

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr HO Wai Sun (何維新醫生) (Reg. No.: M08334)

Date of hearing: 26 September 2013

1. The charges against the Defendant, Dr HO Wai Sun, are that:

“In or around 2010, he, being a registered medical practitioner:

(a) canvassed for the purpose of obtaining patients by:

(i) associating with a syndicate trading under the name of “變靚 D” which engaged itself in provision of beauty and clinical services;

(ii) associating with the said syndicate which advertised cosmetic and/or plastic surgery services to the general public;

(iii) associating with the said syndicate which directed or arranged for patients to consult him for cosmetic and/or plastic surgery services;

alternative to (a) above;

(b) sanctioned, acquiesced in or failed to take reasonable steps to prevent the distribution of an advertisement pertaining to the syndicate with which he had a financial or professional relationship.

and 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 case involves the relationship between the Defendant and a syndicate which, inter alia, operated a number of beauty services centres. The beauty centres provided beauty services including plastic and cosmetic surgery, and sale of beauty products.
3. In December 2007, the Defendant entered into a joint venture agreement with the syndicate. Under the agreement, the Defendant became both a shareholder and a director of a wholly owned subsidiary (i.e. Top Empire Limited) of the syndicate which was responsible for the syndicate’s cosmetic and plastic surgery clinical services. The Defendant was also contractually bound for 5 years (i.e. from 1 December 2007 to 1 December 2012) to, and he did:-
 - (a) cease practising on his own account at his own clinic;
 - (b) provide clinical services including cosmetic and plastic surgeries through Top Empire, on an exclusive basis;
 - (c) supervise and lead the other doctors and staff employed or to be employed by Top Empire to provide services at the beauty services centres of Top Empire.
4. The Syndicate was engaged in provision of beauty and clinical services. It advertised cosmetic and plastic surgery services to the general public. It also directed and arranged for patients to consult the Defendant for cosmetic and plastic surgery services.

Procedure in dealing with alternative charges

5. Charges (a) and (b) are brought by the Secretary (in his prosecuting capacity) on an alternative basis. In the circumstances, we have to decide on the proper procedure for dealing with the 2 charges.

6. There is no provision in the Medical Registration Ordinance or its subsidiary legislations governing the procedure for dealing with alternative charges. Having canvassed the matter with both the prosecution and the Defence, we are of the view that the proper procedure is as follows:-
- (i) We shall first consider Charge (a), putting aside Charge (b).
 - (ii) If we make a finding of professional misconduct on Charge (a), that will be the end of the case and we shall not consider Charge (b), in which case Charge (b) is dismissed.
 - (iii) If we make a finding of no professional misconduct on Charge (a), we shall then proceed to consider Charge (b).
7. We shall adopt the above procedure for dealing with the alternative charges.

Findings of Council

8. The factual allegations of Charge (a) are all admitted by the Defendant.
9. In the circumstances, we find that all factual allegations in Charge (a) have been proven.
10. Registered medical practitioners are not permitted to canvass for patients, either directly or through other persons.
11. Section 5.2.1.1 of the Code of Professional Conduct clearly prohibits a doctor from disseminating information to the public which is aimed to solicit or canvass for patients.
12. Section 5.2.2.1 of the Code provides that:-

“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 Medical 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.”

13. Section 18.2 and 18.3 of the Code stipulates that:-

“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 (meaning health care and health products organizations), 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.

18.3 Under no circumstances should a doctor permit his professional fees or contact information to be published in an organization’s promotional materials.”

14. The Defendant in canvassing for patients through association with the syndicate was clearly acting in contravention of all these rules. His arrangements with the syndicate were all designed for circumventing the rule against canvassing. It was a blatant breach of the rules.
15. We are satisfied that the Defendant’s conduct has fallen below the standard expected amongst registered medical practitioners. We find him guilty of professional misconduct as in Charge (a).
16. In the circumstances, we shall not consider the alternative charge i.e. Charge (b), which stands dismissed.

Sentencing

17. The Defendant has a clear record.
18. In accordance with our published policy, we shall give him full credit for honest admission of all the factual allegations, both during preliminary investigation and in this inquiry.
19. As we have pointed out, this case is a blatant breach of the rules against canvassing for patients. The joint venture agreement was touted in the announcement by the syndicate to the Stock Exchange of Hong Kong as expansion of the syndicate's clinical services business by leveraging on the Defendant's expertise as a specialist in cosmetic and plastic surgeries. Judging from the size of investment and the number of beauty services centres involved, it is obvious that it was a project of substantial scale.
20. In mitigation Defence Solicitor emphasises that the Defendant was merely practising in only one of the syndicate's beauty centres and had never been involved in the other beauty centres. However, this is contradicted by the joint venture agreement which bound the Defendant contractually to supervise and lead the other doctors and staff employed or to be employed by Top Empire to provide services at the beauty services centres of Top Empire. In return, the Defendant would be paid a monthly fee at 35% of the total revenue of Top Empire from the clinical services provided at all the beauty centres, in addition to another monthly fee at 35% of the total revenue derived from the services provided by other doctors at the New World Tower centre.
21. Nevertheless, when he received the notice of meeting of the Preliminary Investigation Committee in July 2011, he immediately resigned from the directorship of Top Empire. We accept that he was taking active steps to terminate his relationship with the syndicate, although he was bound to fulfil his contractual obligations up to December 2012. We also accept that he took remedial action to stop the internet advertising by deleting the website of the beauty centre at which he was practising. These demonstrate his remorse.

22. In respect of practice promotion, this Council issued a clear warning in June 2006 that future cases of practice promotion would be dealt with by removal from the General Register for a short period with suspension of the order, and in serious cases the removal would take immediate effect. Since then, the same warning has been repeated many times over the years. We see no reason not to have regard to the warning in sentencing in the present case.
23. Canvassing is a most serious form of practice promotion. In the present case, the canvassing is even more serious, given the scale of the project.
24. Having regard to the gravity of the case and the mitigating factors, we order that the Defendant's name be removed from the General Register for a period of 3 months. We further order that the removal order be suspended for a period of 2 years, subject to the condition that he shall not commit any further disciplinary offence during the suspension period. If he commits any further disciplinary offence during the suspension period (irrespective of when he is convicted of the further disciplinary offence), the removal order will be liable to be activated in part or in full.

Other remarks

25. The Defendant's name is included in the Specialist Register under the specialty of "Plastic Surgery". We shall leave it to the Education and Accreditation Committee to consider whether any action should be taken under section 20N of the Medical Registration Ordinance. We are of the view that the present case of canvassing is not relevant to his competence as a specialist.

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