

香港醫務委員會

The Medical Council of Hong Kong

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Dates of hearing: 28 October 2008, 13 December 2008 and 17 December 2008

Defendant: Dr GREIG James Donald (唐納基醫生)

1. The charges alleged against Dr GREIG James Donald are that:

“He, being a registered doctor:-

(1) promoted, or acquiesced in the promotion of, his practice in association with ‘Hong Kong Hernia Centre’ (HKHC) by the following means which were not permissible under the Professional Code and Conduct for the Guidance of Registered Medical Practitioners (the Code):-

(a) an advertisement in the ‘Hong Kong Medical Journal’ magazine dated September 2000;

(b) an advertisement in the ‘Parents’ Journal’ magazine dated October/November 2000;

(c) an advertisement in the ‘AWARE’ magazine dated June 2002;

(d) posters in the lifts of Matilda Hospital some time in 2003; and

(e) a booklet entitled “HKHC The Hong Kong Hernia Centre at the Matilda Hospital” which was published in September 2000 and was displayed for distribution to the public at Matilda Hospital;

(2) made the following claims, which are false or misleading, in the

publication as referred to in charge (1)(e) above –

- (a) the claim that the HKHC provides to patients the benefits of “less discomfort after your operation”, “earlier return to work”, “fewer complications”, and “a low recurrence rate” (at page 3 of the booklet), while in fact these benefits are a feature of surgical technique and can be achieved by any surgeon operating in an appropriate setting;
 - (b) the claim, implied by the statement “surgeons and anaesthetists working at the HKHC will be on an approved panel” (page 16 of the booklet), that there were more than one surgeons and there was an approved panel, while in fact there was only one surgeon involved and there was no panel of approved surgeons;
 - (c) the claim, implied by the expressions “Surgeons and anaesthetists working at the HKHC” and “staff working at the HKHC” (both at page 16 of the booklet), that the HKHC had a dedicated physical location within Matilda Hospital, while in fact the HKHC did not exist as a distinct physical facility within Matilda Hospital;
 - (d) the claim, implied by the expressions “staff working at the Hospital” and “our staff” (both at page 16 of the booklet), that the HKHC had employees, while in fact it did not have any employees;
- (3) by means of the same publication as referred to in charges (1)(e) and (2) above –
- (a) published the schedule of fees and charges of the HKHC, with which he was associated, in contravention of paragraph 14.1.2 of the Code; and
 - (b) promoted the Options Medical Practice, an organization with which he was associated, by publishing its telephone number, in contravention of paragraph 14.1.2 of the Code.

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

2. The Defendant came to Hong Kong in 1998. In 2000 he came up with the concept of setting up a centre for the treatment of herniae by laparoscopic surgery. He registered the name “Hong Kong Hernia Centre” and its logo as a trade mark in the Trade Marks Registry. He initially approached a medical group for setting up the hernia centre, but the negotiation did not materialize. He then approached a private hospital, and it was agreed that a centre would be set up in the hospital.
3. The Defendant also had his own solo practice, which was incorporated as “Options Medical Practice Limited”. According to the company registration, the practice traded under the business name of “Hong Kong Hernia Centre”.
4. The hernia centre at the hospital was set up in mid-2000. A series of publicity activities from July to October then followed to publicize the centre, including advertisements and feature articles in journals, magazines and newspapers. A pamphlet on the centre which was substantially drafted and finally cleared by the Defendant was published.
5. After 3 years of unsuccessful operation, the hernia centre was closed down in August or September 2003. A year later in 2004, the Defendant re-established the centre at his own medical practice.
6. The charges are in relation to the advertisements and the pamphlet for the hernia centre. Charge (1) is in relation to promotion of the Defendant’s practice in association with the hernia centre. Charge (2) is in relation to some misleading claims in the pamphlet. Charge (3) is in relation to publication of the fees and charges of the centre and the telephone number of the Defendant’s practice in the pamphlet.
7. In deciding on the charges we must first establish whether the Defendant had knowledge of the various advertisements in question. If he did not have knowledge, then we also have to consider whether there were circumstances which called for the Defendant to exercise caution to prevent publication of the advertisements.
8. There are 5 publications in question, namely, an advertisement in a medical journal and a magazine, a feature article in another magazine, some

postcards in the hospital's lifts, and the pamphlet drafted by the Defendant. The Defendant admits knowledge of the advertisement in the medical journal, the postcards and the pamphlet. He denies knowledge of the feature article in one magazine and the advertisement in another magazine.

