

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

1st Defendant: Dr CHAN Yien Ching (陳燕晴醫生) (Reg. No.: M15209)

2nd Defendant: Dr PONG Chiu Fai (龐朝輝醫生) (Reg. No.: M12144)

Date of hearing: 25 May 2023 (Thursday)

Present at the hearing

Council Members/Assessors: Prof. TANG Wai-king, Grace, SBS, JP
(Chairperson of the Inquiry Panel)
Prof. WONG Chi-sang
Prof. SZETO Cheuk-chun
Mrs BIRCH LEE Suk-ye, Sandra, GBS, JP
Ms Careen WONG

Legal Adviser: Mr Stanley NG

Defence Solicitor representing the Defendants: Ms Jennifer LEE of
Messrs. Mayer Brown

Government Counsel representing the Secretary: Miss Cherie FONG

1. The charges against the 1st Defendant, Dr CHAN Yien Ching, are:

“That, in or about May 2021, she, being a registered medical practitioner, sanctioned, acquiesced in or failed to take adequate steps to prevent :

- (i) *the publication / use / appearance of her name, title, photo, the promotional statement(s) / information and/or interview record(s) / statement(s), including but not limited to, that “陳醫生提醒... 家長亦可於眼鏡 88 租用 AI 視覺習慣分析感應裝置” and “儲積分換禮物更著數眼鏡 88 全新網店及門市會員計劃現已推出，消費每 1 元可賺 1 積分，讓客*

人輕鬆兌換禮品或服務... 並提供更多優惠” on the Article named “香港首間眼鏡 88 眼科醫療中心 一站式眼科診斷治療 服務市民” published on the local newspaper “am730” on 28 May 2021, thereby promoting or endorsing various medical / Ophthalmology treatment(s) and/or rental services of the “AI device” and/or gift redemption scheme provided by Optical 88 Ophthalmology Centre / Optical 88 Limited (“Optical 88”), and/or thereby canvassing for the purpose of obtaining patients in respect of her practice in association with Optical 88; and/ or

- (ii) *the publication / use / appearance of her name, title, photo, the promotional statement(s) / information, including but not limited to, that “著數貼士：眼鏡 88 全新網店及門市會員計劃，消費每 1 元可賺 1 積分，輕鬆換領禮品或服務。” on the Article named “眼鏡 88 眼科醫療中心正式開幕 一站式專業眼科診斷及治療” published on a local newspaper, thereby promoting or endorsing various medical / Ophthalmology treatment(s), including but not limited to, ultrasound treatment of cataract, and/or gift redemption scheme provided by Optical 88, and/or thereby canvassing for the purpose of obtaining patients in respect of her practice in association with Optical 88.*

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

2. The charges against the 2nd Defendant, Dr PONG Chiu Fai, are:

“That, in or about May 2021, he, being a registered medical practitioner, sanctioned, acquiesced in or failed to take adequate steps to prevent:

- (i) *the publication / use / appearance of his name, title, photo, the promotional statement(s) / information, including but not limited to, that “中心醫務行政總監龐朝輝醫生將物色更多專業眼科醫生進駐各區的醫療中心，以相宜的價錢為更多市民提供全面的眼科服務” and “儲積分換禮物更著數 眼鏡 88 全新網店及門市會員計劃現已推出，消費每 1 元可賺 1 積分，讓客人輕鬆兌換禮品或服務... 並提供更多優惠” on the Article named “香港首間眼鏡 88 眼科醫療中心 一站式眼科診斷治療 服務市民” published on the local newspaper*

“am730” on 28 May 2021, thereby promoting or endorsing various medical / Ophthalmology treatment(s) and/or gift redemption scheme provided by Optical 88 Ophthalmology Centre / Optical 88 Limited (“Optical 88”), and/or thereby canvassing for the purpose of obtaining patients in respect of his practice in association with Optical 88; and/or

