香港醫務委員會
The Medical Council of Hong Kong

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr KO Wing Hong (Reg. No.: M13618)

Date of hearing: 15 May 2023 (Monday) (Day 1); 19 August 2023 (Saturday) (Day 2); 14 October 2023 (Saturday) (Day 3); 23 October 2023 (Monday) (Day 4); and 5 November 2023 (Sunday) (Day 5)

Present at the hearing

Council Members/Assessors: Prof. TANG Wai-king, Grace, SBS, JP
(Chairperson of the Inquiry Panel)
Dr CHAN Tin-sang, Augustine
Dr MOK Chun-keung, Francis
Mr HUNG Hin-ching, Joseph
Mr CHAN Hiu-fung, Nicholas, MH, JP

Legal Adviser: Mr Edward SHUM

Legal Officer representing the Secretary: Mr Edward CHIK,
Government Counsel (Day 1)
Ms Carmen SIU,
Senior Government Counsel (Days 2 to 5)

Defence Counsel representing the Defendant: Mr Alfred FUNG as instructed by Messrs. Mayer Brown

1. The charges against the Defendant, Dr KO Wing Hong, are:

"That, he, being a registered medical practitioner, disregarded his professional responsibility to his patient ("the Patient"), in that in 2018, he:

(a) failed to keep proper and adequate medical records in respect of the Patient;
(b) failed to properly and adequately advise the Patient of the possible risks and complications of Dermaveil injection(s) before performing the injection(s) on the Patient; and/or

(c) failed to provide proper remedial care to the Patient about persistent prominent glabella swelling after the Dermaveil injection(s).

In relation to the facts alleged, either singularly or cumulatively, he has been guilty of misconduct in a professional respect."

Facts of the case

2. The name of the Defendant has been included in the General Register from 2 July 2002 to the present. His name has never been included in the Specialist Register.

3. By a letter dated 6 May 2020, the Patient lodged this complaint with the Secretary of the Medical Council (the "Secretary") against the Defendant. In support of her complaint, the Patient later provided the Secretary with photographs depicting her glabella region before and after receiving Dermaveil injections from the Defendant as well as WhatsApp messages between her and the Defendant after receiving the Dermaveil injections. Copies of the same were tabled by the Legal Officer before us for our consideration.

4. Dermaveil is an "*injectable filler*" which "*involves injecting poly-L-lactic acid into the skin and underlying tissues and stimulates the body's own collagen*"; Dermaveil "*is applied by subdermal injection*" and "*[t]he number of treatment sessions depends on the assessment of the diagnosed state of the patient*" but "*all sessions must be separated by a minimum of 3 weeks (20 days)*".

5. According to the Patient, the Defendant had never explained to her the possible risks and complications of Dermaveil treatment before he gave her the first injection. The Defendant disagreed.

6. There is no dispute that the Patient received 2 Dermaveil injections for aesthetic purpose from the Defendant. According to the medical records kept by the Defendant, the first Dermaveil injection was given to the Patient on 14 April 2018. After the second Dermaveil injection on 12 May 2018, the Patient consulted the Defendant multiple times throughout 2018 and again in the first half of 2019 to seek remedial care.

7. The Defendant's medical records also showed that the Patient returned to see the Defendant at his clinic on 20 odd occasions between 26 May 2018 and 18 June 2019 with the same complaint of glabella swelling. Despite all his physical examinations of the Patient after 23 May 2018 revealed no mass or tenderness in her glabella region, the Defendant continued to treat the Patient with NSAID and/or antibiotics on 14 occasions. In addition, intramuscular injections of antibiotics were given to the Patient on 7 occasions. Apart from giving the

Patient normal saline injection "*at her perceived site of swelling*" on one occasion, the Defendant also gave the Patient steroid injection of Kenacort to her glabella region on two subsequent occasions.

Burden and Standard of Proof

8. We bear in mind that the burden of proof is always on the Secretary and the Defendant does not have to prove his innocence. We also bear 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.

9. There is no doubt that the allegations against the Defendant here are serious. Indeed, it is always a serious matter to accuse a registered medical practitioner of misconduct in a professional respect. Therefore, we need to look at all the evidence and to consider and determine each of the disciplinary charges against him separately and carefully.