9. From the development of the events, it is clear that the hernia centre was the brainchild of the Defendant. He single-handedly formulated the idea, and made the necessary arrangements to set up the logo, business name and the corporate structure for the operation of the centre. The arrangement ensured that the Defendant retained full control of the centre. He negotiated the idea with a medical group and then a hospital to set up the centre. He drafted the pamphlet which was 17 pages long. According to the pamphlet published in September 2000, readers could make appointments with either the hospital or the Options Medical Practice at the telephone number of the Defendant's solo practice. He was responsible for recruiting the panel surgeons. Even after the centre at the hospital was closed down, he continued to run the centre at his own practice. Basically, he owned and had control over the centre.
10. The schedule of media relations activities of the hospital showed that a number of publicity activities were organized in the second half of year 2000 for publicizing the opening of the hernia centre. The publications in question corresponded both in timing and target media to the schedule, showing that they were all part of a pre-planned and coordinated publicity campaign. Given the Defendant's close connection with and his personal interest in the centre, the Defendant must have been fully aware of the publicity being arranged for the centre, especially those close in timing to the opening of the centre for which he had made so much preparation.
11. We are satisfied on the evidence that the Defendant had knowledge of all 5 publications in question.
12. We have studied the contents of the 5 publications in question. They were all promotion of the hernia centre, although in the pamphlet there were parts which could be considered as educational. There was no direct reference to the Defendant's name. However, other than the Defendant, only 1 or 2 other surgeons were on the panel of the centre. The Defendant was a direct beneficiary of promotion of the centre. The publications were

in effect disguised promotion of the Defendant's practice. We are satisfied that they were promotional of the Defendant's practice.

13. We then consider whether the publications were in breach of the relevant provisions of the Professional Code and Practice. In this respect, we bear in mind the judgments of Reyes J and the Court of Appeal in the case of *Dr. Kwok Hay Kwong* (i.e. HCAL 46/2006 and CACV 373/2006). The Medical Council having thoroughly considered the judgments made relevant amendments to the provisions in order to ensure that they satisfy the proportionality test, and these amendments have been promulgated in 2008.
14. As the amended provisions post-dated the publications in question, the general rule is that they will have no retrospective effect. However, these are not new provisions but are watered down versions of the pre-judgment provisions. As the Court has declared that the relevant original provisions were unconstitutional only insofar as they breached the Basic Law and the Hong Kong Bill of Rights Ordinance, the provisions remain valid to the extent that they do not breach the Basic Law and the Hong Kong Bill of Rights Ordinance. Such valid provisions are reflected by the amended provisions. In the circumstances, the amended provisions are merely portions of the original provisions and so are applicable from the time when the original provisions were introduced. Therefore, the amended provisions apply with full force to the present charges.
15. The relevant amended provisions are section 5 and 18 of the updated Code of Professional Conduct ("the updated Code").
16. Section 5.2.1 sets out the principles of provision of information to the public.
17. Section 5.2.2.2 provides that practice promotion by doctors to people who are not their patients is not permitted except to the extent allowed under section 5.2.3. Section 5.2.3.8 provides that a doctor may publish in bona fide newspapers, magazines, journals and periodicals his service information which is permitted in Service Information Notices and Doctors Directories. A publication published for the predominant purpose of promotion of the products or services of a doctor or other persons is not regarded as an acceptable newspaper, magazine, journal or periodical for

this purpose.

18. Section 18.3 provides that under no circumstances should a doctor permit his professional fees or contact information to be published in the promotional materials of an organization with which he has any financial or professional relationship.
19. We now apply these provisions to the present charges. We have regard to the fact that under section 5.2.2.1 of the updated Code, communication with registered medical practitioners and specified healthcare professionals is not governed by the provisions on practice promotion. As the medical journal in charge (1)(a) is a journal for circulation to doctors only, the advertisement in the journal is not governed by the provisions on practice promotion. In the circumstances, we find the Defendant not guilty in respect of charge (1)(a).
20. In respect of the feature article in the magazine in charge (1)(b), it was claimed that the hernia centre utilized “*the most advanced surgery in treating hernias*” and “*yet doctors have been resisting it (the surgery) since it is a time consuming procedure to learn, as it utilizes laparoscopic technology*”. This is in breach of the principle in section 5.2.1.2 that information provided to the public must not claim superiority over other doctors, aim to solicit or canvass for patients, or be used for commercial promotion of medical services. The article is also not a form of practice promotion which is permitted under section 5.2.3 of the updated Code.
21. In respect of the advertisement in charge (1)(c), we are concerned that the information about laparoscopic surgery might not be presented in a balanced manner as only the advantages are mentioned but not the disadvantages. Under section 5.2.1.1 of the updated Code, information on the efficacy of particular treatment should set out both the advantages and disadvantages in a balanced manner. However, the only evidence before us was that when the advertisement was published in 2000 major disadvantages of laparoscopic hernia surgery were not evident. In the circumstances, we cannot say that the advertisement breaches the principle.
22. In respect of the postcards in charge (1)(d), there were only the name, logo and contact number of the hernia centre. They were posted within the

hospital and not distributed to the public. In the circumstances, we do not consider that it is in breach of section 5 of the updated Code.

