

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr YUEN Yin Fun (阮燕芬醫生) (Reg. No.: M07680)

Date of hearing: 23 July 2021 (Friday)

Present at the hearing

Council Members/Assessors: Prof. LAU Wan-yee, Joseph, SBS
(Chairperson of the Inquiry Panel)
Dr CHAN Yee-shing
Dr KWOK Siu-yin, Janette
Mr MUI Cheuk-nang, Kenny
Mr WOO King-hang

Legal Adviser: Mr Stanley NG

Defence Solicitor representing the Defendant: Ms Phyllis CHIU of
Messrs. Mayer Brown

Government Counsel representing the Secretary: Miss Cassandra FUNG

1. The amended charges against the Defendant, Dr YUEN Yin Fun, are:

“That from December 2018 to September 2020, she, being a registered medical practitioner, sanctioned, acquiesced in or failed to take adequate steps to prevent:

- (a) the reference to her and/or the use of her name and/or title and/or photograph which promoted the treatment of Small Incision Lenticule Extraction (SMILE) on the websites <https://www.hklasereye.com/en/celebrity/Cheung-Ming-Wai-Aaryn> and/or <https://www.hklasereye.com/en/celebrity/chowkalok>; and/or*
- (b) the publication of her photograph and/or promotional information on the webpage : <https://www.hklasereye.com/en>.*

In relation to the facts alleged, either singularly or cumulatively, she 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 9 April 1990 to the present. Her name has been included in the Specialist Register under the specialty of Ophthalmology since 4 March 1998.
3. Briefly stated, the Medical Council received a statutory declaration on 6 August 2020 complaining the Defendant of practice promotion. Attached to the statutory declaration were pages downloaded from <https://www.hklasereye.com/en/celebrity/Cheung-Ming-Wai-Aaryn> and <https://www.hklasereye.com/en/celebrity/chowkalok>, which were webpages from the website of Hong Kong Laser Eye Centre (“the Centre”).
4. At all material times, the Defendant was in private practice as a medical practitioner at the Centre. The Defendant has been working at the Centre since January 2018.

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 her 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 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 her carefully.

Findings of the Inquiry Panel

7. The Defendant does not contest the two charges laid against her but it remains for us to consider and determine on the evidence of each of the charges whether she is guilty of misconduct in a professional respect.
8. It is clearly stated in section 18.2 of the Code of Professional Conduct (2016 edition) (“the Code”) that:

“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 ...”

9. In this connection, it is stipulated in the Code that:

“5.1.3 *Persons seeking medical service for themselves or their families can nevertheless be particularly vulnerable to persuasive influence, and patients are entitled to protection from misleading advertisements. 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.*

...

5.2.3.3 *Announcement in mass media*

...

Other announcements

Letters of gratitude or announcements of appreciation from grateful patients or related persons identifying the doctor concerned should not be published in the media or made available to members of the public. A doctor should take all practical steps to discourage any such publications.

...
5.2.3.5 *Practice websites*

...

The website may carry only the service information which is permitted on doctors directories under section 5.2.3.7...

...

5.2.3.7 *Doctors directories*

...

A doctors directory must comply with the guidelines set out in Appendix D. A doctor who provides information for publication, or permits publication of such information, in a doctors directory has a personal responsibility to ensure that the directory is in compliance with the guidelines.”

10. In respect of charge (a), the Secretary informed us at the inquiry that they will not rely on the webpage <https://www.hklasereye.com/en/celebrity/chowkalok>. We only therefore need to focus on the webpage <https://www.hklasereye.com/en/celebrity/Cheung-Ming-Wai-Aaryn>.
11. The layout of the webpage <https://www.hklasereye.com/en/celebrity/Cheung-Ming-Wai-Aaryn> shows the name, address and telephone numbers of the Centre. It contains a number of hyperlinks, one of which under the name of “Celebrity Testimonial (/celebrity)”. The main content of this page is the testimonial of a patient of name Cheung, Ming Wai Aaryn (“Cheung”), who appeared to be a celebrity. In the testimonial, Cheung said that the best present he had received for the year was undergoing the SMILE treatment. He then went on to describe how before the treatment he was nervous, that the treatment only took about 10 minutes to complete and it was not painful, how caring and professional his treating doctors and nurses were, and how incredible that his vision was corrected in less than a week’s time. At the end of the testimonial, he expressed his gratitude to the Defendant and the Centre in these words “多謝阮燕芬醫生，多謝 Hong Kong Laser Eye Centre 香港激光矯視中心”. Next to the testimonial is a photograph, which appeared to be taken in December 2018, showing Cheung and the Defendant in the foreground against a background showing the name of the Centre.
12. Clearly, Cheung’s testimonial expressed praise and commendation to the SMILE treatment offered at the Centre. There were references to the Defendant’s name, title and photograph. These materials when viewed as a whole were laudatory, unduly persuasive and promotional. There is no doubt in our minds that publication of these materials aimed at soliciting and/or canvassing patients for the Centre with which the Defendant had a professional relationship.
13. In her submissions to the Preliminary Investigation Committee (“PIC”) dated 8 December 2020 and 9 March 2021, the Defendant said that the Centre is owned and operated by Asia Medicare (HK) Limited (“Asia Medicare”). She was neither the director nor the shareholder of Asia Medicare. From January 2019, Asia Medicare engaged a Business Development Director (“the BD