Findings of the Inquiry Panel

10. It is clearly stated in section 1.1.3 of the Code of Professional Conduct (2016 edition) (the "Code") that:-

"*All doctors have the responsibility to maintain systematic, true, adequate, clear, and contemporaneous medical records…*"

11. We agreed with Dr MOK, the Secretary's expert witness, that the handwritten clinical notes kept by the Defendant on his consultations with the Patient were very brief and largely illegible.

12. Indeed, the Defendant also accepted that he did not record in the medical records kept by him on the Patient the following essential information regarding the two Dermaveil injections:-

(a) the amount of Dermaveil injections given to the Patient at various facial parts;
(b) the use of needle / cannula for injection and the injection method; and
(c) the injection sites and the volume of Dermaveil injected.

13. We wish to supplement that there was nothing in the medical records by the Defendant on the Patient about her medical history and known side effects of drug taking.

14. We need to emphasize that the medical records kept by the Defendant on the Patient were not solely for his own reference. In our view, proper and adequate medical record keeping is essential for the management and continuity of care of the Patient, be it by the Defendant or other professional colleagues.

15. In failing to keep proper and adequate medical records in respect of the Patient, the Defendant has in our view by his conduct in the present case fallen below the standard expected of registered medical practitioners in Hong Kong. Accordingly, we find the Defendant guilty of misconduct in a professional respect as per disciplinary charge (a).

16. There is conflicting evidence on whether the Defendant had ever advised the Patient of the possible risks and complications of Dermaveil injection(s) before performing the injection(s) on her.

17. Our attention was drawn by the Legal Officer to the following passages from the Judgment of Deputy High Court Judge Eugene FUNG SC in *Hui Cheung Fai & Another v Daiwa Development Limited & Others* (unreported) HCA 1734/2009:-

> "78. In deciding whether to accept a witness' account, importance should also be attached to the inherent likelihood or unlikelihood of an event having happened, or the apparent logic of events…
>
> 79. In determining a witness' credibility, I have also attached importance to the consistency of the witness' evidence with undisputed or indisputable evidence, and the internal consistency of the witness' evidence. The latter type of consistency is often tested by a comparison between the witness' oral testimony and his or her witness statement.
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> 80. I have cautioned myself against the danger of too readily drawing conclusions about truthfulness and reliability solely or mainly from the appearance of witnesses…, or from the assessment of the witness' character…
>
> 81. The practical approach to assessing credibility of witnesses in a case such as the present may have best been summarised by the words of Robert Goff LJ, as he then was, in The Ocean Frost [1985] 1 Lloyd's Rep 1 at 57:

"… Speaking from my experience, I have found it essential in cases of fraud, when considering the credibility of witnesses, always to test their veracity by reference to the objective facts proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities. It is frequently very difficult to tell whether a witness is telling the truth or not; and where there is a conflict of evidence such as there was in the present case, reference to the objective facts and documents, to the witnesses' motives, and to the overall probabilities, can be of very great assistance to a judge in ascertaining the truth."

82. Whilst these words were spoken in the context of a fraud case, I believe they are applicable to any case where a witness' credibility features prominently in the court's determination…"

18. We agree with Counsel for the Defendant that disciplinary charge (b) is premised on the allegation that the Defendant had "*failed to properly and adequately advise the Patient of the possible risks and complications of Dermaveil injection(s) before performing the injection(s) on the Patient*". In our view, whether a written consent should have been obtained from the Patient is beyond the scope of disciplinary charge (b).

19. In her Opening Submission, the Legal Officer stated that the Secretary's case in respect of disciplinary charge (b) also covered the failure to advise the Patient "*of other alternative treatment option including the option of not receiving Dermaveil injection*". Although no issue was taken at that time by Counsel for the Defendant on this part of the Secretary's case, it does not automatically allow the Secretary to widen the scope of her case against the Defendant. In our view, the Legal Officer ought to apply for leave to make the necessary amendment to disciplinary charge (b) before she opened the Secretary's case.

20. The Patient was adamant that the Defendant never advised her of the possible risks and complications of Dermaveil injection(s) before performing the injection(s) on her. The Defendant disagreed. In his submission to the Preliminary Investigation Committee ("PIC") dated 16 May 2022, the Defendant specifically mentioned that:-

"…*I explained to the Patient the nature of Dermaveil, including the fact that it would take time, in terms of months, to produce the effect of stimulating soft tissue volume increase. I also explained to her that she should do frequent gentle massage to prevent aggregation / nodule formation. Risks, including general ones such as bleeding, bruising, pain, infection, and more specific*

ones such as nodule formation, accidental blockage of blood vessels, and unexpected overgrowth, were explained to the Patient and she understood. I documented "pros & cons & risks told" in my clinical records."

