香港醫務委員會

The Medical Council of Hong Kong

DISCIPLINARY INQUIRY MEDICAL REGISTRATION ORDINANCE, CAP. 161

Dates of hearing: 25 May 2011 (Day1), 26 May 2011 (Day 2)

1st Defendant:Dr CHAN Fei Ka (陳斐嘉醫生)(Reg. No.: M10353)2nd Defendant:Dr CHAN Lai Ka (陳拉嘉醫生)(Reg. No.: M12134)3rd Defendant:Dr TING Lai Yam Susanna (丁麗鑫醫生)(Reg. No.: M12617)4th Defendant:Dr TONG Shui King (湯瑞琼醫生)(Reg. No.: M11740)

1. Dr CHAN Fei Ka (1st Defendant), Dr CHAN Lai Ka (2nd Defendant), Dr TING Lai Yam Susanna (3rd Defendant) and Dr TONG Shui King (4th Defendant) are charged respectively as follows:-

Dr CHAN Fei Ka (D1)

- on or about 15 October 2007, displayed at the exterior of her office situated at Shop N26D, 10 Nassau Street, Mei Foo Sun Chuen Phase 5, Kowloon ("Her Mei Foo Office"), a poster bearing the Chinese words "立體下巴·突顯輪廓·30 分鐘無刀塑造" causing unnecessary public concern and arousing unrealistic expectations ("the Poster");
- on or about 15 October 2007, engaged in impermissible practice promotion to non-patients under the Professional Code and Conduct issued by the Medical Council of Hong Kong ("the Code") by displaying at the exterior of Her Mei Foo Office information not permitted to be displayed, namely:-
 - (a) a picture of 5 ladies in white coats with stethoscopes held in their hands or hanging around their necks;

- (b) pictures relating to medical treatment on the Poster; and
- (c) the Chinese words "立體下巴·突顯輪廓·30 分鐘無刀塑造" on the Poster;
- on or about 15 October 2007, canvassed for the purpose of obtaining patients by displaying at the exterior of Her Mei Foo Office a note under the headline "會員推薦計劃";
- (4) on or about 22 August 2007, sanctioned, acquiesced in or failed to take adequate steps to prevent impermissible practice promotion to non-patients under the Code in that pamphlets bearing the addresses of Her Mei Foo Office and another office of hers at Room 2308, Hang Lung Centre, 2 Paterson Street, Causeway Bay, Hong Kong ("Her CWB Office") and:-
 - (a) a picture of 5 ladies in white coats with stethoscopes held in their hands or hanging around their necks;
 - (b) a letter of gratitude or an announcement of appreciation from a grateful patient of the medical group CliniCentral with which she had association;
 - (c) remarks of "資深女西醫" and under the headline "你是否想得到以上高質數的美容效果" claiming superiority over other doctors; and
 - (d) a picture relating to medical treatment,

("the Pamphlets"), were distributed to the general public;

(5) on or about 22 August 2007, sanctioned, acquiesced in or failed to take adequate steps to prevent acts constituting canvassing for the purpose of obtaining patients in that the Pamphlets, which bore the addresses of Her Mei Foo Office and Her CWB Office and information in respect of discounts available to non-patients, were distributed to the general public;

- (6) on 20 August 2007, sanctioned, acquiesced in or failed to take adequate steps to prevent impermissible practice promotion to non-patients under the Code in that an advertisement bearing the addresses of Her Mei Foo Office and Her CWB Office and:-
 - (a) a picture of 5 ladies in white coats with stethoscopes held in their hands or hanging around their necks;
 - (b) remarks of "資深女西醫" and "專業之選" claiming superiority over other doctors; and
 - (c) pictures relating to medical treatment,

("the Advertisement"), was placed in a local newspaper;

