

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Dates of hearing: 10 April 2013 (Day 1), 23 April 2013 (Day 2)

Defendant: Dr CHAN Hei Ling Helen (陳曦齡 醫生) (Reg. No.: M03088)

1. The charges against the Defendant, Dr CHAN Hei Ling Helen, are:-

“That:-

- (a) on or about 10 July 2006, she, being a registered medical practitioner, sanctioned, acquiesced in or failed to take adequate steps to prevent the use of the title of “Specialist in Paediatrics & Allergy” in her stationery, which was not acceptable to the Medical Council for use and was misleading to the public that she was a specialist in Paediatrics and/or allergy, when in fact her name was not included in the Specialist Register under either the specialty of “Paediatrics” or the specialty of “Immunology & Allergy”;
- (b) on or about 7 May 2007, she, being a registered medical practitioner, sanctioned, acquiesced in or failed to take adequate steps to prevent the use of the title of “Specialist in Paediatrics & Allergy” in her stationery, which was not acceptable to the Medical Council for use and was misleading to the public that she was a specialist in Paediatrics and/or allergy, when in fact her name was not included in the Specialist Register under either the specialty of “Paediatrics” or the specialty of “Immunology & Allergy”.

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

Facts of the case

2. The facts of the case are simple. Under the provisions of the Medical Registration Ordinance, only doctors whose names are included in the Specialist Register are entitled to use the title of “specialist”. The Defendant was not lawfully entitled to the specialist title, as her name has never been included in the Specialist Register.
3. However, the title “Specialist in Paediatrics & Allergy” was used in her stationery, as evidenced by an allergy test report dated 10 July 2006 and a facsimile cover sheet dated 7 May 2007, both signed and issued by the Defendant.

Findings of the Council

4. The evidence contained in the two documents is indisputable. The allergy test report was a printed form which the Defendant signed. The facsimile cover sheet was a printed form which the Defendant filled in by hand at various places and signed. In both documents, the title “***Specialist in Paediatrics & Allergy***” was printed in italics and bold print underneath the Defendant’s name and qualifications.
5. The Defendant admits that she was not lawfully entitled to use the specialist title, and that she had failed to take adequate steps to prevent the use of the specialist title on the two documents. She admitted that she failed to take adequate steps to prevent the use of the title of “Specialist in Paediatrics & Allergy”, but denied that she had either sanctioned or acquiesced in the use of the specialist title in her stationery.
6. The Defendant’s admission is sufficient for us to find her guilty of both charges on the least serious limb of “failing to take adequate steps to prevent”. Nevertheless, we have to determine whether the more serious limbs of “sanctioning” and “acquiescing in” have been proven to the required standard.
7. The Defendant’s case is that up to 2006 she was not aware that there was a Specialist Register, and that a doctor could not lawfully use the title of “specialist” unless his/her name was included in the Specialist Register. She did not even know that there was a title “specialist”. She claimed that she did not use the “specialist” title all along, as she understood that doctors could only use certain titles which did not include “specialist”. She was not aware that the two documents in question (i.e. the allergy test report and

- the facsimile cover) contained the title of “Specialist in Paediatrics & Allergy” until she was notified by the Police in 2010.
8. The Defendant’s explanation is that she had never given instruction for the title of “Specialist in Paediatrics & Allergy” to be used on her stationery. Despite having made enquiries, so far she is unable to find out how and why that title appeared in the two documents.
 9. She believes that the following was how the specialist title came to be used in the two documents:-
 - (a) In 1999 she joined the group practice which was a group of specialists. Most, if not all, doctors in the group were registered on the Specialist Register. She was invited to join because the group did not have a paediatrician or an allergist.
 - (b) In the group’s notepaper, the names of the doctors were set out at the bottom underneath their respective areas of practice, and her name was set out under paediatrics and allergy.
 - (c) The pool secretaries would create templates for each doctor containing the doctor’s name and details including his or her being a specialist in the respective area. The templates would be used for tailor-making documents for each doctor.
 - (d) One or more of the pool secretaries, not knowing that she was not being registered on the Specialist Register, erroneously created templates referring to her as “Specialist”. Such erroneous templates were saved on the computer.
 - (e) She did not spot the erroneous title because the pool secretaries had also created other templates for her which did not contain the title “Specialist”.
 - (f) When she started to have her own secretary in 2005, the secretary would retrieve the templates saved on the computer whenever the Defendant required them.
 - (g) In about 2006, a patient told her that he was unable to claim from his insurer reimbursement of her fee because she was not on the list of specialists. She asked another doctor in the group and found out that there was a Specialist Register. On 1 August 2006, she applied to the Medical Council for specialist registration.

