

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr WONG Tin Yau (黃天祐醫生) (Reg. No.: M09149)

Date of hearing: 14 May 2024 (Tuesday)

Present at the hearing

Council Members/Assessors: Dr CHOI Kin, Gabriel
(Chairperson of the Inquiry Panel)
Dr Pierre CHAN
Prof. SZETO Cheuk-chun
Mr WONG Hin-wing, Simon, MH
Mr NG Ting-shan

Legal Adviser: Mr Stanley NG

Defence Solicitor representing the Defendant: Miss Jennifer LEE of
Messrs. Mayer Brown

Government Counsel representing the Secretary: Miss Crystal WONG

The Defendant is not present.

1. The charge against the Defendant, Dr WONG Tin Yau, is:

“That in or about November 2020, he, being a registered medical practitioner, engaged in impermissible promotion of himself or his practice and/or claimed superiority over other doctors by sanctioning, acquiescing in or failing to take adequate steps to prevent the following statement(s) from being published in Issue 402 of the “Capital” magazine:

- (i) “好醫生黃天祐與 HIV 的不解緣”;
- (ii) “本文的主角黃天祐醫生(Andrew)，具備傳統好醫生的素質時，也有勇於創新、有冒險精神等新時代好醫生的特性。”;
- (iii) “Andrew 以事實證明，勇於嘗試，事事行前一步，才能開發藍海，成為新時代的好醫生。”;
- (iv) “曾擔任衛生署衛生防護中心感染控制處主任多年的 Andrew，現在開啟事業新的一頁，剛在香港私家醫療服務上發展，並計劃在大灣區複製香港防治愛滋病的模式，開創另一個新天地，貫徹 “do something new” 的信念。”

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

Facts of the case

- 2. The name of the Defendant has been included in the General Register from 20 September 1993 to the present. His name has been included in the Specialist Register under the Specialty of Infectious Disease since 2 August 2000.
- 3. Briefly stated, on 11 November 2022, the Medical Council received an email from an anonymous complainant, complaining that an article published in Capital Magazine (“the Article”) claimed that the Defendant was a good doctor and had superior quality, such contents amounting to impermissible practice promotion. A copy of the Article was attached to the email.
- 4. Another copy of the same Article is provided in the Secretary’s bundle, which shows that it was published in Capital Magazine (November 2020, Issue 402).

Burden and Standard of Proof

- 5. We bear in mind that the burden of proof is always on the Secretary 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.

6. There is no doubt that the allegation 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 the disciplinary charge against him carefully.

Findings of the Inquiry Panel

7. The Defendant admitted the factual particulars of the disciplinary charge against him except the element of “claiming superiority over other doctors”. However, it remains for us to consider and determine on the evidence whether the Defendant had by his conduct fallen below the standards expected of registered medical practitioners in Hong Kong.

8. It is stipulated in the Code of Professional Conduct (2016 edition) (“Code”) that:

“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:-

...

(b) be comparative with or claim superiority over other doctors;

...

(d) aim to solicit or canvass for patients;

...

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.

5.2.2.2 Practice promotion by individual doctors, or by anybody acting on their behalf or with their forbearance, to people who are not their patients is not permitted except to the extent allowed under section 5.2.3. ...”

9. The Article had two pages. An almost full-size photograph of the Defendant already took up all the space of one page. Superimposed on the photograph was the first row of words which read “好醫生黃天祐”. This first row of words was in the biggest font size, when comparing with the rest of the font sizes on the page. The Article had no other title. It was not hard for readers to view this first row of words which was in the biggest font size as the title or heading.
10. Immediately underneath was the second row containing these words “與 HIV 的不解緣”, which were printed in the second biggest font size.
11. Starting from the third row onwards were words printed in the smallest font size which read “美劇 (Good Doctor) 中的眾醫生性格各異，但全都是為病人康復而盡心盡力的好醫生。本文的主角黃天佑醫生 (Andrew)，具備傳統好醫生的質素時，也有勇於創新、有冒險精神等新時代好醫生的特性...”.
12. The second page was the content section. It first discussed the quality of a traditionally “good” doctor was to have benevolence, and went on to suggest that the Defendant was such type of a “good” doctor. It mentioned twice in the contents that the Defendant had the quality of a “good” doctor of the new generation (i.e. “從 Andrew 決定選擇以感染及傳染科作為專科，便可窺一二他具備新時代好醫生的特性”; “Andrew 以事實證明，勇於嘗試，事事行前一步，才能開發藍海，成為新時代的好醫生。”).
13. After some discussion on medical treatment of HIV patients, the Article then ended with these words: “曾擔任衛生署衛生防護中心感染控制處主任多年的 Andrew，現在開啟事業新的一頁，剛在香港私家醫療服務上發展，並計劃在大灣區複製香港防治愛滋病的模式，開創另一個新天地，貫徹 “do something new” 的信念。”