- (7) on 20 August 2007, sanctioned, acquiesced in or failed to take adequate steps to prevent acts constituting canvassing for the purpose of obtaining patients in that the Advertisement, which bore the addresses of Her Mei Foo Office and Her CWB Office and information in respect of discounts available to non-patients, was placed in a local newspaper;
- on 20 August 2007, sanctioned, acquiesced in or failed to take adequate steps to prevent the placing of the Advertisement, which bore the addresses of Her Mei Foo Office and Her CWB Office and the statement of "歲月絕對可以不留痕,您所需要的只是醫生的妙手", in a local newspaper causing unnecessary public concern and arousing unrealistic expectations;
- (9) on 8 October 2007, sanctioned, acquiesced in or failed to take adequate steps to prevent impermissible practice promotion to non-patients under the Code in that an advertisement bearing the addresses of Her Mei Foo Office and Her CWB Office and:-
 - (a) a picture of 5 ladies in white coats with stethoscopes held in their hands or hanging around their necks;
 - (b) remarks of "專業之選" and under the headline "星港醫療中

心三大優勢" claiming superiority over other doctors,

was placed in a local newspaper; and

- (10) on 5 November 2007, sanctioned, acquiesced in or failed to take adequate steps to prevent impermissible practice promotion to non-patients under the Code in that an advertisement bearing the addresses of Her Mei Foo Office and Her CWB Office and:-
 - (a) a picture of 5 ladies in white coats with stethoscopes held in their hands or hanging around their necks;
 - (b) remarks of "資深女西醫", "專業之選" and "壹週刊優質品牌" claiming superiority over other doctors; and
 - (c) a picture relating to medical treatment;

was placed in a local newspaper.

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

Dr CHAN Lai Ka (D2)

- (1) on or about 15 October 2007, displayed at the exterior of her office situated at Shop N26D, 10 Nassau Street, Mei Foo Sun Chuen Phase 5, Kowloon ("Her Office"), a poster bearing the Chinese words "立體下巴·突顯輪廓·30 分鐘無刀塑造" causing unnecessary public concern and arousing unrealistic expectations ("the Poster");
- on or about 15 October 2007, engaged in impermissible practice promotion to non-patients under the Professional Code and Conduct issued by the Medical Council of Hong Kong ("the Code") by displaying at the exterior of Her Office information not

permitted to be displayed, namely:-

- (a) a picture of 5 ladies in white coats with stethoscopes held in their hands or hanging around their necks;
- (b) pictures relating to medical treatment on the Poster; and
- (c) the Chinese words "立體下巴·突顯輪廓·30 分鐘無刀塑造" on the Poster;
- on or about 15 October 2007, canvassed for the purpose of obtaining patients by displaying at the exterior of Her Office a note under the headline "會員推薦計劃";
- (4) on or about 22 August 2007, sanctioned, acquiesced in or failed to take adequate steps to prevent impermissible practice promotion to non-patients under the Code in that pamphlets bearing the address of Her Office and:-
 - (a) a picture of 5 ladies in white coats with stethoscopes held in their hands or hanging around their necks;
 - (b) a letter of gratitude or an announcement of appreciation from a grateful patient of the medical group CliniCentral with which she had association:
 - (c) remarks of "資深女西醫" and under the headline "你是否想得到以上高質數的美容效果" claiming superiority over other doctors; and
 - (d) a picture relating to medical treatment,

("the Pamphlets"), were distributed to the general public;

(5) on or about 22 August 2007, sanctioned, acquiesced in or failed to take adequate steps to prevent acts constituting canvassing for the purpose of obtaining patients in that the Pamphlets, which bore the address of Her Office and information in respect of discounts

available to non-patients, were distributed to the general public;

- (6) on 20 August 2007, sanctioned, acquiesced in or failed to take adequate steps to prevent impermissible practice promotion to non-patients under the Code in that an advertisement bearing the address of Her Office and:-
 - (a) a picture of 5 ladies in white coats with stethoscopes held in their hands or hanging around their necks;
 - (b) remarks of "資深女西醫" and "專業之選" claiming superiority over other doctors; and
 - (c) pictures relating to medical treatment,

("the Advertisement"), was placed in a local newspaper;

- (7) on 20 August 2007, sanctioned, acquiesced in or failed to take adequate steps to prevent acts constituting canvassing for the purpose of obtaining patients in that the Advertisement, which bore the address of Her Office and information in respect of discounts available to non-patients, was placed in a local newspaper;
- on 20 August 2007, sanctioned, acquiesced in or failed to take adequate steps to prevent the placing of the Advertisement, which bore the address of Her Office and the statement of "歲月絕對可以不留痕,您所需要的只是醫生的妙手", in a local newspaper causing unnecessary public concern and arousing unrealistic expectations;
- (9) on 8 October 2007, sanctioned, acquiesced in or failed to take adequate steps to prevent impermissible practice promotion to non-patients under the Code in that an advertisement bearing the address of Her Office and:-
 - (a) a picture of 5 ladies in white coats with stethoscopes held in their hands or hanging around their necks;

