

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

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**DISCIPLINARY INQUIRY**  
**MEDICAL REGISTRATION ORDINANCE, CAP. 161**

Defendant: Dr YEUNG Man Shun (楊文信醫生) (Reg. No.: M11696)

Date of hearing: 10 December 2019 (Tuesday)

Present at the hearing

Council Members/Assessors: Prof. Felice LIEH-MAK, GBS, CBE, JP  
(Chairperson of the Inquiry Panel)  
Dr HO Hung-kwong, Duncan  
Dr MAK Siu-king  
Mrs BIRCH LEE Suk-ye, Sandra, GBS, JP  
Mr WOO King-hang

Legal Adviser: Mr Edward SHUM

Defendant: Dr YEUNG Man Shun and he is not legally represented

Senior Government Counsel (Ag.) representing the Secretary: Miss Sanyi SHUM

1. The charges against the Defendant, Dr YEUNG Man Shun, are:

*First Case (MC 17/412)*

*“That in or about 2017, he, being a registered medical practitioner, sanctioned, acquiesced in or failed to take adequate steps to prevent:*

- (a) the display of signboards which exceeded the permissible sizes on street(s) and/or outside his clinic; and/or*
- (b) the promotion of beauty treatments and/or aesthetic products.*

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

Second Case (MC 18/314)

*“That he, being a registered medical practitioner was convicted at the Kwun Tong Magistrates’ Courts on 21 May 2018 of six counts of failing to keep register or records of a dangerous drug and three counts of failing to keep Register of Dangerous Drugs in the form specified in the First Schedule, which are offences punishable with imprisonment, contrary to Regulations 5(1)(a) and 5(7) Dangerous Drugs Regulations made under Dangerous Drugs Ordinance, Chapter 134, Laws of Hong Kong.”*

2. The name of the Defendant was at all material times and still is included in the General Register. His name has never been included in the Specialist Register.
3. Upon the direction of the Chairperson of the Inquiry Panel, inquiry into the above-mentioned disciplinary charges against the Defendant was consolidated into one pursuant to section 16 of the Medical Practitioners (Registration and Disciplinary Procedure) Regulation.

**Facts of the case**

**First Case (MC 17/412)**

4. The Defendant admits the factual particulars of the disciplinary charges against him in respect of the First Case.
5. Briefly stated, the Secretary received on 18 October 2017 an e-mail complaining the Defendant of practice promotion. Attached to this e-mail were colour photographs of huge signboards outside the Defendant’s clinic and on the street where the Defendant’s clinic was located depicting, amongst others, the Defendant’s medical practice under the name of “Holistic Medical Care Services Limited” and its name in Chinese. Also attached to this e-mail were colour photographs of a huge signboard outside the Defendant’s clinic depicting an advertisement for beauty treatments and/or aesthetic product(s) under the brand name of “CLEVIEL”.

6. There is no dispute that the sizes of all these signboards, which appeared on the colour photographs to be several times the size of a door, exceeded the size(s) permissible under Appendix A to the Code of Professional Conduct (2016 edition) [the “Code”].

### **Second Case (MC 18/314)**

7. The Defendant also admits the factual particulars of the disciplinary charge against him in respect of the Second Case.
8. Briefly stated, pharmacists from the Department of Health (“DH”) visited the Defendant’s clinic at Hung To Centre for dangerous drugs (“DD”) inspection on 20 October 2017.
9. There is no dispute that 3 types of DD, namely, Panbesy 30 mg x 376 capsules; Diazepam 2mg x 4,221 tablets; and Diazepam 5mg x 1,446 tablets were found.
10. However, those 3 types of DD were not kept inside a locked receptacle. Moreover, the DD Registers kept by the Defendant were found to be non-compliant with the statutory requirements under Schedule 1 to the Dangerous Drugs Regulations, Cap. 134A (the “DD Regulations”) in that:
  - (i) name(s) and address(es) of supplier(s) were missing;
  - (ii) quantity of DD received from supplier(s) were missing;
  - (iii) invoice number(s) were missing; and
  - (iv) balance(s) of DD were missing.
11. Subsequent investigation also revealed that the Defendant had failed to keep DD Registers in respect of receipt of supply of Duromine 15mg; Duromine 30mg and Redusa Forte 35mg during the period from 20 October 2015 to 20 October 2017 despite corresponding invoices were found by DH pharmacists in the Defendant’s clinic.
12. The Defendant was subsequently charged with six counts of the offence of “failing to keep register or records of a dangerous drug” and three counts of “failing to keep Register of Dangerous Drugs in the form specified in the First Schedule”, contrary to Regulations 5(1)(a) and 5(7) of the DD Regulations made under Dangerous Drugs Ordinance, Cap. 134.

