



香港牙醫管理委員會
The Dental Council of Hong Kong

Disciplinary Inquiry under s.18 of DRO

Defendant: Dr NG Pui-ching 吳培精牙科醫生 (Reg. No. D03769)

Date of hearing: 5 October 2023

Present at the hearing

Council Members: Dr LEE Kin-man, JP (Chairman)
Prof LEUNG Wai-keung
Dr LIU Wai-ming, Haston
Dr TSANG Hin-kei, Century

Legal Adviser: Mr Stanley NG

Legal representative for the Defendant: Mr Chris HOWSE, Messrs Howse Williams, Solicitors

Legal Officer representing the Secretary: Miss Sanyi SHUM, Senior Government Counsel

The Charge

1. The charge against the Defendant, Dr NG Pui-ching, is as follows:-

“In or about October 2019, you, being a registered dentist, sanctioned, acquiesced in or failed to take adequate steps to prevent dissemination of promotional materials, namely toothpaste and pamphlets, under the name of “Joyful Smile Dental”, with which you had, whether directly or indirectly, a financial and/or professional relationship and/or association and such activity amounted to advertising and/or canvassing for the purpose of obtaining business and patients and that in relation to the facts alleged, you have been guilty of unprofessional conduct.”

Burden and Standard of Proof

2. The Council bears in mind that the burden of proof is always on the Legal Officer and the Defendant does not have to prove his innocence. The Council also bears 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.
3. 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 dentist of unprofessional conduct. Therefore, we need to look at all the evidence and to consider and determine the disciplinary charge against him carefully.

Unprofessional Conduct

4. According to section 18(2) of the Dentists Registration Ordinance, Cap. 156 (“DRO”), “unprofessional conduct” means an act or omission of a registered dentist which would be reasonably regarded as disgraceful or dishonourable by registered dentists of good repute and competency.

Facts of the Case

5. The name of the Defendant has been included in the General Register (“GR”) since 5 August 2008. His name has never been included in the Specialist Register.
6. A complaint made by [REDACTED] against the Defendant was received by the Dental Council on 7 November 2019. The complainant alleged, *inter alia*, that (i) on 29 October 2019, at 1:15 p.m. at No. 997 King’s Road, a clinic assistant of the Defendant’s clinic distributed toothpaste and promotional pamphlets to passers-by to give publicity to the opening of the Defendant’s new clinic (“Allegation 1”); and (ii) the Defendant placed promotional pamphlets outside his clinic at East Pavilion (“Allegation 2”). A copy of the pamphlet was enclosed.

Findings of Council

7. The Defendant admitted the factual particulars of the charge against him. However, it remains for us to consider and determine whether in respect of the charge the Defendant was guilty of unprofessional conduct.
8. The legal officer for the Secretary told us that her case relies on both Allegations 1 and 2, and the successful proof of Allegation 1 will make out the Charge. We note that the Defendant only admits to the factual particulars of Allegation 1. We will therefore only look at Allegation 1, but not Allegation 2.
9. There is no dispute that at all material times the Defendant was practising at a clinic under the name of “Joyful Smile Dental” with which he had a financial and professional relationship.

10. According to the Annual Returns of Exact Dental Limited (which on 1 April 2022 changed its name to Joyful Smile Dental Limited) produced by the legal officer, at all material times, the Defendant was both the sole director and shareholder of the company.
11. The pamphlet consists of the following contents:

[LOGO] Joyful Smile Dental
樂意牙科中心

國際洗牙日
洗牙 \$ 200 位 (名額有限)
30/10/2019 (三)

報名熱線: 2322 3296
Whatsapp: 5540 3266

地址: 香港英皇道 1010-1056 號東匯坊 LG 層 112 號舖
Shop No. 112, LG/F, East Pavilion,
No. 1010-1056 King's Road, Quarry Bay, HK

只供本診所病人傳閱

12. It is stipulated in the Code of Professional Discipline (July 2008 edition) ("Code") that:

"1.1 Principles of Good Communication and Accessible Information

1.1.3 *Persons seeking service for themselves or their families can be vulnerable to persuasive influence, and patients are entitled to protection from misleading advertisements. Promotion of dentist's services as if the provision of dental care were no more than a commercial activity is likely both to undermine public trust in the dental profession and, over time, to diminish the standard of dental care.*

...

1.2.3 Practice Promotion

1.2.3.1 *Practice promotion means publicity for promoting the professional services of a dentist, his dental practice or his group, which includes any means by which a dentist or his dental 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.*

1.2.3.2 *Practice promotion by individual dentists, or by anybody acting on their behalf or with their forbearance, to people who are not their patients must comply with section 1.3.*

...