- (ii) *the publication / use / appearance of his name, title, photo, the promotional statement(s) / information and/or interview record(s) / statement(s), including but not limited to, that “眼鏡 88 眼科醫療中心 醫務行政總監龐朝輝醫生表示，治療白內障唯一最有效方法是透過超聲波技術將混濁晶狀體乳化吸出再植入全新單焦距或多焦距人工晶狀體，整個過程只需 15 分鐘，傷口會自然癒合無須縫線” and “著數貼士：眼鏡 88 全新網店及門市會員計劃，消費每 1 元可賺 1 積分，輕鬆換領禮品或服務。” on the Article named “眼鏡 88 眼科醫療中心正式開幕 一站式專業眼科診斷及治療” published on a local newspaper, thereby promoting or endorsing various medical / Ophthalmology treatment(s), including but not limited to, ultrasound treatment of cataract, and/or gift redemption scheme provided by Optical 88, and/or thereby canvassing for the purpose of obtaining patients in respect of his practice in association with Optical 88.*

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

Facts of the case

3. The name of the 1st Defendant has been included in the General Register from 1 July 2007 to the present. Her name has been included in the Specialist Register under the specialty of Ophthalmology since 6 August 2014.
4. The name of the 2nd Defendant has been included in the General Register from 22 January 1999 to the present. His name has been included in the Specialist Register under the specialty of Ophthalmology since 5 February 2008.
5. On 31 May 2021, the Medical Council received a letter dated 28 May 2021 from a group of anonymous complainants complaining against the 1st and 2nd Defendants for impermissible practice promotion.

6. Attached to the letter were copies of:
- (i) an article entitled “香港首間眼鏡 88 眼科醫療中心 一站式眼科診斷治療 服務市民” published in the local newspaper “am730” on 28 May 2021 (“1st Article”); and
 - (ii) an article entitled “眼鏡 88 眼科醫療中心正式開幕 一站式專業眼科診斷及治療” published in a local newspaper (“2nd Article”).
7. Optical 88 is a commercial eyewear chain store in Hong Kong. In or around May 2021, Optical 88 opened a clinic called Optical 88 Ophthalmology Centre (“the Clinic”). At all material times, the 1st Defendant was a practising doctor, and the 2nd Defendant the Chief Medical Executive, of the Clinic. The 1st and 2nd Articles were published by Optical 88 in relation to the opening ceremony of the Clinic in May 2021.
8. The 1st Article contains, *inter alia*, the following contents:
- (i) reference to the name, doctor’s title and photographs of the 1st Defendant;
 - (ii) reference to the name, doctor’s title, and photograph of the 2nd Defendant;
 - (iii) a statement which reads “陳醫生提醒...家長亦可於眼鏡 88 租用 AI 視覺習慣分析感應裝置...”;
 - (iv) a statement which reads “...中心醫務行政總監龐朝輝醫生將物色更多專業眼科醫生進駐各區的醫療中心，以相宜的價格為更多市民提供全面的眼科服務。”;
 - (v) a box at the bottom right corner which reads “儲積分換禮物更著數 眼鏡 88 全新網店及門市會員計劃現已推出，消費每 1 元可賺 1 積分，讓客人輕鬆兌換禮品或服務... 並提供更多優惠” together with a contact phone number and address of the Clinic; and
 - (vi) these words “資料由客戶提供” at the bottom right corner.
9. The 2nd Article contains, *inter alia*, the following contents:
- (i) a photo of the interior of the Clinic with the contact phone number and address underneath;

- (ii) reference to the name, doctor's title and photographs of the 1st Defendant;
- (iii) reference to the name, doctor's title and photograph of the 2nd Defendant;
- (iv) a statement which reads “眼鏡 88 眼科醫療中心醫務行政總監龐朝輝醫生表示，治療白內障唯一最有效方法是透過超聲波技術將混濁晶狀體乳化吸出再植入全新單焦距或多焦距人工晶狀體，整個過程只需 15 分鐘，傷口會自然癒合無須縫線。”;
- (v) a statement at the bottom which reads “著數貼士：眼鏡 88 全新網店及門市會員計劃，消費每 1 元可賺 1 積分，輕鬆換領禮品或服務。”;
and
- (vi) these words “資料由客戶提供” at the bottom right corner.