21. In his Supplemental Statement dated 16 August 2023, the Defendant further explained that:-

"*... physical examination conducted on 14 April 2018 showed that the Patient's facial skin was just a little bit loose and she had normal facial contour which was quite satisfactory. In light of my examination findings, I advised the Patient to consider not to receive the Dermaveil injection, or to take more time to reconsider. Since the need for cosmetic treatment would largely depend on the Patient's subjective perception of her facial contour and appearance, and given that the Patient insisted on receiving Dermaveil injection on the same day despite my advice, I proceeded to [give] her the injection after giving the explanations…*

…I did not discuss other treatment options with her on that day as I considered that she did not require any cosmetic treatment. In any event,…, I did mention to the Patient in my audio WhatsApp messages sent on 31 March 2018 the different cosmetic treatment options available."

22. When being asked by his Counsel what is meant by "*pros & cons & risks told***"** in the clinical record of his consultation with the Patient on 14 April 2018, the Defendant initially told us that the major risk is inflammation. But when being cross-examined, the Defendant supplemented that he had explained not only the usual but also rare side effects of Dermaveil injections to the Patient on 14 April 2018.

23. We do not accept the Patient's evidence that the Defendant never advised her of the possible risks and complications of Dermaveil injection(s) before performing the injection(s) on the Patient. It is however evident to us from reading the chain of WhatsApp messages exchanged between the Patient and the Defendant after the second Dermaveil injection that the Patient had no clue as to why she developed prominent persistent glabella swelling. We do not accept the Defendant's evidence that he had advised the Patient of the possible risk and complication of prominent persistent glabella swelling before performing the Dermaveil injection(s).

24. But then again, the real point is that the Patient was most concerned about her appearance. Surely, any risk and complication associated with injection of Dermaveil to the glabella region would be a matter of great concern for the Patient. As the Defendant said, the Patient "*insisted on receiving Dermaveil injection*" despite her "*facial skin was just a little bit loose and she had normal*

facial contour which was quite satisfactory." Since "*the need for cosmetic treatment would largely depend on the Patient's subjective perception of her facial contour and appearnce*", it follows that the increased risk(s) and complication(s) associated with injection of Dermaveil to the glabella region would be a material consideration for the Patient.

25. In this connection, it is the unchallenged evidence of the Secretary's expert witness, Dr MOK, which we accept, that "*[t]echnical errors in the delivery of Dermaveil in a layer too superficial can lead to visible or palpable lumps in the skin*". Since Dermaveil is given by subdermal injection, Dr MOK opined and we agreed that "*the Defendant should advise the Patient of the increased risk and complication of uneveness or lump formation after injection of Dermaveil to specific part(s) of the body with thin subdermal layer like the glabella region.*"

26. The Legal Officer reminded us that there was no mention of advice being given to the Patient of the increased risk and complication of subdermal injection of Dermaveil to the glabella region in either the Defendant's PIC submission or Supplemental Statement. We disagree with Counsel for the Defendant that this part of Dr MOK's evidence is new. Dr MOK had repeatedly stated in his 2 expert reports that "*[t]echnical errors in the delivery of Dermaveil in a layer too superficial can lead to visible or palpable lumps in the skin*". Indeed, the Defendant also mentioned in one of the WhatsApp messages exchanged with the Patient on 31 March 2018 that there is higher risk of injection to the forehead region.

27. We find it implausible that having listened to the oral evidence of Dr MOK, the Defendant would still omit to supplement in his evidence in chief that advice had given to the Patient of the increased risk and complication of subdermal injection of Dermaveil to the glabella region. We agree with the Legal Officer that the Defendant was making up his evidence as he went along.

28. It is however trite law that a doctor is under a duty to take reasonable care to ensure that his or her patient is aware of any material risks involved in any recommended treatment. In this connection, we gratefully adopt the following passages from the judgment of the UK Supreme Court in *Montgomery v Lanarkshire Health Board (General Medical Council intervening)* [2015] 2 WLR 768:-

> "87. …The doctor is therefore under a duty to take reasonable care to ensure that the patient is aware of any material risks involved in any recommended treatment, and of any reasonable alternative or variant treatments. The test of materiality is whether, in the circumstances of the particular case, a reasonable person in the patient's position would be

likely to attach significance to the risk, or the doctor is or should reasonably be aware that the particular patient would be likely to attach significance to it.