1.5 *Unsolicited Visits or Telephone Calls*

Dentists' services may not be promoted by means of unsolicited visits, telephone calls, fax, electronic communications or publications by dentists or persons acting on their behalf or with their forebearance.

...

2. **CANVASSING**

2.1 *Canvassing for the purpose of obtaining patients, either by himself, his servants, agents or others whether directly or indirectly, and association with or employment by persons or organisations which canvass, may lead to disciplinary proceedings. Except in an emergency the Council does not consider it permissible for a dental practitioner to call upon or communicate with any person who is not already a patient of his practice with a view to providing advice or treatment unless expressly requested to do so by that person or by a parent or guardian of that person ..."*

13. The pamphlet shows the logo, name, contact telephone numbers and address of the Defendant's clinic. Scaling service was offered at HK\$200 per person, and it was said to be of limited numbers (i.e. "名額有限"). In our view, the pamphlets are nothing but coupons. The contents give readers the impression that the offer was a bargain and limited. Disseminating these coupon-like pamphlets is definitely promotional tactics treating dental service as if it is some kind of a commercial activity.
14. Although the pamphlet contains these words "For circulation among the clinic's patients only" (i.e. "只供本診所病人傳閱"), the complainant said that the pamphlets were distributed to passers-by on King's Road. The complainant also said that toothpaste was distributed. Clearly, the aim or purpose of distributing toothpaste and pamphlets was to advertise and/or canvass for businesses and patients, which is not allowed under the Code.
15. According to the Defendant's submission to the Preliminary Investigation Committee of the Dental Council dated 24 June 2022 ("PIC Submission"), at paragraph 4 thereof, the Defendant accepted that "*in or about October 2019, at the time that he was opening a clinic in Quarry Bay, promotional material namely toothpaste and pamphlets were provided to members of the public outside his clinic.*"
16. At paragraph 5 of the PIC Submission, the Defendant wrote "*[w]hilst it should be noted that this pamphlet was specifically stated to be for circulation amongst the clinic's patients only, [he] accepts that it is possible that copies of this pamphlet may have been given to members of the public when the toothpaste was handed out ...*".
17. Despite what the Defendant wrote at the said paragraph 5 that pamphlet "may have been given to members of the public", the Defendant clearly wrote at paragraph 8 of the PIC Submission the following: "*[f]inally, Dr Ng has asked us to make it clear to you that neither Dr Wong Kin nor Dr Cecilia Chan were aware that he intended to provide this promotional material to members of the public and they were certainly not involved in any way nor were they aware of*

the dissemination of this promotional material. Dr Ng wishes to accept full responsibility for the dissemination of the promotional material which took place on the basis that he is solely responsible for this activity.” This paragraph 8 shows that the Defendant had intention of the dissemination to the public.

18. We are satisfied that in or about October 2019, the Defendant had sanctioned, acquiesced in or failed to take adequate steps to prevent dissemination of promotional materials (i.e. toothpaste and pamphlets), which amounted to advertising and/or canvassing for the purpose of obtaining business and patients. The Defendant’s conduct had seriously fallen below the standard expected amongst registered dentists. It would be reasonably regarded as disgraceful and dishonourable by registered dentists of good repute and competency. We therefore find the Defendant guilty of the charge.

Sentencing

19. The Defendant has no previous disciplinary record.
20. We bear in mind that the purpose of a disciplinary order is not to punish the Defendant, but to protect the public and maintain public confidence in the dental profession.
21. The Defendant does not contest the charge at today’s inquiry. We will give the Defendant credit for his admission.
22. The gravamen of the offence committed by the Defendant was serious. The Defendant admitted that he intended to provide these coupon-like pamphlets to the public. The Defendant has been a registered dentist since 5 August 2008. He should be well aware that the profession prohibits these kinds of promotional tactics treating the provision of dental care as if it is some kind of a commercial activity. These kinds of promotional tactics undermine public trust and confidence in the dental profession. The pamphlet contains at the bottom these words “*For circulation among the clinic’s patients only*” (i.e. “只供本診所病人傳閱”). The Defendant took full responsibility of the contents of the pamphlet. Although there is no conclusive evidence to show that the Defendant knowingly breached the Code, given that these few words were included in the pamphlet, it is *prima facie* very likely that Defendant knew beforehand that he could not distribute these pamphlets to the public, yet he intended to distribute them to the public. If there is conclusive evidence to show that the Defendant knowingly breached the Code, we would have no hesitation but to make an order of removal of his name from the GR, with or without suspension. The Defendant is fortunate to know that there is no such conclusive evidence.
23. Having regard to the nature and gravity of the case and the mitigation submitted by the Defendant, the Council orders that the Defendant be reprimanded. Our order above shall be published in the Gazette.



Dr LEE Kin-man, JP
Chairman
The Dental Council of Hong Kong