

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr WANG I Sing Sandy (王翊馨醫生) (Reg. No.: M15192)

Date of hearing: 15 September 2020 (Tuesday)

Present at the hearing

Council Members/Assessors: Dr CHOI Kin, Gabriel
(Chairperson of the Inquiry Panel)
Dr LUNG David Christopher
Dr KONG Yim-fai, Albert, MH
Mr CHAN Wing-kai
Mr HUI Man-kit, Patrick

Legal Adviser: Mr Edward SHUM

Defence Counsel representing the Defendant: Mr Charles CHAN instructed by
Messrs. Chak & Associates

Government Counsel representing the Secretary: Miss Christine WONG

The Defendant is not present.

1. The charge against the Defendant, Dr WANG I Sing Sandy, is:

“That in or about October 2014, she, being a registered medical practitioner, sanctioned, acquiesced in or failed to take adequate steps to prevent the use or appearance of her name, title and/or photograph in an article and/or advertisement published on 9 October 2014 on a blog at <http://jobeauty8.blogspot.hk/2014/10/nume-is-new-me-nume.html?m=1>, promoting or endorsing the injection of “Restylane” and/or “Botox”.

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

Facts of the case

2. The name of the Defendant has been included in the General Register from 2 January 2007 to the present. Her name has never been included in the Specialist Register.
3. Briefly stated, the Secretary of the Medical Council received on 31 May 2018 a complaint from one Mr Y accusing the Defendant of practice promotion. Mr Y also attached to his complaint a copy of an article entitled “*NuMe is New Me-NuMe 名人醫美外科中心*” [“the Article”] published on the internet by a blogger, who called herself “*Jo Wong*”, in her blog at <http://jobbeauaty8.blogspot.hk/2014/10/nume-is-new-me-nume.html?m=1> on 9 October 2014.
4. A copy of the Article is placed by the Legal Officer before us for our consideration today.
5. The blogger mentioned at the beginning of the Article that she was invited by NuMe Aesthetic and Surgical Center [“NuMe”] to pay a visit to its Causeway Bay branch. The blogger then talked about the event held by NuMe on the day of her visit. This was followed by reference to presentation by a representative from “Restylane” on the efficacy and special feature(s) of “Restylane” medical products.
6. The Article then continued with photographs and descriptions step by step on how the Defendant administered injections of “Restylane” and “Botox” to the face of a female patient. The Defendant, who was referred to as “*Dr Sandy Wang 王醫生*” in the Article, was seen to be wearing a white gown and a surgical mask.
7. The blogger praised the Defendant for using a finer needle for better comfort for her patient during treatment. The blogger further praised at the end of the Article that the effect of the injection of “Restylane” and “Botox” was so natural and there was no visible injection wound.

Burden and Standard of Proof

8. We bear in mind that the burden of proof is always on the Secretary and the Defendant does not have to prove her 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.
9. There is no doubt that the allegation made against the Defendant 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 disciplinary charge against her carefully.

Findings of the Inquiry Panel

10. The Defendant did not attend the inquiry today. Nor did the Defendant call any defence witness. We remind ourselves that it is her legal right not to give oral evidence before us and we should not draw any adverse inference against her.

11. It is clearly stipulated in the Code of Professional Conduct (2009 edition) that:

“6.1 It is appropriate for a doctor to take part in bona fide health education activities, such as lectures and publications. However, he must not exploit such activities for promotion of his practice or to canvass for patients. Any information provided should be objectively verifiable and presented in a balanced manner, without exaggeration of the positive aspects or omission of the significant negative aspects.

6.2 A doctor should take reasonable steps to ensure that the published or broadcasted materials, either by their contents or the manner they are referred to, do not give the impression that the audience is encouraged to seek consultation or treatment from him or organizations with which he is associated. He should also take reasonable steps to ensure that the materials are not used directly or indirectly for the commercial promotion of any medical and health related products or services.

6.3 ... Doctors must not give the impression that they, or the institutions with which they are associated, have unique or special skills or solutions to health problems...

...

18.2 A doctor who has any kind of financial or professional relationship with, uses the facilities of, or accepts patients referred by...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..."

