

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Date of hearing: 13 October 2010

Defendant: Dr LAU Mang Kaw (劉孟蛟醫生)

1. The charges alleged against the Defendant, LAU Mang Kaw, are that:-

“In or around March 2009, he, being a registered medical practitioner, had sanctioned, acquiesced in or failed to take adequate steps to:

- (i) prevent the promotion of his practice in association with *New Town Medical Centre* and/or 新都醫療集團醫學美容中心 and/or *Dr.'s Beauty & Health* by means of distribution in the residential areas in Tuen Mun of promotion leaflets which:
 - (a) contained a coupon offering vaccination on prevention of cervical cancer at a discount;
 - (b) contained a coupon offering influenza vaccination at a discount;
 - (c) contained impermissible promotional statements of ‘新都醫療集團，一直以一站式健康醫療服務為首要任務，自 1985 年成立，至今已發展成為專業醫療機構。『新都』匯聚不同界別的精英，由兒科及其他各類專科至醫學美容範疇，均具備完整及符合經濟效益的專業服務。’;
 - (d) promoted the “Basic Health Check” package;
 - (e) canvassed for the purpose of obtaining patients by means of offering medical services at a discount to those becoming members of *Dr.'s Beauty & Health*;

- (ii) prevent the endorsement or promotion of the services of the beauty parlour *Dr.'s Beauty & Health* by his medical group in the leaflets.

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

Facts of the case

2. In March 2009, promotion leaflets were distributed by post to residential apartments in Tuen Mun.
3. The leaflets promoted the medical services of “New Town Medical Centre” (hereinafter referred to as “the Medical Centre”) and the beauty services of “Dr’s Beauty & Health” (hereinafter referred to as “the Beauty Parlour”). Discount coupons were offered for the medical and beauty services of both the Medical Centre and the Beauty Parlour. Persons who joined as members of the Beauty Parlour were offered a discount card for the medical services of the Medical Centre.
4. In the leaflets, 13 clinic addresses of the Medical Centre in Kowloon and the New Territories were listed at which the discount coupons could be used. For the Beauty Parlour, 5 addresses were listed in the leaflets.
5. The Defendant admits that at all material times he was practising at the Medical Centre in Tuen Mun. In his explanation to the Preliminary Investigation Committee, he admitted that his wife and daughter were responsible for the management of the Beauty Parlour.

Findings of Council

6. The Defendant admits the charges on the least serious limb of failing to take adequate steps to prevent the promotion of his practice and the endorsement or promotion of the services of the Beauty Parlour, but denies the more serious limbs of sanctioning and acquiescing in such promotion.

7. Evidence shows that the Medical Centre was operated by a limited company (“hereinafter referred to as “the Company”). The Company was owned entirely by the Defendant and his wife. The Defendant and his wife were the only shareholders and directors of the Company. The Defendant’s wife was also the secretary of the Company.
8. The Company was the majority shareholder of the Beauty Parlour, with a controlling interest of 75% of its allotted shares. On 29 March 2009, 90% of the shares of the Beauty Parlour were transferred to the Defendant’s wife who then became the controlling shareholder of the Beauty Parlour. In this connection, it should be noted that the leaflets were distributed shortly before 20 March 2009. The Defendant’s wife and daughter were the only directors of the Beauty Parlour. The Defendant’s wife was also the secretary of the Beauty Parlour.
9. It is obvious that both the Company and the Beauty Parlour were the family businesses of the Defendant. According to the Company’s website, the Company was established by the Defendant and his wife in 1986, and the Defendant was the chairman of the Company at least up to September 2010.
10. We bear in mind that the directors of a company are the brain and executive arm of a company. With such controlling interest in the business and management of the Company, the Defendant must have knowledge in and control of the advertising and promotion activities of the Company. We are satisfied that he not only failed to take preventive steps to promote the services of the Company, but he also sanctioned such promotion.
11. We have considered the promotion leaflets as a whole. On a plain and natural interpretation of the statements in the leaflets, it is clear that the leaflets were promotion of the medical services of the Medical Centre at which the Defendant practised medicine. Such promotion was and is not permissible under the Code of Professional Conduct. The leaflets also canvassed for patients.
12. We are satisfied that the conduct of the Defendant in sanctioning the promotion and canvassing in charge (i) was below the standard expected amongst registered medical practitioners. Even on the less serious limbs of acquiescing in or failing to prevent such promotion and canvassing, the

Defendant's conduct was equally below the expected standard. We find him guilty of charge (i).

