

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr YUEN Leonard Hsu (源旭醫生) (Reg. No.: M13826)

Date of hearing: 3 August 2021 (Tuesday)

Present at the hearing

Council Members/Assessors: Dr CHOI Kin, Gabriel
(Chairperson of the Inquiry Panel)
Dr CHOW Yu-fat
Dr MOK Pik-tim, Francis
Mr HUNG Hin-ching, Joseph
Ms HO Yuk-wai, Joan

Legal Adviser: Mr Stanley NG

Defence Solicitor representing the Defendant: Mr Chris HOWSE of
Messrs. Howse Williams

Senior Government Counsel (Ag.) representing the Secretary: Mr Andrew TONG

1. The charges against the Defendant, Dr YUEN Leonard Hsu, are:

“That he, being a registered medical practitioner,

- (a) in or about June 2017, sanctioned, acquiesced in or failed to take adequate steps to prevent the publication of information in a statement in a Facebook post posted by BNI Hong Kong Creation, namely, “Dr. Leonard Yuen, the only HK Harvard graduate in HK specializing in Ophthalmology”, which promoted his practice;*
- (b) in or about November 2018, sanctioned, acquiesced in or failed to take adequate steps to prevent the publication of information in a notice of a talk given by him on 17 November 2018 which named a famous singer from the United States of America as his patient, which promoted his practice; and/or in breach of the Personal Data (Privacy) Ordinance; and/or*

(c) in or about November 2018, sanctioned, acquiesced in or failed to take adequate steps to prevent the publication of information including photographs in a notice of a talk given by him on 17 November 2018 which promoted his practice to a non-profit organization.

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 was at all material times and still is included in the General Register. Also, his name was at all material times and still is included in the Specialist Register under the specialty of Ophthalmology.
3. Briefly stated, the Medical Council received emails on 10 July 2018 and 8 November 2018 complaining the Defendant of practice promotion. Attached to the emails included a Facebook page of an entity known as BNI Hong Kong Creation (“BNI”) posted on 5 June 2017 (“Facebook Page”) and a notice of a talk to be given by the Defendant on 17 November 2018 (“Notice”).

Burden and Standard of Proof

4. 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.
5. 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 each of the disciplinary charges against him carefully.

Findings of the Inquiry Panel

6. The Defendant admits the factual particulars of the disciplinary charges against him but it remains for us to consider and determine on the evidence whether he is guilty of misconduct in a professional respect.
7. 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.”*

8. 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:*

...

(b) *be comparative with or claim superiority over other doctors;*

...

(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;*

...

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.

...
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 ...”*

Charge (a)

9. The Facebook Page of BNI posted a photograph of the Defendant standing next to a screen, and in the screenshot as projected on the screen showed the Defendant's title, name and qualifications (“the Photograph”). On top of the Photograph was this statement “Dr. Leonard Yuen, the only HK Harvard graduate in HK specializing in Ophthalmology 眼科專科醫生” (“the Statement”).
10. In the submission to the Preliminary Investigation Committee (“PIC”) of the Medical Council dated 2 June 2020, the Defendant said that he was invited to join BNI on 5 December 2016 by another ophthalmologist and he was invited to speak on 23 May 2017 about ophthalmology. Subsequently, the Administrator of the Facebook Page of that particular BNI chapter (approximately 30 members) posted the Photograph and the Statement. He said this was done without his knowledge and consent. He said he was not a member of the BNI Facebook Group and never saw the posting prior to 12 July 2018. He said he only learned about the posting through a colleague on 12 July 2018.
11. The only content in the Facebook Page was the Statement and the Photograph, and there was nothing else. The message conveyed to readers could very probably be that the Defendant was “the only HK Harvard graduate specializing in Ophthalmology”, which aim must be to promote the Defendant's practice.
12. We take judicial notice that BNI is a business networking and referral organization, which members referred businesses amongst each other. When asked to speak in the capacity as a doctor at that particular BNI chapter on 23 May 2017, the Defendant should be alert that any information of his and/or

any photograph taken of him would possibly be used by that BNI chapter, which did happen in this case. The Code required the Defendant to exercise due diligence, and not just nominal effort, to ensure any advertising would not contravene the Code. The Defendant had simply not done anything before or immediately after the talk on 23 May 2017 to ensure that particular BNI chapter would not post anything relating to him and his practice in contravention of the Code.

