



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

**Disciplinary Inquiry under s.18 of DRO**

Defendant: Dr TONG Yat-him, Clement 唐逸謙牙科醫生 (Reg. No. D03608)

Date of hearing: 1 December 2016

1. The Defendant, Dr TONG Yat-him, Clement, is charged (as amended) of the following:

“In 2015, he, being a registered dentist –

- (i) sanctioned, acquiesced in or failed to take adequate steps to prevent the publication of a prize-awarding voting activity on the services provided by him in the internet and such activity amounted to advertising and/or canvassing for the purpose of obtaining business and patients; and/or
- (ii) sanctioned, acquiesced in or failed to take adequate steps to prevent the publication of photos, videos and/or other posts on his Facebook Page under the name of “唐逸謙牙科中心 Dr. Clement Tong Dental Centre” (or otherwise known as “康雅牙科中心 Conya Dental Centre”), which promoted his professional services;

and that in relation to the facts alleged, either singularly or cumulatively, he has been guilty of unprofessional conduct.”

**Facts of the Case**

2. On 13 April 2015, a Ms. [REDACTED] (“Ms. [REDACTED]”) filed a complaint via e-mail to the Council about the violation of the Council’s requirements on dissemination of information to the public by the Defendant’s feature page on Facebook named “Dr. Clement Tong Dental Centre” (“the Centre”) in respect of both its contents and layout.
3. Ms. [REDACTED] attached to her e-mail copies of screenshots of websites, which showed that the Centre hosted a dental photography voting contest under the name of “My Most Favourite

Dr. Clement Tong's Dental Services" ("the Voting Contest"). The screenshots also showed that the Voting Contest was organized and managed by a third-party activity platform named "Appro Solutions" ("Appro") with an internet link of <http://www.appro.com.hk> ("Appro's Link"). They also showed a number of dental photographs (12 in total) of which voters could cast votes and the voters would have the chance to win abundant prizes, and the 1<sup>st</sup>, 50<sup>th</sup>, 100<sup>th</sup>, 250<sup>th</sup>, 300<sup>th</sup>, 400<sup>th</sup>, 450<sup>th</sup>, 500<sup>th</sup>, 600<sup>th</sup>, 700<sup>th</sup>, 800<sup>th</sup>, 900<sup>th</sup>, 1000<sup>th</sup>, 1200<sup>th</sup>, 1400<sup>th</sup>, 1600<sup>th</sup>, 1800<sup>th</sup>, 2000<sup>th</sup> voter would win an electric toothbrush at \$850, on a first-come-first served basis. They also showed that voting had started and would end on 30 April 2015 at 24:00 hours, and winners would be announced on the Centre's Facebook page on 2 May 2015.

4. On 22 April 2015, the Council received a complaint letter dated 20 April 2015 from [REDACTED] ([REDACTED]) against the Defendant for unacceptable practice promotion and canvassing.
5. [REDACTED] enclosed in its letter *inter alia* copies of a number of pages printed out by a Mr. [REDACTED], from the Centre's Facebook page on 15 and 17 April 2015 ("the Centre's Facebook Pages"). From the Centre's Facebook Pages, it could be seen that they contained a large quantity of dental surgery photos, videos, photos of dental implant and periodontal disease treatment, excerpts of media coverage, commercial promotion for orthodontic products (Invisalign) and/or such other posts. They also contained information and promotion of the Voting Contest, and directed voters to click into the Appro's Link should they wish to vote.
6. [REDACTED] had made a Statutory Declaration. [REDACTED] stated that he had clicked into the Appro's Link, and it led him to the webpages of Appro. [REDACTED] printed out a number of pages from the webpages of Appro on 15 and 17 April 2015 ("the Appro's Webpages"). The company profile of Appro, as shown from the Appro's Webpages, stated that it provided innovative marketing solutions and guaranteed a boost in turnover for all industries by canvassing for voters online, and "no win, no fee". The Appro's Webpages also provided some examples, which included the Voting Contest of the Centre.
7. Messrs. Howse Williams Bowers, Solicitors representing the Defendant, had sent to the Preliminary Investigation Committee ("PIC") of the Council a letter dated 20 November 2015. According to this letter, the Defendant practised at clinics under the names of the "Dr. Clement Tong Dental Centre" and "Conya Dental Centre". Amongst other things, the Defendant accepted that the Voting Contest amounted to advertising or canvassing for obtaining business and patients and it was impermissible under the Council's Code of Professional Discipline for the Guidance of Dental Practitioners in Hong Kong ("Code"). The Defendant also admitted that he sanctioned, acquiesced in and failed to take adequate steps to prevent the publication of photos, videos and other posts on the Centre's Facebook Page which promoted his professional services.
8. At today's inquiry, the parties submitted to the Council their signed Statement of Agreed Facts dated 1 December 2016. Amongst other things, the Defendant admitted that in 2015, photos, videos and other posts were published on a Facebook page for the Defendant's practice under the name of the Centre. The contents of such posts were promotional of the Defendant's professional services. The Defendant admitted that he

had sanctioned, acquiesced in and failed to take adequate steps to prevent the publication of such posts on the said Facebook page. The Defendant also admitted that in or about April 2015, a prize-awarding voting activity (which was originally intended to end on 30 April 2015) on the services provided by the Defendant was published on the internet, which amounted to advertising or canvassing for obtaining business and patients for the Defendant. The Defendant admitted that he had failed to prevent the activity from taking place. The Defendant told the Council that he would not contest unprofessional conduct in respect of both charges (i) and (ii).