23. In respect of the pamphlet in charge (1)(e), it is not a permitted publication under section 5.2.3.8 as it was published for the sole purpose of promotion of the services of a medical body, namely the Hong Kong Hernia Centre. It contained extensive reference to the advantages of the services provided by the hernia centre, and the fees charged by the centre and the panel surgeons. It was intended to, and had the effect of, canvassing for patients to use the services of the centre, and in turn the services of the Defendant.
24. We have to further consider whether the pamphlet was distributed to the public. The complainant in the complaint letter said that the pamphlet was displayed for distribution in the hospital. The Defendant claimed that it was only given out upon enquiry by members of the public, and all copies printed had already been given out. From the contents of the pamphlet (including the directions for getting to the hospital), it is obvious that the pamphlet was intended for distribution to the public other than in the hospital. We are satisfied that the pamphlet was distributed to the public.
25. Having regard to our findings above, we are satisfied that the Defendant's conduct in relation to publication of the feature article in charge (1)(b) and the pamphlet in charge (1)(e) has fallen below the standard expected amongst registered medical practitioners. We are satisfied that this constitutes professional misconduct. We find him guilty of charge (1)(b) and (e), and not guilty of charge (1)(a), (c) and (d).
26. We now turn to charge (2). The statements in charge (2)(a) were in the pamphlet under the question "*What are the principal benefits of the Hongkong Hernia Centre to me as a patient?*". If the statements in question were simply provided as direct answers to the question, they were misleading and questionable as they implied that the services of the hernia centre definitely had those benefits. However, the statements were preceded by the statement "*We are committed to provide:*". That transformed the statements of benefits into statements of the objectives which the hernia centre wished to achieve. In the circumstances, we cannot say that the statements were misleading.

27. In respect of the statements in charge (2)(b), (c) and (d), we are of the view that they were matters of little significance to medical treatment or patient care. On the other hand, there was evidence that the Defendant was not the only surgeon on the panel and that there were staff of the hernia centre. We do not think that the statements had the misleading effect as alleged.
28. In the circumstances, we find the Defendant not guilty of charge (2).
29. We then turn to charge (3). The pamphlet set out a schedule of fees and charges. The telephone number of Options Medical Practice was set out as one of the telephone numbers for making appointments. As we have said earlier, Options Medical Practice was the Defendant's solo practice. The fees schedule set out both the fees of the surgeon, the anaesthetist and the hospital. The fees of the surgeon were in effect the fees of the Defendant as a panel surgeon in respect of the 34 operations. This is in breach of section 18.3 of the updated Code which prohibits a doctor from permitting his professional fees and contact information to be published in the promotional materials of an organization with which he has a financial or professional relationship. The Defendant's conduct has fallen below the standard expected amongst registered medical practitioners. We are satisfied that this constitutes professional misconduct. We find him guilty of charge (3).
30. In conclusion, the Defendant is found guilty of charges (1)(b) and (e), and 3(a) and (b). The remaining charges are dismissed.

Sentencing

31. The defendant has a clear record. Other than this, there is no mitigating factor of weight.
32. The charges of which the Defendant is found guilty are on practice promotion. In June 2006 the Medical Council made the observation that practice promotion cases were becoming prevalent and it was obvious that the existing level of sentences had not been effective in deterring would be offenders, and a higher level of sentence in future cases was required to send a clear message to members of the profession. The Council

emphasized that future offenders should expect to be removed from the General Register for a short period with suspension of the order, and in serious cases the removal would take immediate effect.

33. The present offences took place in 2000. Therefore, the increased level of sentence does not apply.
34. This is not a case of advertisement of misleading information which has the effect of inducing patients to undergo improper treatment. No harm has been caused to patients.
35. Given the unique circumstances of this case and the fact that the hernia centre is no longer in existence, it is unlikely that the Defendant will re-offend. We are sure that he has learned a lesson from this case.
36. Having regard to the low gravity of the case, we order that a warning letter be served on the Defendant. The order shall be published in the Gazette.

Prof. John Leong, OBE, JP
Temporary Chairman, Medical Council