(b) remarks of "專業之選" and under the headline "星港醫療中心三大優勢" claiming superiority over other doctors,

was placed in a local newspaper; and

- (10) on 5 November 2007, sanctioned, acquiesced in or failed to take adequate steps to prevent impermissible practice promotion to non-patients under the Code in that an advertisement bearing the address of Her Office and:-
 - (a) a picture of 5 ladies in white coats with stethoscopes held in their hands or hanging around their necks;
 - (b) remarks of "資深女西醫", "專業之選" and "壹週刊優質品牌" claiming superiority over other doctors; and
 - (c) a picture relating to medical treatment;

was placed in a local newspaper.

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

Dr TING Lai Yam Susanna (D3)

- (1) on or about 16 October 2007, engaged in impermissible practice promotion to non-patients under the Professional Code and Conduct issued by the Medical Council of Hong Kong ("the Code") by displaying a picture relating to medical treatment on the wall next to the door of her office at 3rd Floor, Bodynits Building, 3 Cameron Road, Tsim Sha Tsui, Kowloon ("Her Office");
- (2) on or about 16 October 2007, engaged in impermissible practice promotion to non-patients under the Code by displaying a signboard exceeding 10 square feet on the wall next to the door of

Her Office;

- (3) on or about 22 August 2007, sanctioned, acquiesced in or failed to take adequate steps to prevent impermissible practice promotion to non-patients under the Code in that pamphlets bearing the address of Her Office and:-
 - (a) a picture of 5 ladies in white coats with stethoscopes held in their hands or hanging around their necks;
 - (b) a letter of gratitude or an announcement of appreciation from a grateful patient of the medical group CliniCentral with which she had association;
 - (c) remarks of "資深女西醫" and under the headline "你是否想得到以上高質數的美容效果" claiming superiority over other doctors; and
 - (d) a picture relating to medical treatment,

("the Pamphlets"), were distributed to the general public;

- (4) on or about 22 August 2007, sanctioned, acquiesced in or failed to take adequate steps to prevent acts constituting canvassing for the purpose of obtaining patients in that the Pamphlets, which bore the address of Her Office and information in respect of discounts available to non-patients, were distributed to the general public;
- (5) on 20 August 2007, sanctioned, acquiesced in or failed to take adequate steps to prevent impermissible practice promotion to non-patients under the Code in that an advertisement bearing the address of Her Office and:-
 - (a) a picture of 5 ladies in white coats with stethoscopes held in their hands or hanging around their necks;
 - (b) remarks of "資深女西醫" and "專業之選" claiming superiority over other doctors; and

(c) pictures relating to medical treatment,

("the Advertisement"), was placed in a local newspaper;

- (6) on 20 August 2007, sanctioned, acquiesced in or failed to take adequate steps to prevent acts constituting canvassing for the purpose of obtaining patients in that the Advertisement, which bore the address of Her Office and information in respect of discounts available to non-patients, was placed in a local newspaper;
- on 20 August 2007, sanctioned, acquiesced in or failed to take adequate steps to prevent the placing of the Advertisement, which bore the address of Her Office and the statement of "歲月絕對可以不留痕,您所需要的只是醫生的妙手", in a local newspaper causing unnecessary public concern and arousing unrealistic expectations;
- (8) on 8 October 2007, sanctioned, acquiesced in or failed to take adequate steps to prevent impermissible practice promotion to non-patients under the Code in that an advertisement bearing the address of Her Office and:-
 - (a) a picture of 5 ladies in white coats with stethoscopes held in their hands or hanging around their necks;
 - (b) remarks of "專業之選" and under the headline "星港醫療中心三大優勢" claiming superiority over other doctors,

was placed in a local newspaper; and

- (9) on 5 November 2007, sanctioned, acquiesced in or failed to take adequate steps to prevent impermissible practice promotion to non-patients under the Code in that an advertisement bearing the address of Her Office and:-
 - (a) a picture of 5 ladies in white coats with stethoscopes held in their hands or hanging around their necks;

- (b) remarks of "資深女西醫", "專業之選" and "壹週刊優質品牌" claiming superiority over other doctors; and
- (c) a picture relating to medical treatment;

was placed in a local newspaper.