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

9. 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. This 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.
10. There are two charges against the Defendant. The Council needs to look at all the evidence and to consider and determine each of the charges separately.

### **Unprofessional Conduct**

11. 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.

### **Code**

12. The theme of the Code is the public interest, which is to protect the public and to maintain public confidence in the dental profession. The Council considers that sections 1 and 2 of the Code are relevant, in particular the following.
13. Section 1.1.3 emphasizes that 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 dentists’ 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.
14. Section 1.2.1 states that any information provided by a dentist to the public or his patients must be accurate, factual, objectively verifiable, and presented in a balanced manner (when referring to the efficacy of particular treatment, both the advantages and disadvantages should be set out).

15. Section 1.2.2 states that such information must not inter alia be exaggerated or misleading, aim to solicit or canvass for patients or be laudatory.
16. In section 1.2.3, 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, 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. 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.
17. In section 1.3.5, a dentist may publish his professional service information in his practice website, which may carry only the service information which is permitted on directories of dentists in electronic format under section 1.3.7. The same rules on directories of dentists in electronic format also apply to practice websites.
18. Section 1.3.7 states that the directory must comply with the guidelines set out in Appendix D, and a dentist who provides information for publication, or permits publication of such information, in the directory has a personal responsibility to ensure that the directory is in compliance with the guidelines.
19. In Appendix D, the permitted contents of directory are limited to all information permitted on signboards and stationery under sections 1.3 and 1.4, language(s) and dialect(s) spoken, dental services and procedures provided and range of fees, and availability of emergency service and emergency contact telephone number.
20. Section 2.1 states that 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.

## **Findings of Council**

### **Charge (i)**

21. Charge (i) is that the Defendant sanctioned, acquiesced in or failed to take adequate steps to prevent the publication of the Voting Contest, and such an activity amounted to advertising and/or canvassing for the purpose of obtaining business and patients.
22. The Council has set out in paragraphs 3 to 6 above background facts relating to the Voting Contest. The Council has no hesitation to hold that the Voting Contest was for the sole purpose of advertising and/or canvassing for the purpose of obtaining business and patients. In any event, the Defendant admits that the Voting Contest amounted to advertising or canvassing for obtaining business and patients for the Defendant. The Defendant further admits that he had failed to prevent the Voting Contest from taking place.

23. The Council is satisfied that the Defendant's conduct was seriously below the standard expected amongst registered dentists. It would be regarded as disgraceful and dishonourable by registered dentists of good repute and competency.
24. The Council therefore finds the Defendant guilty of charge (i).

Charge (ii)

25. Charge (ii) is that the Defendant sanctioned, acquiesced in or failed to take adequate steps to prevent the publication of photos, videos and/or other posts in the Centre's Facebook page which promoted his professional services.
26. From the Centre's Facebook Pages, there were a number of such posts of photos, videos and/or other posts. For example:
- (i) There was a post on "9 March", with the following statement "Dr. Clement Tong Dental Centre provides dental implant treatment. Dental implant treatment should be performed as soon as possible after extraction in order to avoid affecting the growth of other teeth".
  - (ii) There was another post on "15 Dec 2014" with the following statement "Christmas is only ten days away! Are you ready for a party? How to make yourself the focal point of the whole party? Apart from beautiful appearance and clothing that may attract people's attention, a fascinating smile will also leave a good impression. Have you had scaling and polishing this year yet? If your teeth are not white enough after the last scaling, why not take the chance to have a bleaching treatment during the holiday?" [original Chinese version of the last sentence is "...如果洗完都唔夠白，仲唔快D趁假日前來漂牙?"]
27. According to section 1.2.1 of the Code, information provided by a dentist must be presented in a balanced manner, and both advantages and disadvantages of the efficacy of particular treatment must be set out. The Council considers that the aforesaid posts were not presented in any balanced manner and consisted of very little to no information to educate the public, and the main thrust of which was mainly to invite the viewers to consult the Defendant. There were a number of other similar publications throughout the Centre's Facebook Pages. The Council has no hesitation that these publications were aiming at soliciting or canvassing for patients. In any event, the Defendant also admits that the contents of these posts were promotional of the Defendant's professional services. The Defendant also admits that he sanctioned, acquiesced in and failed to take adequate steps to prevent the publication of such posts on the Centre's Facebook Page.
28. The Defendant's conduct was seriously below the standard expected amongst registered dentists. It would be regarded as disgraceful and dishonourable by registered dentists of good repute and competency.

29. The Council therefore finds the Defendant guilty of charge (ii).

**Sentencing**

30. The Defendant has a clear record.

31. The Defendant admitted to the charges at the earliest opportunity when he replied to the PIC in November 2015.

32. The Defendant does not contest unprofessional conduct in respect of both charges (i) and (ii) at today's inquiry.

33. The Council accepts the above as mitigating factors.

34. The Council bears 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.

35. The Council takes a serious view that canvassing and advertisements through these types of electronic social media might lead to damaging consequences if the information so provided are inaccurate, non-factual, objectively non-verifiable, not presented in a balanced manner, exaggerated or misleading. These types of promotion are pervasive and would reach a large number of the public at high speed. More importantly, contents once posted might not be retrievable and/or deleted.

36. Having regard to the gravity of the case, the Council makes the following orders:-  
(a) In respect of charge (i), the Defendant be reprimanded.  
(b) In respect of charge (ii), the Defendant be reprimanded.  
(c) The orders above shall be published in the Gazette.



Dr LEE Kin Man  
Chairman  
The Dental Council of Hong Kong