

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr LAM Tsz Kin (林梓建醫生) (Reg. No.: M13476)

Date of hearing: 12 July 2023 (Wednesday)

Present at the hearing

Council Members/Assessors: Prof. TANG Wai-king, Grace, SBS, JP
(Chairperson of the Inquiry Panel)
Dr Pierre CHAN
Dr CHEUNG Wan-kit, Raymond
Mr CHAN Wing-kai
Ms HO Yuk-wai, Joan

Legal Adviser: Mr Stanley NG

Defence Solicitor representing the Defendant: Ms Jennifer LEE of Messrs. Mayer Brown

Government Counsel representing the Secretary: Ms Cherie FONG

1. The charge against the Defendant, Dr LAM Tsz Kin, is:

“That in or about September 2021, he, being a registered medical practitioner, sanctioned, acquiesced in or failed to take any or adequate steps to prevent the use of the title “皮膚科醫生” on a poster titled “CHAMP DISTRICT 醫生講座” posted at Lee Garden Two in Causeway Bay, which misled the public that he was a specialist, when in fact his name was not included in the Specialist Register under the specialty of “Dermatology and Venereology” at the material times.

In relation to the facts alleged, he 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 July 2002 to the present. His name has never been included in the Specialist Register.
3. Briefly stated, a complaint via email was received by the Medical Council on 5 September 2021 against the Defendant for claiming that he was a dermatologist on a poster posted at the lobby of Lee Garden Two, Causeway Bay when in fact the Defendant's name was not in the Specialist Register under the specialty of "Dermatology and Venereology". Attached to the email included a photograph of the poster ("Poster").
4. The Poster was titled "CHAMP DISTRICT 醫生講座". It concerned a talk of the topic "口罩下的皮膚問題 如何保持皮膚年輕?" held on 20 September 2021 at 21st Floor, Lee Garden Two. It showed a photograph of the Defendant with his name, doctor's title and professional qualifications. Underneath the Defendant's name were these words "皮膚科醫生".

Burden and Standard of Proof

5. We bear in mind that the burden of proof is always on the Secretary 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.
6. There is no doubt that the allegation against the Defendant here is a serious one. Indeed, it is always a serious matter to accuse a registered medical practitioner of misconduct in a professional respect. Therefore, we need to look at all the

evidence and to consider and determine the disciplinary charge against him carefully.

Findings of the Inquiry Panel

7. The Defendant admits that in or about September 2021, there was a poster titled “CHAMP DISTRICT 醫生講座” posted at Lee Garden Two in Causeway Bay, whereby under his name there was a title of “皮膚科醫生”, which was misleading as his name was not included in the Specialist Register under the specialty of “Dermatology and Venereology” at the material times.
8. The Defendant told us in his submission to the Preliminary Investigation Committee (“PIC”) dated 21 June 2022 that prior to the talk, he had informed Ms Ku, a representative of the host of the talk, that (a) the talk should not involve any practice promotion; (b) the talk could only be given for health education purposes; and (c) his clinic names, contact details and fees should not be mentioned during the talk.
9. In the Defendant’s submission to the PIC dated 28 October 2022, the Defendant accepted that he had failed to take adequate steps to prevent the mistake of having a title of “皮膚科醫生” on the Poster.
10. Notwithstanding the Defendant’s aforesaid admission, it remains however for us to consider and determine on the evidence whether he has been guilty of misconduct in a professional respect.
11. There is no dispute that the name of the Defendant has never been included in the Specialist Register under the specialty of “Dermatology and Venereology”.
12. We have no doubt that the use of the title “皮膚科醫生” would mislead the public in thinking that the Defendant was a specialist in Dermatology and Venereology.
13. In the Court of Appeal’s decision of *Ng Kin Wai v The Dental Council of Hong Kong* (CACV 194/2010) 14 October 2011, Fok JA (as he then was) emphasized (at

paragraph 45 of the Judgment) the importance of quoting only such professional title which a dentist is entitled because “[p]rofessional titles are important and members of the public are likely to rely on the expertise implied by those titles in choosing a dentist and submitting themselves to treatment by that dentist.”

14. Although the appellant in the *Ng Kin Wai* case was a dentist, Fok JA’s observation is in our view equally apposite to quotation of professional titles by registered medical practitioners.
15. It is stipulated in the Code of Professional Conduct (2016 Edition) (“Code”) that:-

“7. Specialist title

7.1 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.

7.2 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 specialization in a particular area (irrespective of whether it is a recognized specialty), such as “doctor in dermatology” or “皮膚醫生”.

16. Clearly, the Defendant was in breach of section 7.2 of the Code, which expressly prohibited the use of “any misleading description or title implying specialization in a particular area (irrespective of whether it is a recognized specialty)”.
17. In our view, the Defendant was invited to give a talk should have called for caution that there might be materials containing his professional information published by the host. The Defendant should have taken adequate steps to enquire in advance if there were such materials containing his professional information, and if his professional information was factually correct. The Defendant had failed to do so.

18. In failing to take adequate steps to prevent the use of the title “皮膚科醫生” on the Poster, we are satisfied on the evidence before us that the Defendant has by his conduct fallen below the standards expected amongst registered medical practitioners in Hong Kong and we find him guilty of professional misconduct as charged.

Sentencing

19. The Defendant has a clear disciplinary record.
20. We shall give credit to the Defendant for his frank admission and full cooperation throughout these disciplinary proceedings.
21. We bear in mind that the primary purpose of a disciplinary order is not to punish the Defendant but to protect the public from persons who are unfit to practise medicine and to maintain public confidence in the medical profession by upholding its high standards and good reputation.
22. The Defendant told us in mitigation that since this incident he has striven to be more careful when invited to give educational talks. Apart from explaining the Medical Council’s Code of Professional Conduct to the host/organizer, he will take further steps to (i) confirm whether there will be any promotional posters or materials for the talk; and (ii) ensure that all draft materials must be approved by him personally before circulation (including obtaining a written undertaking as such from the host/organizer). We accept that the risk of re-offending is low.
23. Taking into consideration the nature and gravity of the disciplinary charge for which the Defendant is convicted and what we have heard and read in mitigation, we shall order that a warning letter be issued to the Defendant, and our order shall be published in the Gazette.

Prof. TANG Wai-king, Grace, SBS, JP
Chairperson of the Inquiry Panel
The Medical Council of Hong Kong