Burden and Standard of Proof

- 10. We bear in mind that the burden of proof is always on the Secretary and the 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.
- 11. There is no doubt that each of the allegations against the Defendants here is a serious one. Indeed, it is always a serious matter to accuse any registered medical practitioner of misconduct in a professional respect. We need to look at all the evidence and to consider and determine the respective disciplinary charges against them separately and carefully.

Findings of the Inquiry Panel

- 12. At the beginning of the inquiry, both the 1st and the 2nd Defendants through their Solicitors admitted to the particulars of all their respective charges, but only insofar as the element “failed to take adequate steps to prevent” is concerned.

13. The Secretary's case also is that the Defendant sanctioned and/or acquiesced in the publication of the offending promotional materials. There is however nothing in the evidence adduced by the Secretary to show that the Defendant had actually sanctioned or acquiesced in the publication of the offending promotional materials.
14. Despite the 1st and 2nd Defendants' admission, it remains for us to consider and determine on the evidence whether the 1st and 2nd Defendants' conduct had fallen below the standards expected of registered medical practitioners in Hong Kong.
15. It is stipulated in the Code of Professional Conduct (2016 edition) ("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 doctors' 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:-

(a) be exaggerated or misleading;

...

(d) aim to solicit or canvass for patients;

(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.

...

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 ..."

Charges against the 1st Defendant (Dr CHAN Yien Ching)

16. When looking at the contents of the 1st Article as a whole (see paragraph 8(i) to (vi) above), we have no doubt that they were promotional of the various medical/ophthalmology treatments, the rental services of the "AI device", and the gift redemption scheme provided by Optical 88 and/or the Clinic.
17. The 1st Article contained clear statements that canvassed for medical patients to pay visit to the Clinic (see paragraph 8(iii) to (v) above).

18. The 1st Article also contained a statement with these words “以相宜的價格”, which implication must be that their doctors’ consultation fees were all the more reasonable (see paragraph 8 (iv) above). This again had the effect of soliciting or canvassing for patients.
19. The statement which reads “陳醫生提醒...家長亦可於眼鏡 88 租用 AI 視覺習慣分析感應裝置...” (see paragraph 8 (iii) above) clearly shows that she promoted the AI device offered by Optical 88 and/or the Clinic.
20. The 1st Defendant’s name, doctor’s title and photographs appeared in the 1st Article. This gave the impression that she endorsed these promotional and canvassing statements, which was impermissible under the Code.
21. The 1st Defendant ought to take steps to prevent the publication of these offending promotional and canvassing statements in the 1st Article, but had failed to do so.
22. The 1st Defendant had in our view fallen below the standards expected of registered medical practitioners in Hong Kong. Accordingly, we find the 1st Defendant guilty of misconduct in a professional respect as per charge (i).
23. Turning to the 2nd Article, again they were promotional of the various medical/ ophthalmology treatments, including but not limited to, ultrasound treatment of cataract, and the gift redemption scheme provided by Optical 88 and/or the Clinic (see paragraph 9 (i) to (vi) above).
24. The 2nd Article contained clear statements that canvassed for medical patients to pay visit to the Clinic (see paragraph 9(iv) to (v) above).
25. The 1st Defendant’s name, doctor’s title and photographs appeared in the 2nd Article. This gave the impression that she endorsed these promotional and canvassing statements, which was impermissible under the Code.
26. By failing to take adequate steps to prevent the publication of all these promotional and canvassing statements in the 2nd Article, the 1st Defendant had in our view fallen below the standards expected of registered medical practitioners in Hong Kong. Accordingly, we find the 1st Defendant guilty of misconduct in a professional respect as per charge (ii).