13. The Defendant was convicted on his own plea of the aforesaid offences at the Kwun Tong Magistrates' Court on 21 May 2018 and was fined a total sum of \$22,500. By his solicitors' letter dated 24 May 2018, the Defendant reported his convictions to the Medical Council.
14. There is no dispute that the aforesaid offences are punishable with imprisonment.

### **Burden and Standard of Proof**

15. We bear in mind that the burden of proof is always on the Legal Officer and the Defendant does not have to prove his innocence. We also bear in mind that the standard of proof for disciplinary proceedings is the preponderance of probability. However, the more serious the act or omission alleged, the more inherently improbable must it be regarded. Therefore, the more inherently improbable it is regarded, the more compelling the evidence is required to prove it on the balance of probabilities.
16. There is no doubt that each of the allegations against the Defendant here is a serious one. Indeed, it is always a serious matter to accuse a registered medical practitioner of misconduct in a professional respect. Therefore, we need to look at all the evidence and to consider and determine each of the disciplinary charges against him separately and carefully.

### **Findings of the Inquiry Panel**

#### **First Case (MC 17/412)**

17. We gratefully adopt as our guiding principle the following statement of the law by Ma CJHC (as he then was) in *Kwok Hay Kwong v Medical Council of Hong Kong* [2008] 3 HKLRD 524 at 541-542:

“32. ... it is important also to recognize the following facets of advertising...

- (1) *The public interest as far as advertising is concerned lies in the provision of relevant material to enable informed choices to be made...*
- (2) *The provision of relevant material to enable informed choices to be made includes information about latest medical developments, services or treatments...*

33. *In contrast to these what may be called the advantages of advertising just highlighted, it is, however, also important to bear in mind the need to protect the public from the disadvantages of advertising. Misleading medical advertising must of course be guarded against. In Rocket v Royal College of Dental Surgeons (Ontario), McLachlin J referred (at p.81g) to the danger of “misleading the public or undercutting professionalism”. In Stambuck v Germany, the European Court of Human Rights said, “nevertheless, it [advertising] may sometimes be restricted, especially to prevent unfair competition and untruthful or misleading advertising”. There were references made in both cases to the need to limit commercialism to enable high standards of professionalism to be maintained.”*

18. In this connection, it is stipulated in the Code that:

“5.1.3 ... *Practice promotion of doctor’s medical services as if the provision of medical care were no more than a commercial activity is likely both to undermine public trust in the medical profession and, over time, to diminish the standard of medical care.*

...

5.2.1 *A doctor providing information to the public or his patients must comply with the principles set out below.*

...

5.2.1.2 *Such information must not:*

...

*(e) be used for commercial promotion of medical and health related products and services...;*

...

5.2.2 *Practice promotion*

...

5.2.2.1 *Practice promotion means publicity for promoting the professional services of a doctor, his practice or his group... Practice promotion in this context will be interpreted by the Council in its broadest sense, and includes any means by which a doctor or his practice is publicized, in Hong Kong*

*or elsewhere, by himself or anybody acting on his behalf or with his forbearance (including the failure to take adequate steps to prevent such publicity in circumstances which would call for caution), which objectively speaking constitutes promotion of his professional services, irrespective of whether he actually benefits from such publicity.*

...