…

89. …The significance of a given risk is likely to reflect a variety of factors besides its magnitude: for example, the nature of the risk, the effect which its occurrence would have on the life of the patient, the importance to the patient of the benefits sought to be achieved by the treatment, the alternatives available, and the risks involved in those alternatives. The assessment is therefore fact-sensitive, and sensitive also to the characteristics of the patient.

90. …the doctor's advisory role involves dialogue, the aim of which is to ensure that the anticipated benefits and risks of the proposed treatment and any reasonable alternatives, so that she is then in a position to make an informed decision."

29. For these reasons, we are satisfied on the evidence before us that the Defendant had failed to properly and adequately advise the Patient of the possible risks and complications of Dermaveil injection(s) before performing the injection(s) on the Patient's glabella region. In our view, the Defendant had by his conduct in the present case fallen below the standard expected of registered medical practitioners in Hong Kong. Accordingly, we find the Defendant guilty of misconduct in a professional respect as per disciplinary charge (b).

30. According to the Patient, her glabella region was slightly swollen with the size of a small acne after receiving the first Dermaveil injection.

31. In this connection, the Defendant explained in his Supplemental Statement that:-

"*I would like to point out that it is indeed normal to have transient mild swelling for the first few days after the Dermaveil injection. This is because Dermaveil was activated by adding sterile water for injection prior to use. The mild swelling was resulted from the water injected into the injection site (e.g. glabella). Once the water was absorbed by the body, the swelling would subside several days after injection. I would have, in accordance with my routine practice, explained the above to the Patient when I gave her the post-operative care instructions (e.g. the need to massage the injection sites for 5 minutes 3 times per day for 5 days, as documented in my clinical record on 14 April 2018).*"

32. The Patient returned to the Defendant's clinic on 12 May 2018 to receive the second Dermaveil injection to her glabella and both nasolabial folds. According to the Defendant, the Patient indicated to him during this visit that she was satisfied with the effect of the first Dermaveil injection; and his physical examination of the Patient "*showed a small increase of soft tissue volume but no abnormality or lump or nodule could be found*" on the previous injection sites.

33. According to the Patient, she developed marked swelling and noted a firm lump of the size of a 50 cents coin over her glabella region after receiving the second Dermaveil injection. We appreciate that the Patient's description of glabella swelling as "*half of the size of an egg*" and the size of a "*50 cents coin*" is exaggerated. It is however evident to us from a comparison of the photographs taken of the Patient in March 2018 that prominent glabella swelling was noted in the photographs taken of her on 23 May 2018. And in the selfie photographs taken by the Patient on 13 October 2018, the swelling in her glabella region was even more prominent.

34. There is no dispute that the Patient returned to see the Defendant at his clinic on 23 May 2018. According to the Defendant, despite the Patient's complaint of glabella swelling, his physical examination of the Patient revealed no abnormality and there was no palpable mass or tenderness. He then advised the Patient "*to observe her condition and not to irritate her glabella in any manner*". He also advised the Patient to contact him by phone or WhatsApp whenever she had any problems. He further prescribed the Patient with Lysozyme, Levofloxacin, Indocid, Losec and Pariet.

35. We do not accept the Defendant's evidence that no abnormality was detected when he conducted physical examination of the Patient's glabella region during the consultation on 23 May 2018. This is flatly contradicted by what we can see from the photographs taken of the Patient on the same day.

36. Regardless of the underlying cause(s) of the Patient's persistent prominent glabella swelling, the real issue in our view is whether the Defendant had failed to provide proper remedial care to the Patient.

37. Despite his claim that there was no palpable lump or mass in her glabella region, the Defendant continued to treat the Patient with antibiotics and/or anti-inflammation drugs on 21 occasions in 2018. Apart from giving the Patient normal saline injection "*at her perceived site of swelling*" on 2 January 2019, he also gave the Patient steroid injection to her glabella region on two subsequent occasions in 2019.

38. When being cross-examined, the Defendant initially told us that he thought the Patient's persistent complaint was due to her subjective perception of swelling over the glabella region. However, when being further cross-examined as to why he put down in his clinical record for the consultation with the Patient on 23 May 2018 "*Vague ? NAD*" right after the words "*c/o glabella swelling*", the Defendant initially told us that he could not rule out the possibility that there was swelling. The Defendant later told us that the swelling might be due to the foreign body reaction soon after the second Dermaveil injection.

