

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

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**DISCIPLINARY INQUIRY**  
**MEDICAL REGISTRATION ORDINANCE, CAP. 161**

Date of hearing: 27 May 2009, 6 November 2009 and 27 February 2010

Defendants: Dr CHOI Tat Fai Richard (蔡達暉醫生) (Defendant 1)  
Dr HUI Chi Ching Angus (許智政醫生) (Defendant 2)  
[REDACTED] ([REDACTED]) (Defendant 3)  
[REDACTED] ([REDACTED]) (Defendant 4)  
Dr TSE Tsz Wah (謝梓華醫生) (Defendant 5)

1. The charges alleged against Dr CHOI Tat Fai Richard (Defendant 1), [REDACTED] (Defendant 3), [REDACTED] (Defendant 4) and Dr TSE Tsz Wah (Defendant 5) are that:

“They, being registered medical practitioners, in respect of an advertisement in the 7 June 2006 issue of the publication ‘Sunday Life’ pertaining to an organisation known as ‘CosMedic Beautria’ which they had a financial or professional relationship with –

- (1) contrary to paragraph 14.1.1 of the *Professional Code and Conduct for the Guidance of Registered Medical Practitioners* (“the Code”), they failed to ensure that the advertisement conformed to the principles and rules set out in paragraph 4.2 of the Code (Revised to become section 5.2 in the updated version of the Code, as promulgated in the March 2006 issue of the Newsletter of the Medical Council of Hong Kong), in that the advertisement did not conform to the permissible ways of disseminating service information set out under paragraph 4.2.3 (Revised to become section 5.2.3 in the updated version of the Code, as promulgated in the March 2006 issue of the Newsletter of the Medical Council of Hong Kong); and/or
- (2) they failed to ensure that the organisation did not seek to obtain business by an improper means, namely by including in the advertisement a coupon offering advantages to new clients.

In relation to the facts alleged, they have been guilty of misconduct in a professional respect.”

2. The charges alleged against Dr HUI Chi Ching Angus (Defendant 2) are that:

“He, being a registered medical practitioner, in respect of an advertisement in the 7 June 2006 issue of the publication ‘Sunday Life’ pertaining to an organisation known as ‘CosMedic Beautria’ which he had a financial or professional relationship with -

- (1) contrary to paragraph 14.1.1 of the *Professional Code and Conduct for the Guidance of Registered Medical Practitioners* (“the Code”), he failed to ensure that the advertisement conformed to the principles and rules set out in paragraph 4.2 of the Code (Revised to become section 5.2 in the updated version of the Code, as promulgated in the March 2006 issue of the Newsletter of the Medical Council of Hong Kong), in that the advertisement did not conform to the permissible ways of disseminating service information set out under paragraph 4.2.3 (Revised to become section 5.2.3 in the updated version of the Code, as promulgated in the March 2006 issue of the Newsletter of the Medical Council of Hong Kong);
- (2) he failed to ensure that the organisation did not seek to obtain business by an improper means, namely by including in the advertisement a coupon offering advantages to new clients; and/or
- (3) contrary to paragraph 14.1.2 of the Code, he failed to avoid personal involvement in promoting the services of the organisation, in that he allowed his photograph and statement to be included in the advertisement.

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

**Agreed Facts**

**Dr. CHOI Tat Fai Richard (Defendant 1)**

3. Dr. CHOI Tat Fai Richard (“Dr. Choi”) has been included in the General Register from 1<sup>st</sup> January 2006 to present.
4. Since 2005, Dr. Choi owned the majority of the shares in Prime Asia Limited through Hillmark Technology Limited. Prime Asia Limited operated a business in the name of CosMedic Beautria.
5. Since 2005, Dr. Choi was responsible for the management of CosMedic Beautria.
6. Dr. Choi was responsible for establishing CosMedic Beautria’s policy in respect of any publication in the press.
7. Dr. Choi did not take part in the interview with the reporter from Sunday Life. He did not see the article in draft prior to publication.
8. The article and the coupon in page 38 of the Secretary’s Bundle were published in the 7<sup>th</sup> June 2006 issue of the publication “Sunday Life”.
9. In 2006, Dr. Choi had visiting cards printed under the name of CosMedic Beautria. The title was “Consultant”.
10. Dr. Choi has no past disciplinary record at the Medical Council of Hong Kong.