13. By sanctioning, acquiescing in or failing to take adequate steps to prevent the publication of the Statement, 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)

14. The title of the Notice is “名人面對面：睛彩人生”. It contains three photographs and written contents.
15. The photographs all showed images of the Defendant, one in business attire, one in doctor’s gown and a cap with the word “ORBIS” on it and with a celebrity, and one in sportswear in some kind of competition.
16. The written contents of the Notice are re-produced as follows:

“主講嘉賓：源旭眼科專科醫生

Dr Leonard YUEN

美國哈佛大學碩士畢業

受訓並執業於英國、美國、新加坡、香港

名人客戶包括美國巨星麥當娜

熱心慈善活動，如奧比斯、老有所醫義診計劃和其他義工服務

三項鐵人賽（全新加坡第 16 位）

男拔萃前游泳紀錄保持者

分享重點：

眼科醫學的最新科技發展

慈善活動的感懷與得著

時：2018 年 11 月 17 日（六）晚上 7：15

地：旺角登打士街 56 號家樂坊 15 樓安利體驗館會議室 B

人：\$90 一位（包三文治及飲品）”

17. The Notice clearly named a famous singer in the United States of America as the Defendant’s patient. No doubt, the naming of the famous singer as such promoted the practice of the Defendant, which is not allowed.
18. In the PIC submission, the Defendant said that the Notice was for a talk to be given by him on 17 November 2018 to Empower, a non-profit organization. He said that the administrator of Empower prepared the Notice and sent it to him for approval on about 3 November 2018. He said that before he had time to respond to the contents of the Notice, the administrator of Empower had

already published the Notice for a few days. He also said that the administrator of Empower had heard from another source that he had treated the famous singer from the United States of America whilst she was passing through Hong Kong.

19. We find it hard to believe that if it was really the case that the Notice was sent to the Defendant for the whole purpose of seeking his approval in the first place, then why without his response or approval to the contents, all of a sudden it was published. We also find it hard to believe that the administrator of Empower, simply based on hearsay from some other source and without confirmation from the Defendant, would proceed to publish the statement in the Notice naming the famous singer as the Defendant's patient. The Defendant had not provided any explanation in the PIC submission in this regard. As said, the Code required the Defendant to exercise due diligence, and not just nominal effort, to ensure any advertising would not contravene the Code. We do not see the Defendant had exercised any due diligence before the Notice was published, albeit published for a few days before corrections made as he alleged.
20. By sanctioning, acquiescing in or failing to take adequate steps to prevent the publication of the information in the Notice which named a famous singer from the United States of America as his patient, which promoted his practice, 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)

21. In our view, the only offending materials which amounted to impermissible practice promotion was the reference made to the famous singer of the United States of America, in which we have already found the Defendant guilty under charge (b). The legal officer has failed to prove to us how in this case participation in charity work and sports events would promote the Defendant's practice to a non-profit organization.
22. We therefore acquit the Defendant of charge (c).

Sentencing

23. The Defendant has a clear disciplinary record.
24. 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.
25. 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.

26. 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.
27. In mitigation, the Defendant told us that he had taken immediate remedial actions to remove the offending words from the Facebook Page and the Notice. We accept that he is remorseful, and the chance of re-offending is low.
28. We give credit to the list of charity works which was continuous throughout the years. We also give credit to the positive comments mentioned about him in all the character reference letters as submitted.
29. 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 both charges (a) and (b) that the Defendant's name 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 3 months.

Remarks

30. The Defendant's name is included in the Specialist Register under the Specialty of Ophthalmology. We shall leave it to the Education and Accreditation Committee to decide on whether anything may need to be done to his specialist registration.

Dr CHOI Kin Gabriel
Chairperson of the Inquiry Panel
The Medical Council of Hong Kong