- (h) When she issued the two documents in question (dated 10 July 2006 and 7 May 2007 respectively), she only checked the contents of the documents and did not notice that the specialist title was included.
10. In the Defendant's explanation, she referred to her previous conviction of professional misconduct. For the avoidance of doubt, we must point out that we have disregarded that matter in deciding on the present charges, as it is irrelevant to our consideration.
11. Before proceeding to make a decision on the charges, we have to point out that it is the professional duty of every doctor to acquaint himself/herself with the law and professional rules governing medical practice, in order to comply with those rules. We also have to point out that it is the professional duty of every doctor to ensure that the documents issued by him/her in connection with his/her medical practice do not contain inaccurate, misleading or false information.
12. The two Defence witnesses did not know exactly what happened in respect of the two documents in question. Furthermore, the clinic nurse's evidence that she had never heard of the specialist title being used in the clinic is in doubt, as the group is made up of predominantly specialists who use the specialist title widely.
13. In using the specialist title in her stationery when in law she was not entitled to do so, her conduct has clearly fallen below the standard expected amongst registered medical practitioners. We find her guilty of professional conduct on both charges. What follows is our finding as to whether she is guilty on the limb of "sanctioning", "acquiescing in" or "failing to take adequate steps to prevent".
14. Having considered all the evidence, we make the following findings:-
- (a) The Defendant has been in active practice all along since registration as a medical practitioner in 1977.
- (b) The template on the allergy test report and the template on the facsimile cover are two different templates, one containing the group's name and address and the other did not. The Defendant's name was also written differently in the two templates, one was entirely in capital letters and the other was not.
- (c) In both templates, the title "*Specialist in Paediatrics & Allergy*" was

prominently printed under the Defendant's name and qualifications. The title was highlighted by italic and bold printing. None of the other information in the templates was in italics or in bold printing.

- (d) The templates were retrieved whenever the Defendant required them. In the circumstances, the specialist title would appear in every document on which either of the two erroneous templates was used.
- (e) According to the Defendant, in 2006 several such reports were issued each day, which would involve a significant number of reports each month.
- (f) The Specialist Register was established in 1996. It was impossible that the Defendant was completely unaware of the Specialist Register and the specialist title until 2006 when being prompted by a patient, given that:-
 - (i) the Defendant has been actively practising in a group of predominantly (if not all) specialists since 1999;
 - (ii) according to her own admission, even the secretaries in the group were aware of the specialist title;
 - (iii) according to her own admission, the pool secretaries used the specialist title for all of the doctors in her group;
 - (iv) there were references to the Specialist Register and/or the specialist title in the Professional Code of Conduct issued in 2000 and the various Newsletters of the Council over the years which were sent to every registered medical practitioner.
- (g) Even assuming that the Defendant was unaware of the Specialist Register and the specialist title until 2006, upon being alerted by the patient she would have checked that her documents would not wrongly contain the specialist title, particularly given that the specialist title was being used widely for the doctors within the group.
- (h) When she applied for specialist registration on 1 August 2006, she was under a particular duty to check that all her documents did not wrongly contain the specialist title. By this time at the latest, she was fully aware that the specialist title was wrongly used on her stationery.
- (i) On 7 May 2007, having to go through the various places in the blank

facsimile cover sheet in order to fill in the blanks, the Defendant was aware of the specialist title printed prominently under her name. By proceeding to issue the facsimile, she sanctioned the use of the specialist title.