**Dr. HUI Chi Ching Angus (Defendant 2)**

11. Dr. HUI Chi Ching Angus (“Dr. Hui”) has been included in the General Register from 1<sup>st</sup> January 2006 to present.
12. In June 2006, Dr. Hui was a full time employee doctor of CosMedic Beautria.



23. [REDACTED] has no past disciplinary record at the Medical Council of Hong Kong.

[REDACTED] (Defendant 4)

24. [REDACTED] has been included in the General Register from 1<sup>st</sup> January 2006 to present.

25. [REDACTED] had never been a director or shareholder of CosMedic Beautria.

26. In 2006, [REDACTED] used the laser machines in CosMedic Beautria for several times for medical treatments to patients.

27. In 2006, [REDACTED] had visiting cards printed under the name of CosMedic Beautria. The title is “Consultant”.

28. The advertisement and the coupon in page 38 of the Secretary’s Bundle were published in the 7<sup>th</sup> June 2006 issue of the publication “Sunday Life”.

29. [REDACTED] has no past disciplinary record at the Medical Council of Hong Kong.

Dr. TSE Tsz Wah (Defendant 5)

30. Dr. TSE Tsz Wah has been included in the General Register from 1<sup>st</sup> January 2006 to present.

31. Dr. TSE Tsz Wah had never been a director or shareholder of CosMedic Beautria.

32. In 2006, Dr. TSE Tsz Wah had visiting cards printed under the name of CosMedic Beautria. The title is “Chief Dermatology Consultant”.

33. The advertisement and the coupon in page 38 of the Secretary’s Bundle were

published in the 7<sup>th</sup> June 2006 issue of the publication “Sunday Life”.

34. Dr. TSE Tsz Wah has no past disciplinary record at the Medical Council of Hong Kong.

### **Findings of Council**

35. We are of the view that the article in the 7 June 2006 issue of the publication ‘Sunday Life’ (the Article) has no educational value. It offered a coupon for a free extra carbon laser pore minimizing treatment at CosMedic Beautria. This is blatant promotion of business beyond what is permissible in the Professional Code and Conduct, and is advertising by an improper means.
36. Doctors who have any kind of financial or professional relationship with an organization, or who use its facilities, bear responsibility to ensure the organization’s advertising conforms to the principles and rules set out in the Professional Code and Conduct. This also applies to doctors who accept for examination or treatment patients referred by any such organization. All such doctors must therefore make it their responsibility to acquaint themselves with the nature and content of the organization’s advertising, and must exercise due diligence in an effort to ensure that it conforms with this guidance. Should any question be raised about a doctor’s conduct in this respect, it will not be sufficient for any explanation to be based on the doctor’s lack of awareness of the nature or content of the organization’s advertising, or lack of ability to exert any influence over it.

### **Defendant 1**

37. At the material time, Defendant 1 was the majority shareholder of Prime Asia Ltd., which owned CosMedic Beautria. Not only did he have a financial and professional relationship with CosMedic Beautria, he was also responsible for the management of CosMedic Beautria, including its advertising policy.