14. The Article referred to the Defendant as a “good” doctor numerous times, in the title or heading in big font size; in the passage referring him as one of those “good” doctors seen in American TV series; in the content section referring to him as having the traditional quality of a “good” doctor; mentioning twice that he was a “good” doctor of the new generation; and the mentioning at the end of the Article that he had just started his private practice.
15. The Article went at great length to praise the Defendant as a “good” doctor. The title and name of the Defendant was made known. The Article was certainly practice promotional, which was impermissible. Not only was the Defendant referred to as “good” doctor numerous times, the contents of the Article also suggested that the Defendant was the first doctor in Hong Kong who selected the field of infectious disease (“... 是當年第一個醫生選擇這個冷門的專科作專科培訓及考試...”). This might give some readers the impression that the Defendant was more superior over other doctors.
16. In the Defendant’s submission to the Preliminary Investigation Committee (“PIC”) of the Council, the Defendant explained how the Article came about. The Defendant said that he was first approached by Mr Edmond Lee (“Mr Lee”), the Senior Manager of the Business Development of Gilead (a pharmaceutical company), on 5 October 2020. Mr Lee knew that Capital Magazine wished to publish an article about medical treatment for HIV patients. Mr Lee therefore approached the Defendant to see if he would be willing to attend an interview with Capital Magazine. The interview took place on 12 October 2020 at the Defendant’s clinic. After the interview, Mr Lee sent the Defendant the draft article for his consideration on 20 October 2020. The Defendant then sent a revised draft to Mr Lee on 23 October 2020. Mr Lee then passed the revised draft to Capital Magazine. On or about 30 October 2020, the Defendant contacted Mr Lee as, on second thought, the Defendant wished to make changes to the revised draft to remove reference to the American TV series “The Good Doctor” because he was concerned that it might give readers the wrong impression that he was trying to promote himself, which was not his intention. Mr Lee confirmed that it was not the Defendant’s idea to make reference to “The Good Doctor” in the article, rather, it was Capital Magazine’s idea to make reference to the show as a tagline. Unfortunately, when Mr Lee enquired with Capital Magazine, he was told that no further changes could be made because the draft had already been sent to printer.

17. Even if it was true that the Defendant had tried to remove the reference in the Article to the American TV series of “The Good Doctor”, there still remained many other statements which had nothing to do with the American TV series, yet still referring to the Defendant as a “good” doctor. There was also a statement at the end suggesting that the Defendant had just started his private practice. The Defendant had reviewed and even revised the draft. The Defendant had knowledge of all these other statements.
18. We are satisfied that in or about November 2020, the Defendant had engaged in impermissible practice promotion by sanctioning, acquiescing in or failing to take adequate steps to prevent the publication of the offending promotional statements and/or claiming superiority over other doctors in the Article. The Defendant had in our view fallen below the standards expected of registered medical practitioners in Hong Kong. Accordingly, we find the Defendant guilty of misconduct in a professional respect as charged.

Sentencing

19. The Defendant has a clear disciplinary record.
20. In line with our published policy, we shall give the Defendant credit in sentencing for his frank admission and full cooperation throughout the disciplinary proceedings.
21. We bear in mind that the primary purpose of a disciplinary order is not to punish the Defendant but to protect the public from persons who are unfit to practise medicine and to maintain public confidence in the medical profession by upholding its high standards and good reputation.
22. In June 2006, the 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 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 Council.
23. We have considered the Defendant’s enrolment in CME courses. We are

drawn to our attention that the Defendant had on 30 March 2023 enrolled in a CME course on practice promotion.

24. We have also considered the character reference and appreciation letters as submitted, and the Defendant's contribution to the medical profession and the public.
25. The Defendant reassured us that he had learnt a hard lesson. Going forward, if he engages in any health education, he will always carefully review draft articles before publication to ensure there is no transgression of the Code. In case of doubt, he will seek legal advice before accepting any invitation for health education and approving any draft article. We are satisfied that the risk of re-offending is low.
26. Taking into consideration the nature and gravity of the disciplinary charge for which the Defendant is convicted and what we have heard and read in mitigation, we order that the Defendant's name be removed from the General Register for a period of 1 month; and the operation of the removal order be suspended for a period of 3 months.

Remark

27. The name of the Defendant is included in the Specialist Register under the Specialty of Infectious Disease. It is for the Education and Accreditation Committee to consider whether any action should be taken in respect of his specialist registration.

Dr CHOI Kin, Gabriel
Chairperson of the Inquiry Panel
The Medical Council of Hong Kong