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

Dr TONG Shui King (D4)

- (1) on or about 16 October 2007, engaged in impermissible practice promotion to non-patients under the Professional Code and Conduct issued by the Medical Council of Hong Kong ("the Code") by displaying at the exterior of her office at Shop A34, Nan Fung Centre, 264-298 Castle Peak Road, Tsuen Wan, the New Territories ("Her Office") information not permitted to be displayed, namely:-
 - (a) a picture of 5 ladies in white coats with stethoscopes held in their hands or hanging around their necks;
 - (b) a picture of a lady in white coat with stethoscope hanging around her neck; and
 - (c) a picture relating to medical treatment;
- (2) on or about 22 August 2007, sanctioned, acquiesced in or failed to take adequate steps to prevent impermissible practice promotion to non-patients under the Code in that pamphlets bearing the address of Her Office and:-
 - (a) a picture of 5 ladies in white coats with stethoscopes held in their hands or hanging around their necks;

- (b) a letter of gratitude or an announcement of appreciation from a grateful patient of the medical group CliniCentral with which she had association:
- (c) remarks of "資深女西醫" and under the headline "你是否想得到以上高質數的美容效果" claiming superiority over other doctors; and
- (d) a picture relating to medical treatment,

("the Pamphlets"), were distributed to the general public;

- (3) on or about 22 August 2007, sanctioned, acquiesced in or failed to take adequate steps to prevent acts constituting canvassing for the purpose of obtaining patients in that the Pamphlets, which bore the address of Her Office and information in respect of discounts available to non-patients, were distributed to the general public;
- (4) on 20 August 2007, sanctioned, acquiesced in or failed to take adequate steps to prevent impermissible practice promotion to non-patients under the Code in that an advertisement bearing the address of Her Office and:-
 - (a) a picture of 5 ladies in white coats with stethoscopes held in their hands or hanging around their necks;
 - (b) remarks of "資深女西醫" and "專業之選" claiming superiority over other doctors; and
 - (c) pictures relating to medical treatment,

("the Advertisement"), was placed in a local newspaper;

(5) on 20 August 2007, sanctioned, acquiesced in or failed to take adequate steps to prevent acts constituting canvassing for the purpose of obtaining patients in that the Advertisement, which bore the address of Her Office and information in respect of discounts available to non-patients, was placed in a local newspaper;

- on 20 August 2007, sanctioned, acquiesced in or failed to take adequate steps to prevent the placing of the Advertisement, which bore the address of Her Office and the statement of "歲月絕對可以不留痕,您所需要的只是醫生的妙手", in a local newspaper causing unnecessary public concern and arousing unrealistic expectations;
- (7) on 8 October 2007, sanctioned, acquiesced in or failed to take adequate steps to prevent impermissible practice promotion to non-patients under the Code in that an advertisement bearing the address of Her Office and:-
 - (a) a picture of 5 ladies in white coats with stethoscopes held in their hands or hanging around their necks;
 - (b) remarks of "專業之選" and under the headline "星港醫療中心三大優勢" claiming superiority over other doctors,

was placed in a local newspaper; and

- (8) on 5 November 2007, sanctioned, acquiesced in or failed to take adequate steps to prevent impermissible practice promotion to non-patients under the Code in that an advertisement bearing the address of Her Office and:-
 - (a) a picture of 5 ladies in white coats with stethoscopes held in their hands or hanging around their necks;
 - (b) remarks of "資深女西醫", "專業之選" and "壹週刊優質品牌" claiming superiority over other doctors; and
 - (c) a picture relating to medical treatment;

was placed in a local newspaper.

