

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr LAM Si Wen Grace (林思允醫生) (Reg. no M12540)

Date of hearing: 21 October 2013

1. The charges alleged against the Defendant, Dr LAM Si Wen Grace, are that:

First case (MC 11/240)

“She, being a registered medical practitioner, sanctioned, acquiesced in or failed to take adequate steps to prevent the use of the title “皮膚科醫生” in an article published in the 2227 Issue of Ming Pao Weekly dated 16 July 2011, which implied specialisation in the area of dermatology when she was not a specialist in “Dermatology and Venereology”.

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

Second case (MC 11/368)

“In or around 2011, she, being a registered medical practitioner, in respect of the publication entitled “無齡肌密 – 皮膚碩士醫生教你如何延長皮膚的保鮮期” (“the Book”) authored by her:

- (i) canvassed for the purpose of obtaining patients in relation to her practice in association with SkinFocus Derm Health Services Ltd (“the Company”) by:

- (a) including a coupon entitled “換領券” in the Book; and/or

- (b) including a coupon entitled “送膠原蛋白療程一次” in the Book;
- (ii) sanctioned, acquiesced in, or failed to take adequate steps to prevent the publication of the Book which promoted her practice in association with the Company;
- (iii) alternative to (ii) above, sanctioned, acquiesced in, or failed to take adequate steps to prevent the publication of the following statements in the Book which promoted her practice in association with the Company:
 - (a) describing herself as “將自小愛美經驗及皮膚醫學訓練消化後，得出自己一套的獨家美容心得”;
 - (b) describing herself as “為 Skin Focus 皮膚治療中心創辦人及醫務總監”; and/or
 - (c) the Preface containing promotional materials;
- (iv) sanctioned, acquiesced in, or failed to take adequate steps to prevent the publication of the promotional statements of “更成為該屆唯一在文憑及碩士同時取得Distinction的畢業生” in the Book;
- (v) sanctioned, acquiesced in, or failed to take adequate steps to prevent the publication of statements in the Book which claim superiority over other doctors.

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

Third case (MC 12/062)

“She, being a registered medical practitioner, sanctioned, acquiesced in or failed to take adequate steps to prevent the use of the title “皮膚科醫生” in an advertisement published in the 040 Issue of “Flash On” Magazine dated 18 August 2011, which implied specialisation in the area of dermatology when she was not a specialist in “Dermatology and Venereology”.

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

Facts of the case

2. This is a consolidated inquiry in respect of 3 separate cases against the Defendant. All 3 cases are related to impermissible promotion of the Defendant’s medical practice.
3. The first and third cases are identical, in that the Defendant used (in 2 different publications) the title “皮膚科醫生” implying that she specialised in the area of dermatology when she was not a specialist in “Dermatology and Venereology”.
4. The second case is in respect of a book written by the Defendant, in which various impermissible promotional statements were made, and the Defendant canvassed for patients through coupons included in the book.

Procedure for dealing with alternative charges

5. In the second case, charges (ii) and (iii) are laid as alternatives.
6. The Medical Practitioners (Registration and Disciplinary Procedure) Regulation is silent on the procedure for dealing with alternative charges. This Council has in a recent case decided that the proper procedure in such situation should be as follows:-
 - (a) The Council shall first consider the first alternative charge, putting aside the other alternative charge.
 - (b) If the Council makes a finding of professional misconduct in the first alternative charge, that will be the end of the matter in respect of the alternative(s), and we shall not consider the alternative(s), in which case the alternative(s) is dismissed.

- (c) If the Council makes a finding of no professional misconduct on the first alternative charge, we shall then proceed to consider the next of the alternative(s). If there are more alternatives, we shall proceed in the same manner moving down the list of alternatives in sequence.
7. Both the prosecution and the Defence agree that the same procedure should be adopted. We shall adopt the procedure in the present case.

Findings of Council

8. With the exception of Charge (iii) in the second case, the factual allegations in each charge are admitted by the Defence. Nevertheless, it remains our responsibility to decide whether the factual allegations in each charge constitute professional misconduct.

First case and third case

9. To begin, we shall deal with the first case and the third case which are identical in facts in that the same title was used by the Defendant, although in different publications.
10. Section 7.2 of the Code of Professional Conduct provides that:-
- “Doctors who are not on the Specialist Register cannot claim to be or hold themselves out as specialists. A non-specialist is not allowed to use any misleading description or title implying specialisation in a particular area (irrespective of whether it is a recognised specialty), such as “doctor in dermatology” or “皮膚醫生”.
11. Under the Medical Registration Ordinance, only doctors whose names are included in the Specialist Register are specialists. It is a criminal offence punishable with imprisonment for a doctor who is not a specialist to falsely use any title or description implying that he is a specialist in the Specialist Register. The purpose of these provisions is to protect the public by ensuring that only persons who have received the required training and recognized by the Medical Council as fit and proper persons to be specialists can hold out to the public that they are specialists.

12. The Defendant is not a specialist. It is unlawful for her to use any title or description implying that she is a specialist. The title “皮膚科醫生” implies that she specialized in the area of dermatology. This is categorically prohibited by section 7.2 of the Code of Professional Conduct.
13. We are satisfied that the Defendant’s conduct in the first case and the third case has clearly fallen below the standard expected amongst registered medical practitioners. We find her guilty of professional misconduct in respect of the charges in the first case and in the third case.

