

Inquiry of the Dental Council
Re: Dr. NG Kin-wai

Date of hearing: 5 August 2010

1. The Defendant, Dr. NG Kin-wai, is charged as follows:

“That he, being a registered dentist, in about October 2009, quoted on his visiting card the title of “Specialist in Community Dentistry 「社區牙科醫學專科醫生」” but his name was not included in the Specialist Register at the material time; and that in relation to the facts alleged he has been guilty of unprofessional conduct.”

2. The facts of the case are simple. The Defendant was and is not a specialist dentist. However, in October 2009, he used the title of “Specialist in Community Dentistry 「社區牙科醫學專科醫生」” on his visiting cards. In other words, he used a title which he was not entitled to use. On the evidence, these facts are indisputable.
3. The statutory register of specialist dentists, called the Specialist Register, was established on 30 November 2006. Upon establishment of the Specialist Register, only registered dentists whose names are on the Specialist Register are entitled to be known in the specialist title of “Specialist in the relevant specialty”, such as “Specialist in Orthodontics” and “Specialist in Endodontics”..
4. Before 30 November 2006, some registered dentists were given approval by the Dental Council to use specialist titles under an administrative scheme. However, such specialist titles under the administrative scheme were in the form of “Orthodontist”, “Endodontist”, and so on. The word “Specialist” never appeared in the specialist titles approved under the administrative scheme.
5. The administrative scheme came to an end upon establishment of the Specialist Register in November 2006. Registered dentists must apply in accordance with section 12B of the Dentists Registration Ordinance in order to be included in the Specialist Register. Before the application is approved and the dentist’s name is actually included in the Specialist Register, the applicant is not entitled to use the specialist title “Specialist in the relevant specialty”. In fact, it is a criminal offence punishable by 3 years of imprisonment for a person whose name is not on the Specialist Register to use any title implying that he is a specialist dentist. This reflects the gravity with which the legislature regards the unlawful use of the specialist title.
6. The facts are all admitted by the Defence. The defence raised by Defence Solicitor is that the Defendant was not aware of the need to apply for inclusion in the Specialist Register, and mistakenly believed that he was entitled to use the specialist title simply because he had applied for adding the qualification of “FCDSHK (Community Dentistry)” to his certificate of registration.
7. Defence Solicitor invited us to draw the inference that the Defendant simply made an honest mistake, relying on the written submission by Defence Solicitor to the Preliminary Investigation Committee in March 2010.
8. The Defendant chooses not to give oral evidence in the inquiry. That is his right, and we

shall not draw any adverse inference from his exercise of the right of silence. The significance of his not giving evidence is that there is no direct evidence of what he had in mind when he made the application for adding the “*extra qualification FCDHK (Community Dentistry) to his certificate*” in January 2008, and we can only draw an inference from the circumstantial evidence. Defence Solicitor rightly argued that it is not open for us to speculate what was in the Defendant’s mind when he made the application, and we could only draw an inference from the evidence. The submission to the Preliminary Investigation Committee, being a post facto explanation, is not evidence of weight for determining the Defendant’s understanding of the effect of the application.

9. It is the professional duty of every registered dentist to familiarize with the legislation governing the practice of dentistry and to comply with such statutory requirements. This is made clear in the pre-ambule of the Code of Professional Discipline. One of the most important legislation in relation to the practice of dentistry is the Dentists Registration Ordinance. Breach of the statutory requirements in some cases will constitute criminal offences.
10. On the other hand, breach of the statutory requirements is also a breach of a dentist’s professional duty, as a registered dentist cannot practise in violation of the legal requirements. It is no defence for a dentist to say that because he is ignorant of the law therefore it is excusable for him to engage in the unlawful conduct. That proposition involves failure of the dentist’s professional duty on two fronts: (i) failure to acquaint with the relevant legislation, and (ii) failure to ensure that he practises within the legal framework and not to engage in unlawful conduct. That cannot be right. Given the Council’s duty to regulate the professional conduct of registered dentists and to protect the public, we cannot condone unlawful conduct of registered dentists as acceptable conduct.
11. We are satisfied that the Defendant’s conduct in using a title which he was not entitled to use is conduct which would be reasonably regarded as disgraceful and dishonourable by registered dentists of good repute and competency. That alone is sufficient for us to find him guilty of unprofessional conduct as charged, and we so find.
12. For the sake of completeness, we wish to say that we do not accept that the Defendant made an honest mistake believing that he was entitled to use the specialist title. Firstly, his application in January 2008 was specifically stated as adding an extra qualification to his certificate. As he was not included in the Specialist Register, the only certificate that he had was the certificate of registration certifying that he was included in the General Register. Judging by all common sense, he could not have believed that by such application his name would automatically be included in the Specialist Register. Even if assuming that he honestly had such a belief, there was no reasonable ground for such belief.
13. Secondly, before the date of the present disciplinary offence, the Defendant was a member of the Specialty Board in Community Dentistry and also an examiner for the 2009 FCDSHK (Intermediate) Examination in Community Dentistry. In those positions he was expected to be familiar with the relevant legislation governing the practice of dentistry, in particular practice as a specialist dentist. If the Defendant were unaware of the relevant legal requirement, it would have been an insult to the profession, in particular the specialty of Community Dentistry, for a person who is completely ignorant of such obvious legal requirement on the use of the specialist title to be on the specialty board and the examiner of the specialty. We do not accept that he was unaware of the legal requirement.
14. Thirdly, the specialist title quoted by the Defendant is in a form which was not in

