

## **Inquiry Committee of the Chiropractors Council**

Respondent: TAM Chung Shing

Date of hearing: 25 January 2011

1. The Respondent, TAM Chung Shing, is charged that:-

“In 2009, he, being a registered chiropractor, had sanctioned, acquiesced in or failed to take adequate steps to prevent the use of an unapproved title ‘譚醫生應診’ in his name card, which had a tendency to mislead the public into believing that he was a medical practitioner; and in relation to the facts alleged, he has been guilty of misconduct in a professional respect.”

2. At all material times, the Respondent was both a registered chiropractor and a registered physiotherapist, and he practised both chiropractic and physiotherapy in the same clinic. Around March 2009, he moved his clinic to a new address. He arranged for various information (including his name card) to be sent to the medical practitioners who had been referring patients to him. In the name card, there was the wording ‘譚醫生應診’ which referred to the Respondent. A person in receipt of the name card made a report to the police that the title misled the public into believing that he was a medical practitioner. The police then referred the matter to the Director of Health who in turn referred the matter to the Chiropractors Council.
3. It is not disputed that the Respondent was not a registered medical practitioner and could not use the title of ‘醫生’. Under the Medical Registration Ordinance, it is a criminal offence for a person who is not a registered medical practitioner to use a title or description which implies that he is a registered medical practitioner, and the offence is punishable with imprisonment.
4. The Respondent’s case is that printing of the name card was arranged by his receptionist, and the receptionist inserted the title of ‘譚醫生’ without the Respondent’s knowledge. According to the receptionist, she inserted the title in order to distinguish the Respondent from other physiotherapists practising at the clinic, and a batch of name cards with that title had already been used for a number of months before the Respondent asked her to print another batch in the same format for issue to medical practitioners.

5. All registered chiropractors have a professional duty to ensure that the information they disseminate to the public is true and accurate. This is a personal duty which cannot be delegated. It is no defence for a chiropractor to say that he has entrusted the duty to his employee. A chiropractor's failure to take adequate action to ensure that the information disseminated is true and accurate is in itself failure to discharge his professional duty. The matter is particularly serious if use of the title is a criminal offence.
6. The Respondent's case is that he had always been aware that he could not use the title of '醫生', and he always made it a point to rectify his patients when they addressed him as '醫生' and told them to address him as '脊醫'. However, he had not checked the name card and therefore was not aware of the use of the offending title before the name cards were issued.
7. In effect, the Respondent was saying that he had failed to discharge his professional duty to ensure the truth and accuracy of the information on his name cards before issuing them. This in itself is conduct below the standard expected amongst registered chiropractors. We are satisfied that his conduct constitutes professional misconduct. We find him guilty of the charge.
8. We have considered whether the Respondent has sanctioned or acquiesced in the use of the offending title. We note that the title had already been in use on his name cards for a number of months before the second batch was printed. In ordinary situations, it is a natural inference that he would have noticed the offending title, bearing in mind that in usual circumstances he would have handed out his name cards personally. The offending title would have been particularly obvious because it was repeated in 4 different places in the name card. However, he asked his receptionist to reprint the name cards for the specific purpose of sending them to doctors. Doctors in receipt of the name cards would certainly notice that use of the title by the Respondent was a breach of the provisions of the Medical Registration Ordinance. While we do not rule out that some persons may deliberately run the risk in the face of ready detection by law enforcement authorities, we consider that it is unlikely that the Respondent would knowingly agree to issue the name cards with the offending title to doctors. In the circumstances, we do not draw the inference that he was aware of the offending title on his name cards before issuing them. We find him guilty on the limb of failing to take adequate steps to prevent, but not the limbs of

sanctioning and acquiescing in the act.

### **Sentencing**

9. The Respondent has a clear record.
10. We accept that the Respondent has taken remedial measures to retrieve the offending name cards and replace them with proper name cards without the offending title.
11. Respondent's Solicitor mitigated on the basis that the Respondent was remorseful. We must say that there is no merit in such mitigation at all. Before the inquiry, Defence Solicitor informed us by letter that the Respondent has been found guilty of unprofessional conduct by the Physiotherapists Board on the same facts. The Respondent accepted that the order by the Physiotherapists Board and did not appeal. At the beginning of the inquiry, it was pointed out to the Respondent's Solicitor that unless the standard of professional conduct of chiropractors was lower than that of physiotherapists, there could be no defence to the charge before us. It was also pointed out that by pleading not guilty there could be no mitigation on remorse.
12. Nevertheless, Defence Solicitor adamantly proceeded with trial of the charge. As we pointed out in our judgment, it was no defence at all for the Respondent to say that he had entrusted the duty to his employee and did not check the truth and accuracy of the information on the name card. The Respondent's act of contesting the charge when clearly there was no defence completely contradicts the claim of remorse, particularly when the matter has been clearly pointed out to Defence Solicitor.
13. If the Respondent had pleaded guilty to the charge, that would have been indication of his insight into his misconduct and remorse. After a full trial on the charge, it is not open for Respondent's Solicitor to claim that there was remorse.
14. It is clearly stated in the Practice Directions for Disciplinary Inquiries that *"[admission of undisputed facts] and remorse shown by admission of the charge(s) are mitigating factors which will be taken into consideration in deciding on the disciplinary order"*. We take into consideration that a non-legally trained person

may not fully appreciate that in contesting the charge with no defence at all he will lose the mitigation of remorse, and it is the responsibility of his legal representative to properly advise him. If he proceeds with an unmeritorious trial on legal advice, it would be unfair to penalize him for acting in accordance with the advice. As an exceptional gesture of mercy, we proceed on the assumption that the Respondent is remorseful and that he contested the charge only on advice.

15. Having regard to the gravity of the case and the mitigating factors, we order that a warning letter be served on the Respondent. The warning letter should specifically warn the Respondent to take particular care to acquaint himself with the legal and ethical rules governing his practice as a registered chiropractor.

**Other remark**

16. We have to make an observation that the Practice Directions required both the Secretary and the Respondent to prepare separate “Secretary’s Bundle” and “Respondent’s Bundle”. The Practice Directions were sent to the Respondent 3 months before the inquiry. Nevertheless, the Respondent’s Solicitor chose not to prepare the Respondent’s Bundle. When asked for the reason for not complying with the requirement, Respondent’s Solicitor could not give any explanation. In other words, it was direct defiance of the Practice Directions.
17. We must say that all parties who come before the Inquiry Committee in inquiries must comply with the Practice Directions. If it is not possible to comply for valid reasons, explanation must be given. It is completely unacceptable for a lawyer to defy the Practice Directions without any explanation. We hope this will not happen again. If the same mistake is committed by the same lawyer, the matter will be reported to the relevant regulatory authority.



Dr. Wilkin Kwan  
Chairman, Inquiry Committee