香 港 醫 務 委 員 會

The Medical Council of Hong Kong

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Date of hearing: 12 September 2008
Defendant: Dr WONG David Chuen Ho (黃纘河醫生)

1. The charges alleged against Dr WONG David Chuen Ho are that:

"In 2006, he, being a registered medical practitioner:

(a) sanctioned, acquiesced in or failed to take adequate steps to prevent his appearance and the use of his status as a registered medical practitioner in the advertisement broadcasts on the bus television channel "Road Show" in or around June 2006, which promoted the cosmetic product "Boots No. 7" containing "Light Skin";

(b) sanctioned, acquiesced in or failed to take adequate steps to prevent the publication of his status as a registered medical practitioner, his qualification, his photo and/or his remarks in the advertisement on the leaflet of "Boots", which promoted the cosmetic product "Boots No. 7" containing "Light Skin";

(c) sanctioned, acquiesced in or failed to take adequate steps to prevent the publication of his status as a registered medical practitioner, his qualification, his photo and/or his remarks in the advertisement on the pamphlet of "Boots", which promoted the cosmetic product "Boots No. 7" containing "Light Skin";

(d) sanctioned, acquiesced in or failed to take adequate steps to prevent the publication of his status as a registered medical practitioner, his qualification, his photo and/or his remarks in the advertisement in Issue No. 447 of More Sunday of 5 July 2006, which promoted the cosmetic product "Boots No.7" containing "Light Skin";

(e) sanctioned, acquiesced in or failed to take adequate steps to prevent the publication of his status as a registered medical practitioner, his qualification, his photo and/or his remarks in the advertisement in Issue No. 853 of Next Magazine of 13 July 2006, which promoted the cosmetic product "Boots No. 7" containing "Light Skin";

(f) sanctioned, acquiesced in or failed to take adequate steps to prevent his appearance and the use of his status as a registered medical practitioner in the advertisement broadcasts at Watson's stores in or around June 2006, which promoted the cosmetic product "Boots No. 7" containing "Light Skin";

(g) sanctioned, acquiesced in or failed to take adequate steps to prevent the use of the title of "著名皮膚科醫生" in the aforesaid advertisement broadcasts on the bus television channel "Road Show", which was not acceptable to the Medical Council for use and was misleading to the public that he was a specialist in dermatology, when in fact he had not been approved by the Medical Council to have his name included in the Specialist Register in the field of dermatology and venereology;

(h) sanctioned, acquiesced in or failed to take adequate steps to prevent the use of the title of "著名皮膚科醫生" in the aforesaid advertisement broadcasts at Watson's stores, which was not acceptable to the Medical Council for use and was misleading to the public that he was a specialist in dermatology, when in fact he had not been approved by the Medical Council to have his name included in the Specialist Register in the field of dermatology and venereology.

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

2. The case involves a series of advertisements of a cosmetic skin care product which contains an ingredient with the trademark "LIGHTSKIN". The advertisements were in different forms, including television broadcasts, video shows in drug stores, publication in magazines, promotion pamphlets and leaflets. The Defendant appeared in all these advertisements, and gave presentations on the benefits of LIGHTSKIN. His photograph and a postgraduate qualification in

dermatology were published in the magazine advertisements, promotion pamphlets and leaflets. In the television broadcasts and video shows, he was referred to as a "著名皮膚科醫生" meaning "renowned doctor in dermatology". However, he was not included in the Specialist Register, and therefore not a specialist in dermatology. The series of advertisements sparked off a number of complaints from both laymen and doctors.

3. With the exception of charges (a) and (g), all the charges are admitted by the Defence. Although it is for the Medical Council to decide whether the conduct of Defendant as stated in those charges has fallen below the standard expected of registered medical practitioners and therefore constituted professional misconduct, the Defence accepts that such conduct of endorsing and promoting a cosmetic product is professional misconduct.

4. The subject matter of charges (a) and (g) is the advertisement broadcast on the television channel "Road Show". The Defence takes issue that there was no direct evidence in support of charges (a) and (g), as no video recording of the advertisement is produced as evidence.

5. The Legal Officer relies upon the description of the television advertisement in an email from a complainant and the Defendant's submissions to the Preliminary Investigation Committee as circumstantial evidence of the advertisement. While we do not think that we can rely on the email to determine whether the matters complained of in charges (a) and (g) did take place, we are satisfied that there is clear evidence of those matters in the Defence submissions to the Preliminary Investigation Committee. In the submissions, the Defendant gave a clear and thorough description of the events leading to the filming of the advertisement, as well as what was eventually edited and shown in the television advertisement. In the circumstances, we are satisfied that the allegations in charges (a) and (g) have been proved to the required standard.

