

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr TAI Yuk Ping Patrick (戴玉平醫生) (Reg. No. M07604)
Date of hearing: 19 December 2013

1. The amended charges alleged against the Defendant, Dr TAI Yuk Ping Patrick, are that:

“He, being a registered medical practitioner:

- (a) sanctioned, acquiesced in or failed to take adequate steps to prevent the use of the description of “thoracic surgery” in a Commencement of Practice published in the 1 November 2010 issue of South China Morning Post, which was not acceptable to the Medical Council for use and/or was misleading to the public that he was a specialist in thoracic surgery, when in fact his name was not included in the Specialist Register in the field of cardio-thoracic surgery;
- (b) sanctioned, acquiesced in or failed to take adequate steps to prevent the use of the description of “胸肺外科” in a Commencement of Practice published in the 1 November 2010 issue of AM730, which was not acceptable to the Medical Council for use and/or was misleading to the public that he was a specialist in thoracic surgery, when in fact his name was not included in the Specialist Register in the field of cardio-thoracic surgery; and
- (c) in or around November 2010, sanctioned, acquiesced in or failed to take adequate steps to prevent the use of the description of “thoracic surgery” (“胸肺外科”) in the website of an organization known as asia medical specialists with which he had a professional relationship, which was not acceptable to the Medical Council for use and/or was misleading to the public that he was a specialist in thoracic surgery, when in fact his name was not included in the Specialist Register in the field of cardio-thoracic surgery.

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

Facts of the case

2. There is no dispute that the Defendant’s name was only included in the Specialist Register in the specialty of general surgery.

3. In order to inform, amongst others, members of the public of the Defendant's commencement of practice at Asia Medical Specialists ["AMS"], AMS arranged for the publication of a Commencement of Practice Notice in English in the 1 November 2010 issue of South China Morning Post ["SCMP Notice"]. AMS also arranged for the publication of a similar Notice of Commencement in Chinese in the 1 November 2010 issue of AM730 ["AM730 Notice"].
4. The SCMP Notice stated the name, academic and professional qualifications of the Defendant and then the announcement of commencement of his practice at AMS as from 1 November 2010. This was followed by the words "thoracic surgery".
5. The AM730 Notice was in a similar format. Apart from stating his name, academic and professional qualifications, the Defendant also announced the commencement of practice at AMS as from 1 November 2010. This was followed by the Chinese words "胸肺外科".
6. It is also not disputed that some time in or around 1 November 2010, the Defendant's name also appeared in the web pages of AMS. In the English web page of the AMS, the Defendant's name was placed under the words "thoracic surgery"; and the Defendant's name was under the words "胸肺外科" in the Chinese web page of AMS.

Burden and Standard of Proof

7. We bear in mind that the burden of proof is always on the Legal Officer and the Defendant does not have to prove his 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.
8. There is no doubt that each of the allegations made against the Defendant here are very serious. We need to look at all the evidence and to consider and determine each of the charges separately.

Findings of Council

9. We bear in mind that we must look at the Commencement of Practice Notices and the web pages as a whole. In our view, ordinary members of the public would be misled into thinking that the Defendant was a specialist in thoracic surgery. The fact that thoracic surgery is not a recognized specialty of the Specialist Register is neither here nor there. The real point is that ordinary members of the public, who may have no idea of which specialty is recognized by the Medical Council, would be misled into thinking that the Defendant was a specialist in thoracic surgery.

10. The purpose of the Specialist Register is to protect the public by ensuring that only persons who received the required training and recognition by the Medical Council as fit and proper persons to be specialists would be allowed to claim himself as a specialist in the specialty under which he is included in the Specialist Register. In our view, it is not permissible for any registered medical practitioner to hold himself out as a specialist in an unrecognized specialty. The Medical Council must ensure that there are objective criteria for recognizing the specialty and adequate continual training for upholding the professional standard of the specialists' practice.
11. In this connection, section 7.1 of the Code of Professional Conduct ["the Code"] expressly provides that "Only doctors on the Specialist Register are recognized as specialists, and can use the title of "specialist in a specialty". A specialist can claim himself as a specialist only in the specialty under which he is included in the Specialist Register but not other specialties.
12. The purpose of section 7.1 of the Code is to protect the public from being misled and to ensure that information disseminated by doctors about their practice is for the purpose of facilitating the public to make an informed choice of doctors to consult.
13. There is no dispute that the Defendant's name is included in the Specialist Register as a specialist in the specialty of general surgery. If the Defendant wished to claim himself as a specialist, he could only use the title of "specialist in general surgery". We are firmly of the view that it was impermissible for the Defendant to hold himself out as a specialist of thoracic surgery or indeed any other specialty than general surgery, be it a recognized specialty or not.
14. Although there is nothing in the evidence to prove that the Defendant had sanctioned or acquiesced in the publication of the Commencement of Practice Notices and the information in the web pages, the Defendant ought to make sure that any announcements in mass media would comply with the requirements under the Code. In addition, the Defendant should ensure that any information provided by him to the public would comply with the principles set out in section 5.2 of the Code. However, we are unable to find anything in the evidence to show that the Defendant had taken any (let alone adequate) steps in ensuring that members of the public would not be misled.
15. By reasons of the foregoing, we find the Defendant guilty of professional misconduct as charged.

Sentencing

16. The Defendant has a clear record.
17. In line with our published practice, we shall give him credit for his honest admission and cooperation during this inquiry.

18. We note that the Defendant has taken remedial measures to rectify the description in the web pages of AMS and we accept that the likelihood of his committing the same disciplinary offence is low.
19. However, we must stress that clear warning was issued by this Council 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 order would take immediate effect. The message is loud and clear, as the warning has been repeated on a number of occasions.
20. What the Defendant had done in this case was not only misleading but would also serve to promote his professional services as a doctor, and was a form of practice promotion as defined in section 5.2.2.1 of the Code.
21. Having considered the nature and gravity of this case and what we heard and read in the mitigation, we order that the Defendant's name be removed from the General Register for one month. We further order that the removal order be suspended for a period of one year.

Other remarks

22. We note that the name of the Defendant is also included in the Specialist Register. But since there is nothing in the evidence which reflects on his suitability of specialist registration, we shall not make any recommendation in this respect.

Prof. Felice LIEH-MAK, GBS, CBE, JP
Temporary Chairman, Medical Council