 1 June 2020 (Monday)

Present at the hearing

Council Members/Assessors: Prof. LAU Wan-yee, Joseph, SBS
(Chairperson of the Inquiry Panel)
Dr Hon Pierre CHAN
Dr LUM Chor-ming, Christopher
Mr CHAN Wing-kai
Mr NG Ting-shan

Legal Adviser: Mr Edward SHUM

Defence Solicitor representing the Defendant: Dr Bernard Murphy of
Messrs. Howse Williams

Government Counsel representing the Secretary: Miss Camille SHEK

1. The charge against the Defendant, Dr YIP Wai Man, is:

“That in or about March 2017, he, being a registered medical practitioner, sanctioned, acquiesced in or failed to take adequate steps to prevent the provision of cash coupons in the leaflets of the Hong Kong Geriatric Specialist Centre with which he had a professional relationship.

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

Facts of the case

2. The name of the Defendant was at all material times and still is included in the General Register. His name has been included in the General Register from 26 September 1994 to present. His name has also been included in the Specialist Register under the specialty of Geriatric Medicine from 4 October 2011 to present.
3. Briefly stated, the Secretary of the Medical Council received on 30 March 2017 a letter from one Dr YUM (the “Complainant”) complaining the Defendant of business promotion.
4. According to the Complainant, he received a promotional leaflet through the Post announcing the grand opening of the Hong Kong Geriatric Specialist Centre (“HKGSC”). Also printed on the promotional leaflet was a cash coupon (the “Coupon”) to be used “as payment of the amount of \$50 at the Centre for ... health check packages”.
5. According to the record of the Companies Registry, the Defendant was at the material time a director and shareholder of Hong Kong Geriatric Specialist Centre Company Limited. The registered office address of this company was the same as the new address of HKGSC, which was printed on the promotional leaflet. Indeed, the Defendant also admitted that he was at the material time a director of HKGSC.
6. In response to the complaint against him, the Defendant apologized through his solicitors in their submission to the Preliminary Investigation Committee (“PIC”) of the Medical Council dated 26 August 2019 for his mistake.
7. The Defendant further explained through his solicitors that he very much regretted his error in failing to prevent the Coupon being sent out. According to the Defendant, in preparation for the grand opening of HKGSC, the General Manager of HKGSC “prepared a Commencement Notice which included change of practice details, intended to [be sent] to medical practitioners and the existing patients of the doctors, dentist and therapists of HKGSC only”. Upon reviewing the draft Commencement Notice, the Defendant noted certain information which could be in breach of the Code of Professional Conduct. The Defendant therefore instructed the General Manager of HKGSC to have them removed and the latter replied via

WhatsApp that he would. The General Manager of HKGSC also added in his reply that “[m]ailing to household is possible as a centre or medical provider with services e.g. health check packages...”.

8. Although the Defendant denied having prior knowledge of the Coupon being printed on the promotional leaflet, he accepted in retrospect that his instructions to the General Manager of HKGSC to include “just the Commencement Notice” could have been clearer.

Burden and Standard of Proof

9. 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.
10. 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

11. The Defendant admits the factual particulars of the 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.
12. There is no dispute that the Defendant had at the material time a professional relationship with HKGSC.
13. We are particularly concerned that the promotional leaflets were circulated to the public indiscriminately.

14. In our view, provision of the Coupon, which could be used “as payment of the amount of \$50 at the Centre for... health check packages”, was no doubt for the purpose of attracting patients to HKSGC and a form of impermissible practice promotion on behalf of the Defendant.

15. It is clearly stated in the Code of Professional Conduct (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.

...

5.2.1.2 Such information must not:

...

(d) aim to solicit or canvass for patients;

(e) be used for commercial promotion of medical and health related products and services...

...

18.1 Medical and health products and services are offered by a variety of organizations. The Council does not have jurisdiction over such organizations. However, subject to section 18.2, disciplinary action will be taken against a doctor where an advertisement in the name of the organization is in effect promotion of the doctor’s practice. In this respect, the Council will look at the actual effect of the advertisement.

18.2 *A doctor who has any kind of financial or professional relationship with, uses the facilities of, or accepts patients referred by, such an organization, must exercise due diligence (but not merely nominal efforts) to ensure that the organization does not advertise in contravention of the principles and rules applicable to individual doctors. Due diligence shall include acquainting himself with the nature and content of the organization's advertising, and discontinuation of the relationship with an organization which is found to be advertising in contravention of the principles and rules."*

16. In our view, the Defendant ought to have reviewed the final draft of the Commencement Notice before sending out the same.
17. We are satisfied on the evidence before us that the Defendant had failed to take adequate steps to prevent the provision of cash coupons in the leaflets of HKGSC.
18. In our view, the Defendant's conduct had fallen below the standards expected of registered medical practitioners in Hong Kong. Accordingly, we find him guilty of professional misconduct as charged.

Sentencing

19. The Defendant has a clear disciplinary record.
20. In line with our published policy, we shall give credit in sentencing for his frank admission and full cooperation both at the PIC stage and before us today.
21. In June 2006, the Medical Council issued a clear warning that in 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.

22. We are told in mitigation that upon being informed of the incident, the Defendant immediately implemented a strict policy at HKGSC of ensuring that all materials to be sent out by HKGSC regarding its services would be seen by him first and that no materials regarding financial incentives or offers would be sent out.
23. We are also told in mitigation that the Coupon had not yet been used by anyone as payment for any services at HKGSC. However, given the promotional leaflets were circulated to the public indiscriminately, potential damage to the public confidence in the high standards and good reputation of the medical profession should not in our view be overlooked.
24. Having considered the nature and gravity of this case and what we have read and heard in mitigation, we order that the name of the Defendant be removed from the General Register for a period of 1 month. We further order that the operation of the removal order be suspended for a period of 12 months.

Remark

25. The Defendant's name is included in the Specialist Register under the specialty of Geriatric Medicine. It is for the Education and Accreditation Committee to consider whether any action should be taken in respect of his specialist registration.

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