Director”) to oversee the Business Development and Marketing Team, which handled the business development and marketing matters of Asia Medicare, including those in relation to the Centre. The BD Director was subsequently discharged from her position in February 2020 due to non-compliance with the Centre’s internal policies and copyright requirements. The Defendant said she had absolutely no knowledge of the contents of the Centre’s website until she received the PIC Notice in October 2020. We do not accept what the Defendant said that she had no knowledge of the contents of the Centre’s website until October 2020. The Code required her to exercise due diligence, including acquainting herself with the nature and content of the Centre’s advertising, to ensure there was no contravention. The Defendant joined the Centre in January 2018. Cheung’s testimonial and the photograph of the Defendant and Cheung had been posted online for about 20 months from December 2018 to around July 2020. It is unreasonable and hard to believe that she had not visited the Centre’s website even once over the period. Further, the fact that the BD Director was discharged from her position in February 2020 due to non-compliance with the Centre’s internal policies and copyright requirements should have alerted the Defendant, even if it was really true that she had yet visited the Centre’s website, to visit the Centre’s website to see if there was any materials that contravened the Code. Still further, a photograph was taken of the Defendant and Cheung together in the Centre, with the name of the Centre as background. She should have been alert to how the photograph would be used and took active steps to ensure that it would not be published in contravention of the Code.

14. By sanctioning, acquiescing in or failing to take adequate steps to prevent the reference of her and/or the use of her name and/or title and/or photograph which promoted the SMILE treatment on the website <https://www.hklasseseye.com/en/celebrity/Cheung-Ming-Wai-Aaryn>, the Defendant has in our view by her conduct fallen below the standard expected of registered medical practitioners in Hong Kong. We find the Defendant guilty of charge (a).
15. In respect of charge (b), the Secretary relies on a number of pages downloaded from <https://www.hklasseseye.com/en>, the website of the Centre. These pages were in fact one single webpage. This webpage shows a photograph of the Defendant taken against the background showing the name of the Centre. What followed were a number of short paragraphs starting with the heading “5 Reasons to Choose Hong Kong Laser Eye Centre”, which are reproduced below:

“Advanced Technology – We specialise in refractive procedure and are able to provide personalised laser vision correction plans that are not limited to a particular laser technology. With a more advanced laser vision equipment, we can meet the specific needs of many people in the eyes.

22 Years of Experience – When it comes to your eyes, your ophthalmologist’s experience plays an important role. Skilled ophthalmologist, experienced optometrists and clinic staff operate 6 days a week to provide convenient procedure times for you. We care deeply about Hong Kong, a city we have served 22 years. With 3 surgery centres in this city, we have more than 100,000+ patients who share our passion for a quality eye care service.

More than Smile & Lasik – We offer more than just SMILE and LASIK. We also offer a variety of ophthalmology treatments for people for all ages, such as comprehensive eye care exam, cataract treatment, diabetic eye diagnosis, macular degeneration treatment. Our ophthalmologists focus on helping patients to achieve better vision and eye health.

Location – We have three Medical and Surgical centres ...[illegible] ...

Patient Education – We organise many eye health seminars every week in order to raise the public awareness of various eye diseases. When it comes to our eyes, prevention is better than cure. Several eye diseases are preventable, and can be managed much better if identified earlier on. The goal of our ophthalmologists is to raise awareness towards eye health and assist our patients to maintain good vision.”

16. There is no doubt in our minds that publication of the said 5 reasons aimed at soliciting and/or canvassing patients for the Centre with which the Defendant had a professional relationship. Particularly, under sub-heading “Advanced Technology”, when it used wordings such as “able to provide personalised laser vision correction plans” and “with a more advanced laser vision equipment”; and under sub-heading “22 Years of Experience” when it quoted its vast experience in the field and the 100,000+ patients who shared their same passion, although there was no direct comparison made with other doctors in the field, indirectly it certainly gave readers the impression of superiority over other doctors in the field. This was clearly not allowed. As said above, we do not accept what the Defendant said in her PIC submission that she had no knowledge of the contents of the Centre’s website prior to receipt of the 1st PIC Notice in October 2020. The Code required her to exercise due diligence, including acquainting herself with the nature and content of the Centre’s advertising, to ensure there was no contravention.
17. By sanctioning, acquiescing in or failing to take adequate steps to prevent the publication of her photograph and/or promotional information on the webpage: <https://www.hklasseseye.com/en>, the Defendant has in our view by her conduct fallen below the standard expected of registered medical practitioners in Hong Kong. We find the Defendant guilty of charge (b).

Sentencing

18. The Defendant has a clear disciplinary record.
19. In line with published policy, we shall give credit to the Defendant in sentencing for her frank admission and full cooperation throughout these disciplinary proceedings.
20. 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.

21. 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.
22. In mitigation, the Defendant told us that she had taken improvement measures to prevent similar incidents from happening. We accept that she is remorseful, and the chance of re-offending is low.
23. We give credit to the awards she received, her voluntary commitment to the medical profession, and her involvement in charitable and community work. We also give credit to the positive comments mentioned about her in all the character reference letters as submitted.
24. 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 6 months.

Remarks

25. 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 her specialist registration.

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