existence before the establishment of the Specialist Register. Judging from the fact that the specialist title he quoted was exactly in the recognized form after establishment of the Specialist Register instead of the previous form under the Council's administrative scheme which ended in November 2006, he must have been aware of the legislative change. It would be surprising that he selectively recognized the establishment of the Specialist Register but not the associated provisions for inclusion in the Specialist Register.

15. Fourthly, members of the dental profession have been reminded by the Council in June 2006 and October 2006 of the need to apply for inclusion in the Specialist Register. There was no reason for the Defendant to turn a blind eye to such reminders.
16. We do not think that an honest mistake of the legal requirement is an acceptable defence where the dentist's conduct involves failure of his professional duty to acquaint and comply with the legal requirement. Even if it is an acceptable defence, the honest mistake must have been based on reasonable grounds. In the present case, we find that the Defendant was not acting under an honest mistake. Even if he were acting under an honest mistake, there were no reasonable grounds for such mistake.
17. We have already stated that registered dentists of good repute and competency would reasonably regard the Defendant's conduct as disgraceful and dishonourable. We find him guilty of unprofessional conduct as charged.

Sentencing

18. The Defendant has a clear record. He has been involved in voluntary work. He has also taken remedial action after the complaint has been brought to his notice.
19. We will also give him credit for honest admission of the facts during preliminary investigation of the complaint and in this inquiry. Nevertheless, we must bear in mind that the issue of unprofessional conduct was strongly contested by the Defence.
20. Defence Solicitor argued that no one would have been misled by the use of the specialist title, given that it related to the specialty of "Community Dentistry". We disagree. The specialist title gave the misleading impression that the Defendant was in fact a specialist, and patients would be attracted to his practice. If the title was of no effect as argued by Defence Solicitor, we see no reason why he would have resorted to such unlawful use of the title and risk disciplinary proceedings against him.
21. This is the first case of this nature involving the use of specialist titles. We appreciate that there may be the wrong impression that it is a trivial matter of technical breach and thus not a matter of importance. While we give the Defendant the benefit of doubt that he may not appreciate the importance of such legal requirement and sentence on a more lenient approach, future offenders will not be entitled to the same benefit given that they have been warned of the importance of complying with the legal requirements, whether in respect of the specialist title or otherwise.
22. Having regard to the gravity of the case and the mitigating factors, we order that the Defendant be reprimanded. The order shall be published in the Gazette in accordance with section 18(6) of the Dentists Registration Ordinance.

Other remarks

23. We note that there are inaccurate matters in the reference letters submitted by the

Defence in support of mitigation. There is one issue in particular which we wish to address.

24. In the letter dated 28 July 2010 by Dr. Thomas Ip, it was stated that *“Dr. Ng explained carefully to me about his recent unfortunate event in processing his specialist’s registration. The omission of a declaration form of true copies of certificates was not his intention. I believe he tried his best to comply to all regulations set by both the Dental Council and the Academy of Medicine.”*
25. The truth is that before the time of the disciplinary offence the Defendant had never made any application for specialist registration. There was no question of omission of declaration form or true copies of certificates. The rules on specialist registration and specialist titles are stipulated by the law, not set by the Dental Council or the Academy of Medicine. The inaccuracies in the cited passage in Dr. Ip’s letter either showed that the Defendant had not told Dr. Ip the truth or that the Defendant is still not making the necessary efforts to familiarize with the legal requirements. Nevertheless, for the avoidance of doubt, we have not taken these matters into consideration in sentencing.
26. We also wish to take the opportunity to impress upon the Defendant the importance of a declaration before a Commissioner for Oath. The declaration made by him on 4 February 2010 in his application for specialist registration clearly contained matters which are untrue and inaccurate (including his registration number and that there was no disciplinary proceedings in progress against him), but the Defendant *“solemnly and sincerely declare that all information provided with the application is true and accurate to the best of his knowledge and belief”*. This shows that he is not making the declaration solemnly and sincerely as he avowed. Again for the avoidance of doubt, we have not taken this into consideration in both our finding on his guilt and sentencing. We draw his attention to this in the hope that he would not make the same mistake in future declarations.
27. We also wish to impress upon all registered dentists the importance of truth and accuracy of all information provided under declaration, as in processing many of the applications under the Dentist Registration Ordinance the Council will rely on the truth of information provided under declaration. The making of a false declaration is a criminal offence punishable by imprisonment, and may also constitute unprofessional conduct.



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Chairman
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