

Chiropractors Council
Disciplinary inquiry by Inquiry Committee

Respondent: Dr. SHIU Lik Chi Alex

Date of hearing: 30 November 2010, 29 December 2010

1. The Respondent, Dr. SHIU Lik Chi Alex, is charged as follows:-

“You, being a registered chiropractor, in or about October 2007-

- (a) sanctioned, acquiesced in or failed to take adequate steps to prevent the use on your business card of a description of a professional status which you no longer possessed, namely, that you were a registered chiropractor in the United States of America;
- (b) sanctioned, acquiesced in or failed to take adequate steps to prevent the use in your website at “<http://www.drcare.org/consult.htm>” of a description of a professional status which you no longer possessed, namely, that you were a registered chiropractor in the United States of America;
- (c) sanctioned, acquiesced in or failed to take adequate steps to prevent publication in your website at “<http://www.drcare.org/consult.htm>” of the following unapproved descriptions of you, namely, ‘美國特許運動醫學脊醫’, ‘美國西密芝根大學體育碩士’, ‘國立臺灣師範大學體育學士’, ‘國際康體專業學院院長’, ‘香港執業脊醫協會執行委員’, ‘香港運動醫學脊醫學會副會長’, ‘聖約翰講師聯會醫務顧問’, ‘香港手力急救協會醫務顧問’, and ‘國際跆拳道聯盟香港地區總部醫務顧問’;

and in relation to the facts alleged, either individually or cumulatively, you have been guilty of misconduct in a professional respect.”

Application for recusal of 2 members of Inquiry Committee

2. At the beginning of the inquiry, Respondent’s Counsel applied for recusal of 2 members of this Inquiry Committee. The ground for the application was that there

was apparent bias for the 2 members to adjudicate in the inquiry, as the Respondent had on 19 November 2010 made complaints against the 2 members in respect of similar subject matters which the Respondent himself is facing in this inquiry. The Respondent's argument was that owing to the complaints, the 2 members would be biased either in favour of the Respondent in order to protect themselves in respect of the complaints they may face, or against the Respondent in order to take revenge on the Respondent for making the complaints against them. Having considered the application according to the "reasonable apprehension of bias test" set out in the case of *Deacons v. White & Case* [2004], the Committee rejected the application for the reason that a fair-minded and informed observer would not conclude that there is a real danger or real possibility that either of the 2 members is biased, either against or in favour of the Respondent.

3. We must emphasize that members of the Inquiry Committee are servants of the law, in the sense that they are under a duty to adjudicate on the case by applying the ethical rules set out by the Chiropractors Council rather than their own personal views. Although individual members may have their personal views on the pros and cons of the ethical rules, they are required to apply the rules in an objective manner.
4. On the other hand, the Respondent lodged complaints against the 2 members shortly (i.e. 11 days) before the inquiry. This is obviously a calculated and artificial maneuver by the Respondent to create a basis for his application for recusal. It is against the spirit of adjudication by an independent and impartial tribunal to allow a Respondent to manipulate the membership of the Committee by such artificial maneuver.
5. For the avoidance of doubt, we shall not hold this against the Respondent in adjudicating on the charges. We shall put this matter aside and adjudicate only on the basis of the evidence to be adduced in the inquiry.

Charges (a) and (b)

6. In his business card and his practice website, the Respondent quoted the title of "美國註冊脊醫" meaning "registered chiropractor in the United States of America". The truth is that he was a licensed chiropractor in the state of California of the United States of America ("USA") from 11 September 1998 to 31 January

2002. Upon expiry of his license on 31 January 2002, he lost his right to practise in California. In other words, he was and is no longer a registered chiropractor in the United States after that date. Nevertheless, he continued to quote that title in his business card and his practice website despite the fact that he no longer possessed that licensed status.

7. In USA, chiropractors are required to be licensed by a state in order to practise in that state. Passing Parts I and II of the National Board examinations is the precondition for applying for practice licenses in individual states. Individual states will also have other additional requirements. For California, the additional requirements are passing Parts III and IV and Physiotherapy of the National Board examinations. Regular renewal of the license is required, and will only be granted upon payment of a fee and proof of completion of a course of continuing education.
8. According to the California Board of Chiropractic Examiners, persons not holding an active chiropractic license are prohibited from practising chiropractic. They are also prohibited from using the descriptions of “doctor”, “chiropractor”, or the prefix “Dr.” or the suffix “D.C.”. Failure to comply with the regulation is a violation of the Chiropractic Initiative Act.
9. The Respondent argued that because he is qualified to apply for a chiropractic license, he is entitled to use the description of “registered chiropractor in USA”. Furthermore, there is only licensure but not registration in USA. Therefore, there was nothing to prevent him from claiming that he was a registered chiropractor in USA.
10. In the absence of “registration” in USA, we must give a plain and ordinary interpretation to the description quoted by the Respondent. For all intents and purposes, it means that he is a person having the right to practise chiropractic in USA. As his practice license had expired in 2002, he can no longer quote such description. To do so is to falsely represent to the public that he is still entitled to practise chiropractic in USA. Such conduct is improper and is definitely below the conduct expected among registered chiropractors.
11. In his written representation to the Preliminary Investigation Committee, the Respondent admitted that he was “*no longer a registered chiropractor in the California State of U.S.*” and he had forgotten to amend the website and the

business card. He said that it was his unintentional and careless mistake, and sincerely apologized as it was his fault. He clearly accepted that it was improper for him to use that description.