38. Defendant 1 claimed that there was a system in place to control the marketing of CosMedic Beautria. He did not produce any protocol relevant to the system. Although he maintained that he had provided his marketing manager with a copy of the Professional Code and Conduct and updates of the code, he did not ascertain that his marketing manager, who was not a doctor, understood the code. This reflected lack of due diligence on his part regarding advertising.
39. We do not accept his claim of ignorance with regards to the publication of the Article. We are satisfied that he knew that CosMedic Beautria would seek to obtain business by advertising. He ought to have known that unless closely monitored and properly restrained, CosMedic Beautria's advertising would likely trespass beyond the limits of permitted advertising prescribed by the Code. By virtue of his position in the company, it was his duty to ensure that all advertising of CosMedic Beautria conformed to the Professional Code and Conduct. We are of the view that he failed in this duty.
40. We are satisfied that Defendant 1 had not exercised due diligence to ensure that the advertising of CosMedic Beautria conformed to the Professional Code and Conduct. We are also satisfied that Defendant 1 had not exercised due diligence to ensure that CosMedic Beautria did not seek to obtain business by an improper means.
41. The conduct of Defendant 1 has fallen below the standard expected of registered medical practitioners, and such conduct constitutes professional misconduct. We find him guilty of Charges 1 and 2.

#### Defendant 2

42. At the material time, Defendant 2 was a full time employee of CosMedic Beautria. His remuneration depended on the number of patients he saw. He therefore had both a financial and a professional relationship with CosMedic Beautria.
43. Arising from this relationship, he had a duty to exercise due diligence to ensure that the advertising of CosMedic Beautria conformed to the provisions

of the Professional Code and Conduct, and did not seek to obtain business by an improper means.

44. He was interviewed and posed for the pictures for the production of the Article. It was not conducted against his will. He was directly involved in the production of the Article.
45. We do not accept his claim that the purpose of the interview was educational. Giving the content of the Article a plain and natural reading, we are of the view that the Article has no educational value. He failed to ensure that a draft of the Article was available for his proof before it was published. After the Article was published, he failed to take remedial action.
46. We are satisfied that Defendant 2 had not exercised due diligence to ensure that the advertising of CosMedic Beautria conforms to the provisions of the Professional Code and Conduct. We are also satisfied that Defendant 2 had not exercised due diligence to ensure that CosMedic Beautria did not seek to obtain business by an improper means. We are further satisfied that Defendant 2 failed to avoid personal involvement in promoting the services of CosMedic Beautria.
47. The conduct of Defendant 2 has fallen below the standard expected of registered medical practitioners, and such conduct constitutes professional misconduct. We find him guilty of Charges 1, 2 and 3.

### Defendant 3

48. Defendant 3 used the facility of CosMedic Beautria for the treatment of her own patients between December 2005 and February 2006. Such a relationship ceased after she brought her last patient to CosMedic Beautria for treatment on 27 February, 2006.
49. We find her a credible witness. We accept her evidence that she did not inform Defendant 1 of her intention to cease the professional relationship with CosMedic Beautria in order not to cause any offence. Her name cards were left at the disposal of CosMedic Beautria. She had not caused such name cards to be made available to patients at CosMedic Beautria. The mere



presence of her name cards at CosMedic cannot be regarded as a professional relationship.

50. At the material time, Defendant 3 had no financial or professional relationship with CosMedic Beautria. As such, she had no duty to ensure that CosMedic Beautria would conform with the Code.
51. We find her not guilty of Charges 1 and 2.

#### Defendant 4

52. At the material time, Defendant 4 was a full time employee of TY Medical Centre, which had an arrangement with CosMedic Beautria for her to use its facilities for her patients. Her responsibility was to her employer, and not to CosMedic Beautria.
53. We accept her evidence that she was neither involved in, nor had influence over the publication of the Article.
54. We are of the view that Defendant 4 was a user of the facilities provided by CosMedic Beautria by virtue of her employment with TY Medical Centre. In this context, there was no financial or professional relationship with CosMedic Beautria. As such, she had no duty to ensure that CosMedic Beautria conform with the Code.
55. We find Defendant 4 not guilty of Charges 1 and 2.