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

Facts of the case

2. At the material times, all 4 Defendants were employed by the same company "Astique Clinicentral Limited" ("the Company") to provide medical services at different clinics of the Company. Under the employment contract, the Company would provide support facilities and activities for the employed doctors, and the employed doctors would carry out their medical practices in the Company's clinics. Common to all 4 Defendants, Clause 8.2 of the contract under the heading of "Obligations of the Doctor" specifically provided as follows:-

"The Doctor will observe and comply with all laws, regulations and codes relating to the medical profession in Hong Kong and in particular the document issued by the Medical Council of Hong Kong as may be amended from time to time, entitled "Professional Code and Conduct for the Guidance of Medical Practitioners"."

- 3. The 1st Defendant and the 2nd Defendant were shareholding members of the Company up to 20 March 2007. The 2nd Defendant was also a director of the Company up to 18 March 2007.
- 4. During the 4 Defendants' employment with the Company, various publicity materials in respect of the Defendants' clinics were issued to the public, including advertisements in 3 issues of a newspaper (i.e. on 20 August 2007, 8 October 2007 and 5 November 2007), pamphlets distributed to the public, and posters and signboards placed at the exterior of the clinics. These publicity materials were in breach of the provisions of the Professional Code and Conduct in one or more of the following aspects:-
 - (a) carried information not permitted to be displayed;
 - (b) canvassed for the purpose of obtaining patients;
 - (c) carried statements arousing unrealistic expectations;
 - (d) offering discounts;
 - (e) offering advantages of free consultations for becoming members:

- (f) offering advantages for recommending others to become members;
- (g) claiming superiority over other doctors;
- (h) exceeding the permitted size;
- (i) issued not in the permitted manners.

Findings of the Council

- 5. The 4 Defendants were all absent from the inquiry, but were jointly represented by the same Defence Solicitor. We shall not draw any adverse inference from their absence.
- 6. No defence was advanced, nor was any submission made, by the Defence Solicitor on behalf of the Defendants. Through the Defence Solicitor, all 4 Defendants admitted the truth of all the factual allegations in the respective charges against them. Therefore, the only remaining question for us to consider is whether the conduct of the respective Defendants constituted professional misconduct.
- 7. The charges in respect of the pamphlets and newspaper advertisements allege alternative limbs of sanctioning, acquiescing in or failing to take adequate steps to prevent the relevant acts. We have to decide in which manner the Defendants were responsible for those acts. In coming to a conclusion on this issue, we bear in mind that (i) all 4 Defendants' clinics were promoted in the same pamphlets and advertisements; (ii) the Defendants were under employment by the same employer; and (iii) the Company as operator of the clinics should have a direct interest in promotion of the clinics' business.
- 8. We shall ignore the fact that the 1st and 2nd Defendants were previous shareholders and that the 2nd Defendant was a previous director of the Company, as there was no evidence that the pamphlets and advertisements had been planned during the time of their shareholding or directorship.
- 9. As there is no evidence pointing to the Defendants' active involvement in the planning, distribution or placement of the pamphlets and newspaper advertisements, on the balance of probabilities we find that each of the Defendants were liable for the acts alleged in the respective charges involving

- the pamphlets and newspaper advertisements under the limb of failing to take adequate steps to prevent those acts.
- 10. It has been a long established principle in the medical profession that medical practice should not be promoted as a commercial activity. As is stated in the Professional Code and Conduct (2000 version), "practice promotion of doctors' medical services as if the provision of medical care were no more than a commercial activity is both likely to undermine public trust in the medical profession and, over time, to diminish the standard of medical care".
- 11. Comparative claims of superiority among doctors are often misleading and can unduly influence potential patients' choice of doctors. It will also lead to unbecoming rivalry among doctors and damage the reputation of the medical profession, which in turn will undermine public trust in the profession.
- 12. The Professional Code and Conduct provided for acceptable ways of dissemination of doctors' service information to the public, so as to enable members of the public to make an informed choice of which doctor to consult for medical treatment. It is the professional duty of doctors as members of the profession to comply with these provisions. There are various reasons for the provisions of the Code, including but not limited to ensuring that proper information is provided to the public, preventing unbecoming rivalry among doctors, not causing unnecessary public concern, not enticing the public into seeking unnecessary medical services, and not arousing unrealistic expectations.
- 13. The acts in question took place from August to November 2007. During that time the applicable provisions were section 5 of the new Code of Professional Conduct (which superseded paragraph 4 of the Professional Code and Conduct (2000 version)) promulgated in March 2006. Section 5 of the new Code was subsequently read down by the Court to the extent necessary to make it consistent with the freedom of expression guaranteed under the Basic Law. Therefore, the applicable provisions were set out in section 5 of the new Code subject to the Court's ruling.
- 14. We have considered each charge separately. Subject to our later comment on the charges in which "causing unnecessary public concern" is alleged, we are satisfied that the conduct of each Defendant in respect of each respective

charge has fallen below the standard expected amongst registered medical practitioners and constituted professional misconduct. We find each Defendant guilty of each respective charge.

