

Inquiry of the Dental Council

Defendant: Dr YOU Soon-hua, Daisy

Date of hearing : 4 August 2011

1. The Defendant, Dr. YOU Soon-hua, Daisy, is charged as follows:-

Charge A

“You, being a registered dentist, in or about December 2008, canvassed for the purpose of obtaining patients by sanctioning, or conniving at, or failing to take adequate steps to prevent the publication in the “am730” on 9 December 2008 of an article or advertisement which promoted the computer guided dental implant surgery provided by your dental practice; and that in relation to the facts alleged you have been guilty of unprofessional conduct.”

Charge B

“You, being a registered dentist, sanctioned, acquiesced in or failed to take adequate steps to prevent the publication of an article in the “壹蘋果健康網 hk.health.nextmedia.com” on 7 January 2009 which contains materials constituting self-advertising, canvassing or publicity to enhance or promote professional reputation for the purpose of attracting patients; and that in relation to the facts alleged you have been guilty of unprofessional conduct”

Facts of the case

2. Charge A is in respect of an article (“Article A”) published in the 9 December 2008 issue of a newspaper by the name “am730”. It is a newspaper distributed free of charge to the general public, which has an “audited average daily distribution of 300,300 copies for the period 1/7/2008 – 30/9/2008”, as stated underneath the heading of the newspaper on the front page.
3. Charge B is in respect of an article (“Article B”) published on 7 January 2009 in a website called “壹蘋果健康網”. It is public knowledge that the general public has unrestricted access to the website.

Council’s findings

4. The Defendant is absent from the inquiry, but is represented by her solicitor. We shall draw no adverse inference from her absence.
5. The Defence has not adduced any evidence as to whether the Defendant was involved in the publication of the two articles. Nevertheless, it remains our duty to determine, on the basis of the evidence, whether the Defendant was involved in the publication of the two articles.

Charge A

6. Article A is a full page article in the newspaper. The whole of Article A is enclosed by a blue and black border. This suggests that all information within the enclosure is part of the same article.
7. Two photographs of the Defendant are published in the article. Judging from the contents of the article, it is clear that the clinical photographs were also provided by the Defendant.
8. The addresses and contact information (including telephone and facsimile numbers) of the two clinics of the Defendant and the various dental services provided by the Defendant, and a photograph of the Defendant's clinic, are set out at the lower part of the article. To the left of such information is a message by the Defendant urging the children of elderly parents to show their filial piety by paying for computer guided dental implant surgery for their parents. This lower part of the article is clearly an advertisement promoting the Defendant's dental services. The only reasonable inference is that the advertisement was placed by the Defendant, and the contents of the article were provided to the newspaper by the Defendant for publication in the advertisement.
9. We find that the main body of Article A is not independent from, but is part and parcel of, the advertisement placed by the Defendant, as the whole article is enclosed by the border and the contents are all related to the Defendant's dental services.
10. Given our finding that Article A was an advertisement placed by the Defendant, it follows that the Defendant sanctioned the publication of the article.
11. Despite our finding that Article A is an advertisement, we have to consider whether it is an article for dental health education as Defence Solicitor claims.
12. Section 1.6 of the Code of Professional Discipline (July 2008 version) sets out the salient elements of bone fide dental/oral health education activities, i.e., objectively verifiable, presented in a balanced manner, without exaggeration of the positive aspects or omission of the significant negative aspects. The published materials should not encourage the readers to seek consultation from the dentist concerned, and should not be presented for the purpose of furthering the professional interests of the dentist concerned.
13. Put simply, public health education should present both the pros and cons of the treatment. The dentist should not seek to persuade the readers to undergo the treatment concerned, let alone treatment by the dentist concerned.
14. Article A is a one-sided claim of the benefits of the "computer guided dental implant surgery" provided by the Defendant, with no mention of the negative aspects including the significant risks and complications involved. It is not a neutral presentation of the clinical indications for the treatment, but an active encouragement to undergo treatment by the Defendant.
15. Giving the article a natural and ordinary interpretation, we find that Article A is an article purely for commercial promotion of the Defendant's dental services, but not an article for

public health education. The seemingly clinical information about the treatment is only an advertising tactic to induce readers into believing that the treatment is more favourable than other treatments. It is a sales message, not an educational article.