15. The Defendant claimed that she was very stupid in respect of the specialist title. We have great reservation in accepting such claim, as such claimed stupidity is inconsistent with her ability to acquire several professional fellowships and her impressive curriculum vitae. Nevertheless, giving her the greatest allowance of oversight, we find her guilty of Charge (a) on the limb of “failing to take adequate steps to prevent”.
16. In respect of Charge (b), we find her guilty on the limb of “sanctioning”.

Sentencing

17. The Defendant has a previous disciplinary record in October 2006, on a charge of public endorsement of a commercial brand of health related products. She was ordered to be reprimanded.
18. The previous conviction was in respect of promotion of products instead of promotion of the Defendant’s practice. However, we cannot ignore the fact that the Defendant committed the present disciplinary offences after she had been found guilty of professional misconduct in the previous case.
19. We shall give her credit in sentencing for her admission of the factual allegations. However, her admission of failing to take adequate steps is based on the premise that she had no knowledge of the offending title being used, contrary to our finding on Charge (b) that she knew and sanctioned the use of the title.
20. Defence Counsel submits that the use of the specialist title in the present circumstances did not involve any risk of misleading the public. We disagree. The erroneous templates containing the specialist title were created before the Defendant had her own secretary in 2005, and was kept on the computer at least up to 2006 (for the template with the group’s name and address) or 2007 (for the template without the group’s name and address). The specialist title would have appeared in every document on which one of those templates was used.
21. This is a case of practice promotion, for the reason that the unlawful use of the specialist title will promote the professional advantage of the Defendant.

Practice promotion need not be to the public, but also includes promotion to patients.

22. We fully agree with the following remark of Fok JA in the case of Ng Kin Wai v. The Dental Council of Hong Kong (CACV 194/2010):-

“The legislation has restricted the use of the title specialist to those whose names are included in the Specialist Register. Professional titles are important and members of the public are likely to rely on the expertise implied by those titles in choosing a dentist and submitting themselves to treatment by that dentist.”

23. The charges are about the use of the specialist title in the Defendant’s stationery, as evidenced by the two documents in question. According to the Defendant’s own version, the title would have appeared whenever the erroneous templates were used. It is irrelevant whether the Defendant actually benefitted from such practice promotion.

24. In June 2006, this Council issued a clear warning that future cases of practice promotion would be dealt with by removal from the General Register for a short period with suspension of the order, and in serious cases the removal would take immediate effect. The same warning has been repeated a number of times.

25. Defence Counsel urges us not to apply the warning. We see no reason not to apply the warning in sentencing, particularly in view of the fact that this is the Defendant’s second case of professional misconduct.

26. We bear in mind that the purpose of a disciplinary order is not to punish the Defendant, but to protect the public from persons who are unfit to practise medicine for reason of competence, honesty or otherwise, and to maintain public trust in the medical profession by upholding the reputation of the profession.

27. Having regard to the gravity of the case and the mitigating factors, we make the following global order in respect of both charges:-

(a) The Defendant’s name be removed from the General Register for a period of 1 month.

(b) The removal order be suspended for a period of 6 months, subject to the condition that the Defendant does not commit further disciplinary offences within the suspension period. If she

commits further disciplinary offences within the suspension period (irrespective of when she is found guilty of the further disciplinary offences), the suspended order is liable to be activated in part or in full.

28. We advise the Defendant to treasure the opportunity and take particular caution to ensure that she conducts her medical practice within the bounds of the rules of professional ethics, written and unwritten. Given that this is already her second disciplinary case, any further disciplinary offence will be treated more seriously.

Dr CHENG Chi Man

Temporary Chairman,
Medical Council of Hong Kong