#### 5.2.3.1 Signboards

*Signboards include any signs and notices exhibited by a doctor to identify his practice to the public.*

*Doctors in group practice may exhibit either their own individual signboards or a shared signboard. Both individual and shared signboards must comply with the requirements set out in Appendix A.”*

19. There is no dispute that the offending signboards exceeded the sizes permissible under Appendix A to the Code.
20. There is also no dispute that advertisement for beauty treatments and/or aesthetic products under the brand name of “CLEVIEL” were prominently displayed on a huge signboard outside the Defendant’s clinic. This left in our view the public with an impression that these beauty treatments and/or aesthetic products were actually endorsed by the Defendant.
21. The Defendant maintained that initially he was not involved in the installation of huge signboards of his medical practice on How Ming Street and outside his clinic at Hung To Centre. When he became aware of the offending signboards on 3 April 2017, he immediately informed the landlord and who, upon his request, had them removed on 5 April 2017.
22. However, the real point is that by renting the signboards on How Ming Street and outside his clinic at Hung To Centre, the Defendant was under a personal duty to ensure that the size(s) of the signboard(s) and information displayed on them albeit by somebody acting on his behalf or with his forbearance would be in compliance with the requirements of the Code and did not constitute unauthorized practice promotion.

23. In our view, the Defendant's conduct has fallen below the standards expected of registered medical practitioners in Hong Kong. Accordingly, we find him guilty of both the disciplinary charge in respect of the First Case.

### **Second Case (MC 18/314)**

24. There is no dispute that the offences for which the Defendant had been found guilty were punishable with imprisonment. By virtue of section 21(1) of the Medical Registration Ordinance, Cap. 161 ("MRO"), our disciplinary powers against the Defendant are engaged.

25. Section 21(3) of the MRO expressly provides that:

*"Nothing in this section shall be deemed to require an inquiry panel to inquire into the question whether the registered medical practitioner was properly convicted but the panel may consider any record of the case in which such conviction was recorded and any other evidence which may be available and is relevant as showing the nature and gravity of the offence."*

26. Moreover, the Defendant does not dispute the convictions against him. We are therefore entitled to take the aforesaid convictions as proven against the Defendant.
27. Accordingly, we also find the Defendant guilty of the disciplinary offence as charged in respect of the Second Case.

### **Sentencing**

28. The Defendant's name was removed from the General Register on 2 July 2008 for his failure to renew his practicing certificate for the year 2008 for over 6 months. He applied for restoration of his name to the General Register on 8 July 2008 but complaints had been received alleging him of misconduct in a professional respect while he was practicing medicine in Hong Kong. In the course of his application for restoration to the General Register, the Medical Council had taken into consideration the following outstanding complaints against him, namely that:

- (1) "He, being a registered medical practitioner, sanctioned, acquiesced in or failed to take adequate steps to prevent the distribution of a promotional leaflet relating to his practice in association with Brightway Medical Centre ( 皓朗醫務中心 ) at the following locations and on the following dates:

- (a) a commercial centre at the Butterfly Estate, Tuen Mun in or about July 2005;
  - (b) the entrance of the Melody Garden Estate in Wu Chui Road, Tuen Mun on 1 September 2005; and
  - (c) the entrance of the Melody Garden Estate in Wu Chui Road, Tuen Mun on 5 October 2005;”
- (2) “In or about July 2005 at a location near the Tuen Mun Pier he, being a registered medical practitioner, sanctioned, acquiesced in or failed to take adequate steps to prevent the distribution of a promotional leaflet relating to his practice in association with 皓朗醫務中心.”
29. The Medical Council was satisfied on the available evidence that the outstanding complaints against the Defendant had been substantiated. Having considered all the evidence in the round, the Council decided to allow his application for restoration to the General Register. His name was then included into the General Register on 14 November 2008. The Medical Council also warned the Defendant that the finding in the restoration hearing would be entered in his disciplinary record and be taken into account if he is found guilty of further disciplinary offences.
30. In accordance with our published policy, we shall give the Defendant credit for his frank admission to disciplinary charges in respect of the First Case. We shall also give the Defendant credit for his cooperation in that he did not contest the disciplinary charge in respect of the Second Case. However, given that there is hardly any room for dispute in a disciplinary case involving criminal conviction, the credit to be given to him must necessarily be of a lesser extent than in other cases.
31. We bear in mind that the purpose of a disciplinary order is not to punish the Defendant for the criminal offence for a second time but to protect the public from persons who are unfit to practice medicine and to maintain public confidence in the medical profession by upholding its high standards and good reputation.
32. In July 2006, the Medical Council issued a clear warning that all future cases of unauthorized practice promotion would be dealt with by removal from the General Register for a short period of time with suspension of operation of the removal order, and in serious cases the removal order would take immediate effect. The same warning was repeated in subsequent disciplinary decisions of the Medical Council.