- The element of "causing unnecessary public concern and arousing unrealistic expectations" is alleged in the following charges: charges (1) and (8) against the 1st Defendant, charges (1) and (8) against the 2nd Defendant, charge (7) against the 3rd Defendant, and charge (6) against the 4th Defendant. The statements which are alleged to have caused unnecessary public concern are "立體下巴·突顯輪廓·30分鐘無刀塑造" and "歲月絕對可以不留痕,您所需要的只是醫生的妙手". Concern stems from fear or worry, and expectation arises from hope or wish. The statements gave promises of improved appearance, but did not allude to or insinuate any undesirable health concerns. While we are satisfied that the statements aroused unrealistic expectations, we are not satisfied that they caused unnecessary public concern.
- 16. In conclusion, we find each Defendant guilty of each respective charge, subject to our finding on the element of "causing unnecessary public concern".
- 17. We wish to point out that section 5 of the new Code promulgated in 2006 has subsequently been relaxed and replaced by the Code of Professional Conduct (2009 version). While the Defendant's conduct should be judged according to the rules applicable at the time of the acts in question, even if the subsequently relaxed rules set out in the Code of Professional Conduct (2009 version) were applicable, we would have come to the same conclusion.

Sentencing

- 18. All 4 Defendants have a clear record.
- 19. We also give credit to the Defendants for their admission of all the factual allegations in the respective charges, in accordance with our policy published in the Practice Directions on Disciplinary Inquiries. In giving such credit, we have not lost sight of the fact that such admissions were not made during preliminary inquiry and in the previous inquiry which was aborted after 3 days of hearing owing to the fact that the inquiry could not continue because of the subsequent termination of office of a member of the original inquiry panel.

However, having regard to the fact that the Defendants have been under stress due to the inquiry for a lengthy period of time, we shall disregard the fact that they had contested the charges in the original inquiry.

- 20. We accept as mitigating factors the Defendants' clear record, their honest admission in this inquiry, and the length of time during which they have been under stress. Other than these, there are no mitigating factors of weight.
- 21. The acts in question took place from August to November 2007. In 2006, this Council issued a warning that in view of the rampant situation of contravening practice promotion future cases would be visited by removal from the General Register with suspension of the order, and in serious cases the removal would take immediate effect. The same warning has been repeated on many subsequent occasions. In the circumstances, those who commit contravening acts after the warning cannot expect to be given lenient sentences as those cases before the warning.
- 22. We must also bear in mind that the misconduct involved canvassing and the offering of discounts to potential patients. We have pointed out in previous cases that such acts are more serious than the ordinary type of practice promotion in that they may entice potential patients into seeking unnecessary medical services.
- 23. Having regard to the gravity of the case and the mitigating factors, we order that each Defendant's name be removed from the General Register for a period of 1 month. We further order that the removal orders be suspended for a period of 2 years, subject to the condition that the Defendants do not commit further disciplinary offences during the suspension period.

Other remark

24. We are informed that the 4 Defendants are still under employment by the same employer. We must advise the Defendants to be particularly careful in their future medical practice, and take decisive and effective action to ensure compliance with the Code of Professional Conduct. The influence of the employer cannot be an excuse for breaching the provisions of the Code, as it is the personal duty of every registered medical practitioner to comply with the Code.

25. The 4th Defendant's name is included in the Specialist Register under the specialty of "Emergency Medicine". While it is for the Education and Accreditation Committee to consider whether to take any action in respect of her specialist registration under section 20N of the Medical Registration Ordinance, we are of the tentative view that this case does not reflect adversely upon her suitability to remain on the Specialist Register.

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