Charges against the 2nd Defendant (Dr PONG Chiu Fai)

27. We ruled above that the 1st Article contained offending promotional and canvassing statements.
28. The 2nd Defendant was quoted to be the person in the 1st Article to say that their doctors' consultation fees were all the more reasonable. This clearly was for the purpose of soliciting or canvassing for patients (see paragraph 8(iv) above).
29. The 2nd Defendant's name, doctor's title and photographs appeared in the 1st Article. He was also referred to therein as the Chief Medical Executive of the Clinic. These no doubt would give the impression that the 2nd Defendant endorsed these promotional and canvassing statements, which was impermissible under the Code.
30. By failing to take adequate steps to prevent the publication of these offending promotional and canvassing statements in the 1st Article, the 2nd Defendant had in our view fallen below the standards expected of registered medical practitioners in Hong Kong. Accordingly, we find the 2nd Defendant guilty of misconduct in a professional respect as per charge (i).
31. We ruled above that the 2nd Article contained offending promotional materials.
32. The 2nd Article also quoted the 2nd Defendant to be the person who claimed that the ultrasound treatment of cataract offered by the Clinic just took 15 minutes to complete (“整個過程只需 15 分鐘”). The claim that their ultrasound treatment of cataract could be done in just 15 minutes is for the purpose of soliciting or canvassing for patients.
33. The 2nd Defendant's name, doctor's title and photograph appeared in the 2nd Article. He was also referred to therein as the Chief Medical Executive of the Clinic. These no doubt would give the impression that the 2nd Defendant endorsed these promotional and canvassing statements, which was impermissible under the Code.
34. By failing to take adequate steps to prevent the publication of these offending promotional and canvassing statements in the 2nd Article, the 2nd Defendant had in our view fallen below the standards expected of registered medical practitioners in Hong Kong. Accordingly, we find the 2nd Defendant guilty of misconduct in a professional respect as per charge (ii).

Sentencing

35. We bear in mind that the primary purpose of a disciplinary order is not to punish the Defendants 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.
36. In June 2006, the Council adopted that all future cases of practice promotion not allowed under the Code 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.

1st Defendant (Dr CHAN Yien Ching)

37. The 1st Defendant has a clear disciplinary record.
38. In line with our published policy, we shall give the 1st Defendant credit in sentencing for her admission and not contesting the disciplinary proceedings before us today.
39. We accept that the 1st Defendant is remorseful and we give credit to the reference letters as submitted.
40. In mitigation, the 1st Defendant told us that as a remedial step, she has obtained an undertaking from Optical 88 that, going forward, they would (i) always obtain the 1st Defendant's prior consent before allowing the press to publish "any information about Dr Chan or the Clinic (regardless of whether those information relates to the Dr Chan's medical practice)"; and (ii) take steps to ensure that the 1st Defendant's name, professional qualification, title, photograph, and other practice information will not be used for the purpose of promoting the services of the 1st Defendant, Optical 88 and the Clinic in breach of the Code. We accept that the risk of re-offending is low.
41. Taking into consideration the nature and gravity of the disciplinary charges for which the 1st Defendant is convicted and what we have heard and read in mitigation, we shall make a global order in respect of charges (i) and (ii) 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 3 months.

2nd Defendant (Dr PONG Chiu Fai)

42. The 2nd Defendant has a clear disciplinary record.
43. We shall give the 2nd Defendant credit in sentencing for his admission and not contesting the disciplinary proceedings before us today.
44. We accept that the 2nd Defendant is remorseful and we give credit to the reference letters as submitted.
45. In mitigation, the 2nd Defendant told us that as a remedial step, he has obtained an undertaking from Optical 88 that, going forward, they would (i) always obtain the 2nd Defendant's prior consent before allowing the press to publish "any information about Dr Pong or the Clinic (regardless of whether the information relates to Dr Pong's medical practice)"; and (ii) take steps to ensure that the 2nd Defendant's name, professional qualification, title, photograph, and other practice information will not be used for the purpose of promoting the services of the 2nd Defendant, Optical 88 and the Clinic in breach of the Code. We accept that the risk of re-offending is low.
46. Taking into consideration the nature and gravity of the disciplinary charges for which the 2nd Defendant is convicted and what we have heard and read in mitigation, we shall make a global order in respect of charges (i) and (ii) 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 3 months.

Remark

47. The names of the 1st and 2nd Defendants are registered in the Specialist Register under the specialty of Ophthalmology; and we shall leave it to the Education and Accreditation Committee to decide on whether anything needs to be done in respect of their specialist registrations.

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