

CHIROPRACTORS COUNCIL Inquiry Committee

DISCIPLINARY INQUIRY

Date of hearing : 20 April 2010 and 27 July 2010

Respondent : Dr CHU Chun Pu

1. The charges against the Respondent Dr. CHU Chun Pu are that:-

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

- (a) sanctioned, acquiesced in or failed to take adequate steps to prevent the use of the titles and descriptions ‘NASA Ames Research Center’, ‘Chiropractic Doctor, Empire Clinic’, ‘Stanford University School of Medicine’, ‘Sen Yat Sen University, China’ and ‘Salvation Army, USA’ in the website (<http://www.hkchiropractor.com/id2.html>) which served to promote his own professional advantage, contrary to section 3.7 in Part IV of the Code of Practice;
- (b) sanctioned, acquiesced in or failed to take adequate steps to prevent the use of the titles and descriptions ‘NASA Ames Research Center’, ‘Chiropractic Doctor, Empire Clinic’, ‘Stanford University School of Medicine’, ‘Sen Yat Sen University, China’ and ‘Salvation Army, USA’ in the website (<http://www.hkchiropractor.com/id2.html>) which are misleading and unapproved, contrary to section 3.10 in Part IV of the Code of Practice;

and in relation to the facts alleged, he has been guilty of misconduct in a professional respect.”

Facts of the case

2. The case involves five titles and descriptions relating to the Respondent published in a website. It is alleged that the five titles and descriptions set out in charge (a) served to promote the Respondent's professional advantage. As to the five titles and descriptions set out in charge (b), it is alleged that they are misleading and unapproved. The titles and descriptions in charge (a) are the same as those in charge (b).
3. The website in question is the Respondent's chiropractic practice website.
4. It is not disputed that the titles and qualifications in question were published on the website in accordance with the Respondent's decision. When the Respondent was asked in his oral testimony why he included the relevant titles and descriptions in the website, the Respondent said that he decided to put such information on the website in response to his website designer's enquiry whether to put his past experience on the website. It is clear from the evidence that the Respondent himself instigated the publication of those titles and descriptions in the website. In the circumstances, we have no difficulty to find that he sanctioned the use of those titles and descriptions in the website.
5. Having made the finding that the Respondent sanctioned the use of those titles and descriptions, we then have to decide the following questions:-
 - (i) In relation to charge (a), did such titles and descriptions serve to promote the Respondent's professional advantage?
 - (ii) In relation to charge (b), are those titles and descriptions misleading and unapproved?
6. We wish to point out that, with the exception of '*Chiropractic Doctor, Empire Clinic*', the titles and descriptions in question are only half-truths. The Respondent admitted that he either only served short periods of internship or had given one lecture in the relevant organizations. Nevertheless, such capacity was not disclosed in the titles and

descriptions published in the website. In the absence of the actual capacity in which he was involved with those organizations, a reasonable man is likely to form the impression that the Respondent occupied some position of responsibility in, or was given recognition by, those organizations.

7. Given that the title '*Chiropractic Doctor, Empire Clinic*' truly and accurately reflected his position in that clinic, we do not think that it served to promote the Respondent's practice or is misleading. In the circumstances, we shall consider the charges only in respect of the other four titles and descriptions.
8. We are of the view that such titles and descriptions served to promote the Respondent's professional advantage, because a reasonable man would be attracted to the Respondent's practice, thinking that the information indicated or implied that the Respondent was of better training and competence than those chiropractors without such titles and descriptions.
9. The Respondent claimed that the website was his personal website and therefore was not governed by the rules of the chiropractic profession. We disagree. If access to the website was restricted by passwords or other measures, and only specific persons given permission by the Respondent could see the information posted therein, then the Respondent may characterize the website as his personal website which has no relevance to his chiropractic practice. However, access to the website was not restricted in any way, either by password or other measures. The general public including potential patients had unrestricted access to the information on the website. To post the information in the website is analogous to posting the information in newspapers and magazines, in that the information would be accessible to any person.
10. Section 3.7 of the Code of Practice provides that registered chiropractors should not engage in self-advertisement, and should not publish matters which serve to promote his professional advantage by commending or drawing attention to his professional skill, knowledge services or qualifications. We take note of the freedom of expression and that a chiropractor could not be prohibited from giving information to the public which will facilitate them in making an informed choice of chiropractors, or

educate them on the chiropractic science. However, the information in question served no purpose whatsoever in educating the public or facilitating an informed choice of chiropractors, other than to attract patients to the Respondent's practice.

11. We are satisfied that the Respondent's conduct in this respect has fallen below the standard expected amongst registered chiropractors, and therefore constitutes professional misconduct. We find him guilty of charge (a).
12. In relation to charge (b), it is strongly contended by the Respondent's Counsel that the allegations of "misleading" and "unapproved" are elements of the charge which have to be proved by the Legal Officer. Having considered the allegation in charge (b) (i.e. "sanctioned...the use of the titles and descriptions....which are misleading and unapproved...."), we find that they are elements which must be proved by the Legal Officer.
13. The Respondent's Counsel argued that it must also be proved that persons have actually been misled by such information. We disagree. What is required to be proved is that on a natural and ordinary interpretation of the information a reasonable man reading such information will be misled. Whether or not any person has actually been misled is irrelevant.
14. Applying the reasonable man test, we are satisfied that a reasonable reader of such information will be misled into thinking that the Respondent has more training, more qualifications and more experience than those chiropractors without such titles and descriptions.
15. Furthermore, the Respondent himself admitted in his oral testimony that he was aware that under the Code of Practice the titles and descriptions in question were inappropriate and could not be quoted, therefore he did not use them in his business cards.
16. Given the Chiropractors Council's duty to protect the public from misleading information and that such titles and descriptions are misleading, they are incapable of being approved by the Chiropractors Council to be quoted by registered chiropractors. The Council could not have approved them. In any case, the Respondent admitted that he had

not applied to the Council for approval to use such titles.

17. Section 3.10 of the Code of Practice warns registered chiropractors not to use misleading and unapproved descriptions. We are satisfied that the Respondent's use of the misleading and unapproved titles and descriptions is below the standard of conduct expected amongst registered chiropractors, and therefore constitutes professional misconduct. We find him guilty of charge (b).

Sentencing

18. The Respondent has a clear record.
19. We note that the Respondent had immediately removed the offending information from the website upon being notified of the complaint against him. He also gives to this Committee an undertaking to ensure that he will not breach the rules of professional ethics again. We are satisfied that he is remorseful of his misconduct, and consider that a lenient sentence will be appropriate in the circumstances.
20. Having considered the gravity of the case and the mitigating factors, we order that a warning letter be served on the Respondent. The order shall be published in one English newspaper and one Chinese newspaper circulating in Hong Kong, in accordance with section 21(1) of the Chiropractors Registration Ordinance.
21. We wish to advise the Respondent to be particularly careful in the future conduct of his chiropractic practice. While we consider that the matter can be dealt with by a lenient order this time, he will not be given such leniency in the case of a repeated offence in the future.



Dr. Wilkin Kwan,
Chairman,
Inquiry Committee of the Chiropractor Council