6. We now turn to whether the Defendant's conduct in respect of each charge constitutes professional misconduct. The charges can be classified into two categories. One category involves appearance in advertisements promoting a cosmetic product, i.e. charges (a) to (f). Another category involves allowing himself to be addressed as "著名皮膚科醫生" when he was not a specialist in dermatology, i.e. charges (g) and (h).

7. It is a long standing rule of the profession that medical practitioners should not

publicly endorse or promote a commercial product. For the avoidance of misunderstanding, we wish to point out that there is a significant difference between speaking about the benefits of a medicine and endorsing or promoting a particular brand of the medicine. While the former will further the purpose of public health education as long as a balanced view of the advantages and disadvantages is provided, the latter will only further the commercial interest of the brand being promoted.

8. Having regard to the events surrounding the making and publication of the advertisements, it is clear that this is a well planned and coordinated publicity campaign to promote the cosmetic product. The Defendant was asked to endorse LIGHTSKIN by a representative of the manufacturer who explained that the manufacturer was promoting a new line of skin care products containing LIGHTSKIN. The Defendant agreed to appear in the printed advertisements and a video to be broadcast on the television channel "Road Show", as well as to attend a press conference about the line of cosmetic products.

9. He was asked to read in the press conference a prepared speech clearly endorsing the products. He found the speech unacceptable and objected, but was eventually persuaded to go along with the events. During filming of the video, when he was introduced as "著名皮膚科醫生" he did not object because he felt pressurized to cooperate, although privately he disagreed. He felt uneasy about what happened, but did nothing to rectify the situation. Nor did he do anything afterwards to prevent publication of the offending parts.

10. In such a large scale and coordinated promotion campaign, from the beginning there can be no doubt in the Defendant's mind that the advertisements are merely commercial promotion of the products. The Defendant could not be so naïve as to believe that he was participating in public health education. Even if he was, upon realizing that it was a commercial promotion campaign he should have objected. We do not accept that he was an unwilling participant in the campaign being pressurized and victimized as he claimed. On the other hand, a doctor is expected to have the fortitude to face up to pressure and take proper action if required, and not to succumb to pressure to do something which he recognized as wrong in the manner he claimed.

11. We are satisfied that by appearing in the advertisements to promote the cosmetic product, the Defendant was publicly endorsing the product for commercial purposes. In doing so, his conduct has fallen below the standard expected

amongst registered medical practitioners. We find him guilty of charges (a) to (f).

12. We then turn to the use of the title "著名皮膚科醫生". Under the Medical Registration Ordinance, only doctors entered on the Specialist Register can hold themselves out as specialists in the respective specialties. In 2002, the Medical Council noticed that some non-specialist doctors had been circumventing the law by using the title of "doctor in a particular field" or "某科醫生". In 2002, this Council promulgated in Issue No. 7 of the Newsletter that use of such a title by a non-specialist would cause confusion to the public and is against the purpose of the Specialist Register, and will be regarded as breaching the Professional Code and Conduct.

13. In the circumstances, the Defendant's acquiescence in the title "皮膚科醫生" clearly breached the Professional Code and Conduct. Furthermore, the description "著名" meaning "renowned" also breached the rule in paragraph 4.2.1 of the Code that any information provided by a doctor to the public shall not claim superiority over other doctors. We are satisfied that the Defendant's conduct in this respect has fallen below the standard expected amongst registered medical practitioners. We find him guilty of charges (g) and (h).

Sentencing

14. The Defendant has a clear record. He has been involved in health education and social service.

15. We must have regard to the fact that this is a case of obvious commercial promotion of a cosmetic product. The advertisements were published in various media on repeated occasions. As we have pointed out earlier, he could not have believed that he was participating in public health education. We are satisfied that he was knowingly taking part in the promotion campaign. In normal circumstances, the case will be visited by immediate removal from the General Register.

16. Nevertheless, we must give credit to the Defendant for his cooperation in the preliminary investigation of this case and his admission of his mistakes at the earliest opportunity. He categorically admitted that it was wrong for him to take part in the advertisements and that such conduct constituted professional misconduct. Given his remorse and insight, it is unlikely that he will commit the

same misconduct again.

17. Having regard to the gravity of the case and the mitigating factors, in particular his cooperation in the preliminary investigation of the case and forthcoming admission of the charges in this inquiry, we order that the Defendant's name be removed from the General Register for a period of two months. We further order that the removal order be suspended for a period of one year, subject to the condition that he does not commit further disciplinary offence during the suspension period.

18. We must remind the Defendant to take particular care in ensuring that he does not breach the rules of professional ethics again. If he is found guilty of other disciplinary offences committed during the suspension period, the removal order may be activated and his name removed from the General Register immediately.

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