#### Defendant 5

56. Defendant 5 was a core person of CosMedic Beautria since its establishment. He trained the staff and selected the instruments. Although he also had a separate clinic which he shared with Defendant 1, he worked as a resident doctor at CosMedic Beautria. He received a fixed consultancy fee and additional income directly related to the number of patients he saw at CosMedic Beautria.

57. Although he claimed that he sent to Defendant 1 an email to resign from CosMedic Beautria in February 2006, and he only worked as a visiting doctor and was not involved in the management and marketing thereafter, we disagree. The email did not mention anything about resigning. Instead, the email showed that he was not satisfied with the calculation of his remuneration and sought an adjustment. He further stated in the email that he would remain working in CosMedic Beautria at least for the next 2 years. At the material time, Defendant 5 still saw patients at CosMedic Beautria.
58. We are satisfied that contrary to what he claimed, Defendant 5 was still actively involved in CosMedic Beautria at the material time. He therefore had a financial and professional relationship with CosMedic Beautria at the material time.
59. We are satisfied that he knew that CosMedic Beautria would seek to obtain business by advertising. He ought to have known that unless closely monitored and properly restrained, CosMedic Beautria would likely trespass beyond the limits of permitted advertising prescribed by the Code.
60. By virtue of his involvement in CosMedic Beautria, Defendant 5 had a duty to exercise due diligence to ensure that the Article conformed to the Professional Code and Conduct. He failed to discharge that duty. He also failed to ensure that CosMedic Beautria did not seek to obtain business by an improper means.
61. In view of his financial and professional relationship with CosMedic Beautria, we do not accept Defendant 5's claim that he had no knowledge of the advertising of CosMedic Beautria. He failed to ensure that the Article conformed to the Professional Code and Conduct.
62. We are satisfied that Defendant 5 did not exercise due diligence to ensure that the advertising of CosMedic Beautria conforms to the Professional Code and Conduct. We are also satisfied that Defendant 5 did not exercise due diligence to ensure that CosMedic Beautria did not seek to obtain business by an improper means.

63. The conduct of Defendant 5 has fallen below the standard expected of registered medical practitioners, and therefore constitutes professional misconduct. We find him guilty of Charges 1 and 2.

### **Sentencing**

64. In view of the rampant situation of practice promotion, the Council has on 23 June 2006 issued a clear warning that in future cases of practice promotion offenders should expect to be removed from the General Register for a short period with suspension of the order, and in serious cases the removal will take immediate effect. The same warning was repeated in December 2008.
65. We note that the offences were committed shortly before 23 June 2006. In the circumstances, in sentencing we give the Defendants the benefit of not being affected by that warning. However, we must advise them to be particularly careful in the future, as they would not be given such advantage if they come before us again on the same charge.

### **Defendant 1**

66. Defendant 1 has a clear record.
67. Defendant 1 was found guilty of charges 1 and 2.
68. Having regard to the gravity of the case, the commission of the offences before 23 June 2006, and the mitigation advanced, the Council orders that Defendant 1 be reprimanded.
69. We note that Defendant 1 is included in the Specialist Register under the Specialty of General Surgery. While it is the function of the Education and Accreditation Committee to consider whether any action should be taken in respect of his specialist registration under Section 21 of the Medical Registration Ordinance, we are of the view that the offences do not adversely reflect upon the competence of Defendant 1 with respect to his specialist status.

Defendant 2

70. Defendant 2 has a clear record.
71. Defendant 2 was found guilty of charges 1, 2 and 3.
72. Having regard to the gravity of the case, the commission of the offences before 23 June 2006, and the mitigation advanced, the Council orders that Defendant 2 be reprimanded.

Defendant 5

73. Defendant 5 has a clear record.
74. Defendant 5 was found guilty of charges 1 and 2.
75. Having regard to the gravity of the case, the commission of the offences before 23 June 2006, and the fact that he played a lesser role in the production of the Article, the Council orders that a warning letter be issued to Defendant 5, and that it be gazetted.

Prof. Felice Lieh-Mak, CBE, JP  
Chairman, Medical Council