Second case

14. We then turn to the second case.

Charge (i)

15. The Book in question was written by the Defendant about skin anti-aging measures. The Book is 149 pages long. Two coupons were included in the Book, one for purchasing another publication of the Defendant at a special price, and the other for a complimentary collagen treatment.
16. Registered medical practitioners are not permitted to canvass for patients by offering free treatments or any other inducement. To do so not only violates the rules of medical ethics, but it also inappropriately induces patients to undergo treatment for reason of economic advantages rather than the treatment being medically indicated. The coupon offering complimentary treatment is obviously offered for the purpose of canvassing for patients.
17. Although the coupon for purchase of another publication at a special price is on first glance not to obtain patients for the Defendant, it is only redeemable at the Defendant’s clinic. This is a disguised form of canvassing for patients, attracting them to visit the Defendant’s clinic at which her medical services may be promoted.
18. We are satisfied that the Defendant’s conduct in respect of Charge (i) has fallen below the standard expected amongst registered medical practitioners. We find her guilty of professional misconduct as in Charge (i).

Charges (ii) and (iii)

19. Charge (ii) is in respect of promoting the Defendant's practice through the Book in question. As the Book was written by the Defendant, she instigated the publication of the Book and approved all the contents of the Book. Therefore, if we find that there is misconduct in publishing the Book or any part of its contents, she committed the misconduct on the limb of sanctioning.
20. In considering this charge, we must consider the effect of the contents of the Book in context. While the Book may mention some dermatological treatments, it is not an educational publication in that it emphasised the advantages of the treatments with literally no mention of the adverse effects. For some of the procedures, the claimed advantages were neither evidence-based nor supported by relevant data. Such imbalanced presentation of the advantages of the treatments to the exclusion of the adverse effects is a sales tactic rather than an educational discourse, not to mention that the claimed advantages lack authority and scientific support.
21. It is unnecessary for us to cite the individual contents of the Book to illustrate the promotional nature of the Book. Suffice it to say that the many subjective descriptions glorifying the Defendant's expertise and achievements in dermatology were obviously designed to attract patients to the Defendant's practice.
22. We are satisfied that the Defendant's conduct in respect of Charge (ii) has fallen below the standard expected amongst registered medical practitioners. We find her guilty of professional misconduct as in Charge (ii).
23. In the circumstances, in accordance with the standing procedure for alternative charges, we shall not consider Charge (iii). Charge (iii) is dismissed.

Charge (iv)

24. Charge (iv) is in respect of a promotional statement about the Defendant being the only graduate obtaining distinction in both the diploma and the master degree. This is clearly a statement to suggest the Defendant's superiority in her competence. Taken in the context of the Book which is obviously a promotional publication for canvassing for patients, such promotional statement is impermissible.

25. We are satisfied that the Defendant's conduct in respect of Charge (iv) has fallen below the standard expected amongst registered medical practitioners. We find her guilty of professional misconduct as in Charge (iv).

Charge (v)

26. Finally we turn to Charge (v). Charge (v) is about statements in the Book claiming the Defendant's superiority over other doctors.
27. It is admitted that the Book contained statements claiming superiority. Again it is unnecessary for us to cite individual statements which have such effect of claiming superiority. The statement in Charge (v) is already one of such statements.
28. We are satisfied that the Defendant's conduct in respect of Charge (v) has fallen below the standard expected amongst registered medical practitioners. We find her guilty of professional misconduct as in Charge (v).
29. To sum up, the Defendant is guilty of all charges in the second case except Charge (iii).

Sentencing

30. The Defendant has a clear record.
31. We shall give her credit for her cooperation in the inquiry. However, we do not agree that she has been cooperative during preliminary investigation, as in all 3 of her submissions to the Preliminary Investigation Committee, she arduously argued that the publications were educational in nature and that the offending title of “皮膚科醫生” was used by the reporters without her knowledge. She also contended that the coupons were enclosed with the Book by her business partners without her knowledge.
32. We accept that the misconduct in all 3 cases was committed within a relatively short period. Nevertheless, the Book once sold or circulated to the public will have a lasting effect, even if the unsold copies have been withdrawn from

circulation. Furthermore, canvassing is a most serious form of practice promotion.

33. We must have regard to the fact that a book must have been planned and edited thoroughly before being put to print and circulation. The Defendant admitted that she spent 12 months in preparing for the publication of the Book.
34. In June 2006, this Council issued a clear warning that all future cases of practice promotion will be visited by removal from the General Register for a short period with suspension of the removal order, and in serious cases the removal order will take immediate effect. The same warning has been repeated on many subsequent occasions. We must have full regard to the warning in sentencing, so as not to send a wrong message to the profession that we are relaxing on our efforts to stamp out impermissible practice promotion.
35. We bear in mind that the purpose of a disciplinary order is not to punish the Defendant, but to protect the public and to maintain public confidence in the medical profession.
36. Having regard to the gravity of the cases and the mitigating factors, we make the following orders:-
 - (a) In respect of the single charge in the first case, the Defendant's name be removed from the General Register for a period of 1 month, with the removal order suspended for a period of 1 year.
 - (b) In respect of the single charge in the third case, the Defendant's name be removed from the General Register for a period of 1 month, with the removal order suspended for a period of 1 year.
 - (c) In respect of all charges in the second case, the Defendant's name be removed from the General Register for a period of 3 months, with the removal order suspended for a period of 2 years.
 - (d) All the above orders shall run concurrently.
 - (e) All orders are suspended subject to the condition that the Defendant shall not commit any further disciplinary offence during the suspension

period. If the Defendant commits any further disciplinary offence during the suspension period (irrespective of the time of conviction for such further offence), the removal orders are liable to be activated in part or in full.

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Temporary Chairman, Medical Council