12. It is evident to us on the evidence that the Defendant had a professional relationship with NuMe at the material time.
13. We agree with Defence Counsel that the Article should be read as a whole but it is idle to argue that the Article was written by the blogger in her own capacity without any direct quotation from the Defendant on the efficacy of "Restylane" and/or "Botox". In our view, the real question is what the Article would mean to an ordinary person.
14. In our view, the use or appearance of her name, professional title and photographs in the Article would leave the readers with the impression that the Defendant was promoting or endorsing the "Restylane" and "Botox" injections. It is particularly true when this part of the Article was preceded by reference to the event held by NuMe and presentation by a representative from "Restylane" on the efficacy and special feature(s) of "Restylane" medical products.
15. The Defendant admitted the publication of the Article on the internet on 9 October 2014. The Defendant also accepted that her name, professional title and photographs appeared in the Article. The Defendant further accepted that she was depicted in the photographs to be wearing a white gown and a surgical mask; and providing treatment to a female patient.
16. However, in response to the complaint, the Defendant submitted through her solicitors by letter dated 21 June 2019 to the Medical Council that the Complainant's "*accusations are slanderous*". The Defendant denied that she was acquainted with the blogger "*in any kind of aspect, not a friend nor any doctor-patient relationship*"; and she "*wasn't aware of that was a to-be-public activity*". The Defendant also submitted that the Article "*promotes the business of NuMe was published by Ms. Wong without [her] knowledge or consent... [she] was wearing her mask all the time and she was not even aware of the fact that she was being photographed.*"

17. Through her solicitors, the Defendant further submitted to the Medical Council by letter dated 27 December 2019 that the event organized by NuMe was “*a private member / patient activity*”. She “*did not participate in the private member activity... held at the conference area...*” and “*was providing service to her patient... inside a treatment room*”.
18. There was no legitimate reason in our view why in the ordinary course of treatment photographs would be taken of the Defendant and her patient inside the treatment room. This is no evidence before us that these photographs were taken for comparison purpose before and after the medical procedure.
19. We do not accept that the Defendant’s submission that “*she was not even aware of the fact that she was being photographed*”. To the contrary, we note from reading the Article that the Defendant was depicted in one of the photographs holding a syringe in her hands and facing the direction of the camera. We also note from reading the Article that someone was holding a video camera when the Defendant was about to start administering injection to a female patient.
20. Unlike the case where a doctor does not even know that someone is going to talk about her professional practice and services in the social media, the Defendant should know that photographs were being taken of her and a female patient together with other people inside the treatment room.
21. In our view, the Defendant ought to take proactive steps in the circumstances to ensure that photographs taken of her whilst administering injections to a female patient would not be used for the purpose of promoting or endorsing the injections of “Restylane” and “Botox”. This is particularly true when the Defendant knew NuMe was organizing a promotional event at the Causeway Bay branch where she worked on the same day.
22. It is inadequate in our view for the Defendant to rely solely on what she claimed to be a written undertaking from NuMe that her name would not be used in promoting treatment or aesthetic medical products. Nor could the Defendant safely assume that photographs taken of her whilst administering injections to a female patient would not be disclosed to third parties and let alone not to be used for promotional purposes.

23. In failing to take any or any adequate steps to prevent the promotion or endorsement of the injections of “Restylane” and “Botox”, the Defendant had in our view fallen below the standards expected of registered medical practitioners in Hong Kong. Accordingly, we find her guilty of misconduct in a professional respect as charged.

Sentencing

24. The Defendant has a previous disciplinary record relating to impermissible practice promotion back in 2008. The Defendant’s name was ordered after due inquiry on 13 January 2010 to be removed from the General Register for a period of 2 months and such removal order be suspended for a period of 2 years.
25. In June 2006, the Medical Council issued a clear warning that all future cases of unauthorized practice promotion would be dealt with by removal from the General Register for a short period of time with suspension of operation of the removal order, and in serious cases the removal order would take immediate effect. The same warning was repeated in subsequent disciplinary decisions of the Medical Council.
26. We are deeply concerned that the Defendant’s previous disciplinary conviction also related to publication of her name, professional title and photographs in an advertisement in a magazine, in which she endorsed a similar aesthetic medical product offered by a company with which she was employed.
27. Bearing in mind her previous breach of the Code on practice promotion, the Defendant ought to have in our view a higher index of suspicion on how the photographs taken of her whilst administering “Restylane” and “Botox” injections to the female patient might be used. This reflects in our view on the lack of vigilance on the part of the Defendant.
28. We disagree with Defence Counsel that the Medical Council had by its Decision in the previous case “*advised*” the Defendant that a written undertaking by her employer not to use her name, professional title and photographs for promotion of cosmetic procedures would suffice. In our view, the Medical Council, in exercising its quasi-judicial functions, would never give legal advice to a defendant doctor. In any event, each case must turn on its own facts and suggestion made by the Medical Council on one occasion may not be applicable to another.

29. Having considered the nature and gravity of this case and what we have heard in mitigation, we order that the name of the Defendant be removed from the General Register for a period of 6 months and that the operation of the removal order be suspended for a period of 36 months.

Dr CHOI Kin, Gabriel
Chairperson of the Inquiry Panel
The Medical Council of Hong Kong