16. It is a long established rule of professional ethics in the profession that canvassing for patients by deliberate solicitation for business is prohibited. Section 2.1 of the Code also makes it clear that canvassing for patients is not permitted. The Defence accepts that canvassing is not a permissible practice.
17. The only purpose and effect of the advertisement is to canvass for patients to the dental services provided by the Defendant.
18. We are satisfied that the Defendant's conduct in canvassing for patients by publishing the advertisement is conduct which registered dentists of good repute and competency would regard as disgraceful and dishonourable.
19. In the circumstances, we find the Defendant guilty of unprofessional conduct as set out in Charge A.

Charge B

20. As to Charge B, the Defence Solicitor has not made any submission at all. For reasons we shall set out below, it is understandable that the Defence Solicitor adopts this approach. Nevertheless, there is no admission by the Defence as to the charge.
21. Bearing in mind the burden on the Legal Officer to prove the charge against the Defendant, we have to consider whether the facts alleged are proven to the required standard, and whether the proven facts constitute unprofessional conduct.
22. In Article B, the whole article is full of praises for the care and concern of the Defendant towards her patients, and the unique way she seeks to attract patients to her services (e.g. how she makes her patients comfortable in the dental chair, suggesting them to listen to music through iPods during the treatment, introducing the new technology of "computer guided minimally invasive implant surgery", providing personal services similar to caring restaurant waiters). The article also impliedly suggested that a famous actress could be her patient.
23. In the article there are five photographs of the Defendant, one of which is the photograph of the Defendant's family members. There were also the addresses and telephone numbers of the two clinics of the Defendant. All these information must have been provided by the Defendant for the purpose of publication. In the circumstances, we find that the Defendant sanctioned the publication of Article B for the purpose of canvassing for patients.
24. According to the Defendant's submission to the Preliminary Investigation Committee, the Defendant had not given consent for publication of the article, and she was totally unaware that the article had been published at all until she received the letter from the Secretary inviting her to submit explanation of her conduct. It also enclosed an email showing that she had requested the media company to remove the article from the website.

25. We do not accept at all that the Defendant had not given consent for, and was not aware of, the publication of Article B. In her email to the media company issued more than one month after the Secretary's letter to her (and two years after Article B was and continued to be published from 7 January 2009 onwards), she referred to "*the feature interview on 7 January 2009*". The only purpose of having a feature interview by a media company is to publish the contents of the interview in the company's media (i.e. the website in the present case). The Defendant must have provided the photographs to the reporter for the purpose of publication. The article could not have been published without her consent. She could not have been unaware of the publication of the article.
26. For the avoidance of doubt, Article B is in no way an article for public health education. We believe that is the reason why the Defence Solicitor made no submission on Charge B at all.
27. We are satisfied that the Defendant's conduct in canvassing for patients by sanctioning publication of the article is conduct which registered dentists of good repute and competency would regard as disgraceful and dishonourable.
28. In the circumstances, we find the Defendant guilty of unprofessional conduct as set out in Charge B.

Sentencing

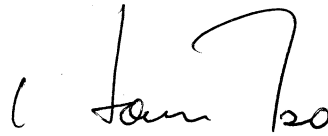
29. The Defendant has a clear record. We take note that she has performed some community service.
30. The two unprofessional acts were committed less than one month apart. This shows some degree of organized canvassing.
31. Having regard to the gravity of the case, and giving allowance for the fact that she has a clear record, we order that the Defendant be reprimanded in respect of each charge. In accordance with section 18(5) of the Dentists Registration Ordinance, the order shall be published in the Gazette.

Other remarks

32. After the Court of appeal's ruling in the case of *Dr Kwok Hay Kwong* (CACV 373/2006) in respect of public health education, some dentists have been resorting to advertising under the disguise of public health education. We must send a clear message to the profession that such disguised advertising will not be tolerated.
33. The Court of Appeal made it clear that public education being used as a shambolic cloak to disguise blatant advertising does not come within the ambit of freedom of expression in bona fide public health education.
34. As is illustrated in the present case, many advertisers include in their advertisements some apparently educational information in order to disguise the true nature of the

advertisements. Such information is not bona fide public health education. Quite the reverse of promotional information incidental to public health education (which is acceptable), at most such information can only be incidental to the promotional advertisement (which is not acceptable). In deciding on whether an article is bona fide public health education, we will look to the true nature of the article.

35. While the constitutionality of the provisions of the Code on public health education and canvassing (i.e. section 1.6 and 2) are irrelevant in the present case, we wish to point out that these provisions have been revised having regard to the Court of Appeal's decision in CACV 373/2006.

A handwritten signature in black ink, appearing to read "Homer Tso". The signature is written in a cursive style with a large, sweeping flourish at the end.

Dr. Homer Tso, SBS, JP
Chairman, Dental Council