39. When being asked why he prescribed antibiotics to the Patient, the Defendant then told us that he was unsure if she was suffering from inflammation. This is however inconsistent with the Defendant's clinical record of no tenderness being detected upon physical examination of the Patient's glabella region on 23 May 2018.

40. In his Supplemental Statement, the Defendant emphasized that "*the swelling perceived by the Patient was not a pathological swelling which necessitated any treatment*" but "*since the Patient was very concerned about the "swelling", [he] tried [his] best to do everything (which was not harmful to her) she requested which might improve her perceived glabella swelling".*

41. It is however evident to us from reading the WhatsApp messages exchanged between the Defendant and the Patient on 15 June 2018 that it was the Defendant who advised the Patient to continue to take the anti-inflammation drugs that he had prescribed to her.

42. The Defendant's claim that the injection of normal saline injection to the Patient's glabella region was to "*improve her perceived glabella swelling*" is again inconsistent with the advice that he gave to the Patient in the WhatsApp messages exchanged between them on 12 November 2018. It was indeed the Defendant who advised the Patient to make use of the volume of normal saline injection to push down the lump so that it would disintegrate and be absorbed by the body.

43. It is clearly stated in section 9.1 of the Code that "*[a] doctor may prescribe medicine to a patient only after proper consultation and only if drug treatment is appropriate.*"

44. In our view, the Defendant ought not continue to prescribe antibiotics and/or anti-inflammation drugs without ascertaining the underlying cause(s) of the Patient's glabella swelling and let alone if he was truly of the opinion that this was due to her subjective perception of swelling.

45. For these reasons, we are satisfied on the evidence before us that the Defendant had failed to provide proper remedial care to the Patient about her prominent persistent glabella swelling after the Dermaveil injection(s).

46. In our view, the Defendant had by his conduct in the present case fallen below the standard expected of registered medical practitioners in Hong Kong. Accordingly, we also find the Defendant guilty of misconduct in a professional respect as per disciplinary charge (c).

Sentencing

47. The Defendant has one previous disciplinary record for failing to maintain proper and/or adequate medical records for his consultations with 5 patients back in 2016 to 2017. On 11 October 2023, his name was ordered to be removed from the General Register for a period of 1 month and the operation of the removal order was suspended for a period of 12 months on conditions that he should complete during the suspension period CME courses relating to medical record keeping and medical ethics; and satisfactory peer audit by a Practice Monitor to be appointed by the Council.

48. We appreciate that the time limit of 1 month within which the Defendant may appeal against the said previous disciplinary order has yet to expire. But then again, the real point is that the Defendant was found guilty on his own admission of the 5 disciplinary charges relating to medical records keeping. And it is evident to us from reading the Judgment of the Inquiry Panel for the previous disciplinary case that the Defendant's failure to keep proper and adequate medical records for the Patient in the present case is not an isolated incident.

49. We need to remind ourselves that the primary purpose of a disciplinary order is not to punish the Defendant but to protect the public from persons who are unfit to practise medicine and to maintain public confidence in the medical profession by upholding its high standards and good reputation.

50. We are particularly concerned about the Defendant's indiscriminate prescriptions of antibiotics and steroid injections to the Patient. We do not agree with Counsel for the Defendant that the Defendant was trying his best to help the Patient. As a registered medical practitioner, the Defendant ought to know that diagnosis could not be made or revised by trial and error from the Patient's response to treatment provided by him.

51. Taking into consideration the nature and gravity of the disciplinary charges for which we find the Defendant guilty and what we have read and heard in mitigation, we order that:-

(1) in respect of disciplinary charge (a), the name of the Defendant be removed from the General Register for a period of 2 months;
(2) in respect of disciplinary charge (b), the name of the Defendant be removed from the General Register for a period of 2 months;
(3) in respect of disciplinary charge (c), the name of the Defendant be removed from the General Register for a period of 6 months;
(4) the said removal orders to run concurrently making a total of 6 months;
(5) operation of the said removal orders be suspended for a period of 24 months, subject to the condition that the Defendant shall complete during the suspension period CME courses relating to safe prescription and clinical management of patients to the equivalent of 20 CME points and such courses have to be preapproved by the Chairman of the Council.

Prof. TANG Wai-king, Grace, SBS, JP
Chairperson of the Inquiry Panel
The Medical Council of Hong Kong