33. We appreciate that the offending signboards were quickly removed. However, there is no reason why the Defendant did not know the sizes of the signboards he was renting. Bearing in mind his previous breach of the Code on practice promotion, the Defendant ought to have in our view a higher index of suspicion that the signboards might exceed the permissible sizes. The same is true in respect of the information displayed on the signboards.
34. Having considered the nature and gravity of the First Case and what we have heard in mitigation, we shall make a global order in respect of disciplinary charges (a) and (b) that the name of the Defendant be removed from the General Register for a period of 3 months and that the operation of the removal order be suspended for a period of 18 months.
35. Turning to the Second Case, we accept that there was nothing in the evidence to suggest that the Defendant prescribed DD to his patients improperly.
36. However, the Council has repeatedly emphasized the importance of proper record of DD in compliance with the statutory requirements. Medical practitioners being given the legal authority to supply DD must diligently discharge the corresponding responsibility to keep records in the prescribed form. As a matter of fact, the DD register is a simple form which can be filled in as a clerical exercise whenever drugs are received or dispensed, and there is nothing complicated about it. Any medical practitioner exercising proper care would have no difficulty at all in complying with the statutory requirements.
37. In our view, stringent control of DD is essential to avoid misuse and abuse. Failure to comply with the statutory requirements to keep proper DD Registers may jeopardize the monitoring system of DD by public officers.
38. In the recent years, all cases of failing to comply with the statutory requirements to keep proper DD registers have been dealt with by removal from the General Register, and in less serious cases the operation of the removal order would be suspended for a period with the condition of peer audit.
39. We accept that the Defendant has learnt his lesson. We are also told in mitigation that the Defendant is working as a part-time locum doctor. However, we need to ensure that the chance of his repeating the same or similar breach(es) should be low.

40. Having considered the nature and gravity of the Second Case and what we have heard in mitigation, we order in respect of the Second Case that the name of the Defendant be removed from the General Register for a period of 1 month and that the operation of the removal order be suspended for a period of 18 months on the condition that he shall complete during the suspension period satisfactory peer audit by a Practice Monitor to be appointed by the Council with the following terms:
- (a) the Practice Monitor shall conduct random audit of the Defendant's practice with particular regard to the keeping of dangerous drugs registers;
  - (b) the peer audit should be conducted without prior notice to the Defendant;
  - (c) the peer audit should be conducted at least once every 6 months during the suspension period;
  - (d) during the peer audit, the Practice Monitor should be given unrestricted access to all parts of the Defendant's clinic(s) and the relevant records which in the Practice Monitor's opinion is necessary for proper discharge of his duty;
  - (e) the Practice Monitor shall report directly to the Chairman of the Council the finding of his peer audit. Where any defects are detected, such defects should be reported to the Chairman of the Council as soon as practicable;
  - (f) in the event that the Defendant does not engage in active practice at any time during the suspension period, unless otherwise ordered by the Council, the peer audit shall automatically extend until the completion of 18-month suspension period; and
  - (g) in case of change of Practice Monitor at any time before the end of the 18-month suspension period, unless otherwise ordered by the Council, the peer audit shall automatically extend until another Practice Monitor is appointed to complete the remaining period of peer audit.
41. We further order that the above suspended removal orders to run concurrently, making a removal of 3 months from the General Register with suspension for 18 months.

Prof. Felice LIEH-MAK, GBS, CBE, JP  
Chairperson of the Inquiry Panel  
The Medical Council of Hong Kong