13. While his control of the Beauty Parlour was one step removed in that he was not a director thereof, his knowledge and role in the promotion and endorsement of the services of the Beauty Parlour must be judged with regard to the leaflets in question. The leaflets were joint and concerted promotion of the services of both the Medical Centre and the Beauty Parlour. The fact that the services of both organizations were promoted in the same leaflets, coupled with the fact that members of the Beauty Parlour were offered discount for services of the Medical Centre, showed that they were mutual endorsement and promotion of each other's services. The two were so intertwined that the Defendant in sanctioning the distribution of the leaflets must have also known and sanctioned the endorsement and promotion of the services of the Beauty Parlour.
14. Although the services of the Beauty Parlour were not expressly endorsed in the leaflets, promoting the services of the Beauty Parlour in the same leaflets which promoted the services of an allegedly well established medical group with various medical specialists was an implied endorsement of the services of the Beauty Parlour.
15. It is needless to say that the Court of Final Appeal in the case of *Dr. Chan Hei Ling Helen v. The Medical Council of Hong Kong* has confirmed the long established rule in the medical profession against public endorsement of commercial products and services. Furthermore, section 5.2.1.2(e) of the January 2009 version of the Code of Professional Conduct prohibits commercial promotion of medical and health related products and services.
16. We are satisfied that the Defendant's conduct in sanctioning the endorsement and promotion of the services of the Beauty Parlour as stated in charge (ii) was below the standard expected amongst registered medical practitioners. Again, even on the less serious limbs of acquiescing in or failing to prevent such promotion and endorsement, the Defendant's conduct was equally below the expected standard. We find him guilty of charge (ii).
17. In summary, we find the Defendant guilty of charges (i) and (ii) on the limb of sanctioning. Even disregarding sanctioning, he is still guilty on the limbs of acquiescing in or failing to take adequate steps to prevent, each of which is

also conduct below the standard expected.

Sentencing

18. The Defendant has a clear record. He has also performed community services.
19. The Defendant admitted the charges on the less serious limb of failing to take adequate steps to prevent. We found him guilty on the most serious limb of sanctioning. While this may be a strategic move to gain credit in sentencing in accordance with our published policy for giving credit for remorse reflected by honest admissions, nevertheless we give him credit for the admission, although not to the same extent as for full admission.
20. On 23 June 2006, this Council issued a warning that in view of the rampant situation of practice promotion, future cases will be visited 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 and September 2010.
21. 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. On 30 September 2010, this Council remarked 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.
22. This case involves promotion of a large medical group and a beauty parlour on an extensive scale.
23. Although the Defendant mitigates on the basis that rectification measures had been taken in September 2009 to ensure the Company's compliance with the Code of Professional Conduct, the evidence shows that there were still such promotional practices by the Company as late as September 2010. For the avoidance of doubt, this issue only negates the mitigating factor of rectification measures but does not aggravate the sentence to be imposed.

24. Having regard to the gravity of the charges and the mitigating factors, we order that in respect of each charge the Defendant's name be removed from the General Register for a period of 1 month, suspended for a period of 2 years. The removal order shall run concurrently. The orders will be published in the Gazette in accordance with the provisions of the Medical Registration Ordinance.

Other remarks

25. We note that the Defendant's name is included in the Specialist Register under the specialty of Paediatrics. While it is for the Education and Accreditation Committee to consider whether any action should be taken in respect of his specialist registration under section 20N of the Medical Registration Ordinance, we are of the view that this case does not reflect adversely on his suitability to remain on the Specialist Register.

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