12. Although a copy of the Respondent's business card at the relevant time was not available, there is circumstantial evidence of the Respondent having quoted the description in his business card, including his admission to the allegation set out in the Notice of Meeting of the Preliminary Investigation Committee, the description of “美國註冊脊醫” which was quoted in his practice website, and the fact that an identical allegation was made in respect of the website and the business card. In the circumstances, we are satisfied that the Respondent had quoted the description of “美國註冊脊醫” in his business card in October 2007.
13. We are satisfied that the Respondent had quoted the description of “美國註冊脊醫” in both his business card and his practice website at a time when he did not possess that professional status. We are satisfied that this is conduct below the standard expected amongst registered chiropractors, and such conduct constitutes professional misconduct. We find him guilty of charges (a) and (b).

Charge (c)

14. The Respondent quoted in his practice website various titles and qualifications which were unapproved. He admitted that he provided all those information to his website designer to be published in the website. In the circumstances, he sanctioned the publication of those descriptions.
15. The titles and qualifications had not been approved by the Chiropractors Council for publication in signboards and stationery of registered chiropractors. Nor had the Respondent applied to the Chiropractors Council for approval to publish such titles and qualifications.
16. On 6 October 2009, the Respondent was notified of the complaint about his using those titles and qualifications. Shortly afterwards, on 14 November 2009, he made an application to the Chiropractors Council for approval to use 11 descriptions, including 6 of the 9 titles/qualifications in question.
17. Section 3.10 of the Code of Practice warns chiropractors against the use of

descriptive wording which indicates or implies superiority, unless such descriptions have been specifically accepted by the Chiropractors Council. Reference to unapproved titles, qualifications, etc. which are not approved for use on signboards and stationery etc. may amount to misconduct.

18. The requirement for regulating the use of titles, qualifications and other descriptions is to prevent the public from being misled and to ensure that only descriptions which will properly facilitate the public in making an informed choice of chiropractor will be quoted in connection with a chiropractor's professional practice. The descriptions should be approved by the Chiropractors Council, either generally (as those set out in section 3.7 of the Code) or specifically on application by individual chiropractors. Upon application, the Council will ensure that training leading to the qualification meets the required standard and quality and that it is relevant to the practice of chiropractic before approving use of the qualification.
19. While we have no information on the nature of the positions or training leading to those descriptions in question, prima facie the majority of the descriptions are of no direct relevance to the practice of chiropractic. Nevertheless, the standard of those descriptions and their relevance to the practice of chiropractic are not matters for this Committee to decide, but are matters to be considered by the Chiropractors Council if an application for their use is made.
20. We are aware of the right to freedom of expression and the requirement of proportionality on any restrictions on the right. We are of the view that the requirement for obtaining approval from the Chiropractors Council is proportionate to the objective of protecting the public from being misled and to facilitate an informed choice of chiropractor.
21. Respondent's Counsel argues that the Respondent was not familiar with the provisions of the Code and was misled by the practice of some other chiropractor to believe that he was entitled to use those descriptions. It is the professional duty of every registered chiropractor to familiarize himself with the rules of professional conduct including the Code. Failure to do so is a breach of that professional responsibility, and cannot be claimed as a defence.
22. We are satisfied that the Respondent sanctioned the publication of the 9 descriptions in question in his practice website and the descriptions had not been

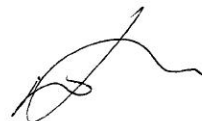
approved by the Chiropractors Council. Every registered chiropractor is required to comply with the provisions of the Code. The Respondent's conduct has fallen below the standard expected amongst registered chiropractors, and constitutes professional misconduct. We find him guilty of charge (c).

Sentencing

23. The Respondent has a clear record.
24. We accept that there is no evidence that any patient has been harmed or misled by the publication of the descriptions in question. Nevertheless, we must emphasize that the requirement for approval is to prevent such harm, and by publishing unapproved descriptions there is always the potential of misleading the public.
25. There is evidence that the Respondent has taken prompt action to remove the offending descriptions from his business card and his practice website.
26. We also accept that he had been licensed in California, and that his license ceased to have effect by expiry but not revocation.
27. While he may be apologetic in his written representation to the Preliminary Investigation Committee, his approach took a radical change when the case proceeded to inquiry. For example, despite his clear admission of using the description of “美國註冊脊醫” in his business card, he strenuously contested charge (a) on the basis that there was no evidence of his using such description in his business card. That approach certainly militates against the mitigation of remorse. Nevertheless, we are prepared to give him an opportunity to improve himself in his professional conduct.
28. Having regard to the fact that the case is of relatively low gravity and the mitigating factors, we make an order that a warning letter be served on the Respondent.

Other remarks

29. While it is a matter to be considered by the Chiropractors Council as to whether to publish the order in other publication or manner in addition to the mandatory publication in one English and one Chinese newspaper, we do not make any recommendation for further publication in addition to the mandatory publication.
30. We mentioned earlier that the Respondent has attempted to manipulate the membership of the Inquiry Committee by artificially lodging complaints against the members shortly before the inquiry. In fact, before lodging the complaints the Respondent's solicitors demanded the members concerned to withdraw from adjudicating in the inquiry and threatened to lodge complaints against them. Although this is not a matter for consideration in the inquiry, we must say that such threatening behaviour is improper conduct of the solicitors. If the Respondent sanctioned or acquiesced in the improper tactic, it would also constitute conduct unbecoming of registered chiropractors. Chiropractors must approach disciplinary inquiries with integrity, and must not resort to improper tactics to obstruct the conduct of the inquiry.
31. As we have said earlier, this matter had not affected our finding on the charges and the sentence. We advise the Respondent to treasure the opportunity we have given him and refrain from further misconduct.



Dr. Wilkin KWAN
Chairman,
Chiropractors Council