

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Date of hearing: 30 September 2010
Defendant: Dr HUI Tak Wing Samuel (許德榮醫生)

1. The charge alleged against the Defendant, Dr HUI Tak Wing Samuel, is that:

“He, being a registered medical practitioner, sanctioned, acquiesced in, or failed to take adequate steps to prevent the publication of his name, specialist title, photograph and/or interview to endorse an eyedrop product “Patanol”:-

- (a) in an article or advertisement published in the 27 July 2004 issue of the TVB Weekly;
- (b) in an article or advertisement published in the August 2004 issue of the Parents Magazine;
- (c) in an article or advertisement published in the 10 August 2004 issue of the Apple Daily;
- (d) in an article or advertisement published in the June 2006 issue of the Life Style Plus;
- (e) in an article or advertisement published in the 1 June 2006 issue of the Headline Daily.

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

Facts of the case

2. The case involves 5 articles published in 5 different magazines or newspapers.

The articles were published at different times, the first and the last articles were 2 years apart. They were all “feature articles”. The contents of the articles were substantially similar. The Defendant was featured prominently in each of the articles as the provider of the information. His photograph, name, specialist title (i.e. “Specialist in Ophthalmology”) were clearly stated in each of the articles. The brand name, photograph and benefits of an eyedrop product (i.e. Patanol) were incorporated in each article. In each article, the readers were referred to a website for more detailed information. Patanol was exclusively and prominently promoted in that website. A pharmaceutical company (i.e. Alcon) claimed copyright and all legal rights in respect of the website. Three of the 5 articles in question appeared in the website as of September 2006.

3. The above facts are not disputed. The Defendant also admitted that he gave an interview in 2004 at the request of Alcon, with knowledge that the interview would be published.

4. The Defendant admitted that he failed to take adequate steps to prevent the publication of the 5 articles.

Findings of the Council

5. Giving a plain and natural interpretation to the 5 articles, we are satisfied that the articles were clearly published for the promotion of Patanol. Although the Defendant had not been cited as referring directly to the product, his comments tied in with the benefits of the product. Taking the contents of each article as a whole, the Defendant publicly endorsed the product. In view of the fact that 3 of the articles were reproduced in Alcon’s website, we are satisfied that each of the articles was part of a concerted marketing campaign for promoting the product.

6. On the Defendant’s own admission, we have no difficulty in finding that he failed to take adequate steps to prevent the publication of the articles in which he endorsed the product.

7. Having regard to the fact that he gave the interview at the request of the company promoting the product and that the articles had been repeatedly published in different media at different times with his knowledge, we are satisfied that he had acquiesced in the publication of the articles for the purpose of endorsing the product. Although we are not sure whether he acquiesced in the publication of the first article, as time went on he must have acquiesced in publication of the subsequent articles. We

find that he failed to take adequate steps to prevent publication of the first article, and he acquiesced in publication of the subsequent 4 articles.

8. It has been clearly established that it is a long standing rule of ethics in the medical profession that doctors should not be involved in public endorsement of a commercial product. This has been confirmed categorically by the Court of Appeal and the Court of Final Appeal in the case of *Dr. Chan Hei Ling Helen v. The Medical Council of Hong Kong*.

9. In view of the ethical rule and the fact that he endorsed the product publicly, we are satisfied that his conduct has fallen short of the standard expected amongst registered medical practitioners. We are satisfied that his conduct in respect of publication of each article constituted professional misconduct. We find him guilty as charged.

Sentencing

10. The Defendant has a clear record.

11. While the articles promoted the product, there is no evidence that the articles contained exaggerated or misleading information. However, this is not a one-off incident but a series of incidents over a period of 2 years.

12. This Council has on 23 June 2006 issued a clear warning that future cases of practice promotion will be dealt with by removal from the General Register for a short period with suspension of the order, and in serious cases the removal will take immediate effect. The same warning was repeated in December 2008.

13. On 13 January 2010, this Council made a clear remark that there is no significant difference between promotion of the doctor's own practice and promotion of a product, as both involve the exploitation of a doctor's status to promote services or products for the doctor's financial benefits.

14. We wish to add that in view of the similarity between practice promotion and product promotion, in future cases both should be treated on the same footing in sentencing.

15. In the present case, the last article was published on 1 June 2006 which pre-dated the above warnings. In the circumstances, we shall not apply the warnings to the

present case. Nevertheless, we wish to state clearly that this Council's determination to combat similar misconduct has not diminished at all, and the warnings will be applied with full force in applicable cases.

16. In this inquiry, the Defendant honestly admitted the allegations in the charge. All along the Defendant was prepared to contest the charge, as is apparent from the service of the Defence documents which were withdrawn only today. We are informed that after he has been given proper legal advice by Defence Counsel, in particular the Court of Final Appeal's confirmation of the ethical rule against public endorsement of commercial products, he changed his original stance and decided not to contest the charge. That is a very sensible decision, which reflects upon his insight into his misconduct and remorse, which in turn will have a bearing on the likelihood of committing the same misconduct again. We shall give him credit in sentencing. If he had shown remorse at an earlier stage such as during preliminary investigation, greater credit will be given. Nevertheless, remorse at the last minute is better than no remorse at all.

17. In this respect, we must also commend Defence Counsel for very properly discharging his professional duty towards his client as well as to this Council.

18. Having regard to the gravity of the case and the mitigating factors, we order that a warning letter be served on the Defendant. We further order that the order be published in the Gazette.

Miss WAN Lai-yau Deborah, BBS, JP
Temporary Chairman, Medical Council