

香港醫務委員會

**The Medical Council of Hong Kong**

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**DISCIPLINARY INQUIRY**  
**MEDICAL REGISTRATION ORDINANCE, CAP. 161**

Defendant: Dr LAM Pang Eric (林澎醫生) (Reg. No.: M12574)

Dates of hearing: 8 November 2016 (Tuesday)

Present at the hearing

Council Members/Assessors: Prof. Felice LIEH-MAK, GBS CBE JP  
(Temporary Chairman)  
Dr CHEUNG Hon-ming  
Dr CHEUNG Tak-hong  
Dr HO Hung-kwong, Duncan  
Miss CHAU Man-ki, Mabel, MH  
Prof. KWONG Yok-lam  
Mr POON Yiu-kin, Samuel

Legal Adviser: Mr Edward SHUM

Defence Solicitor representing the Defendant: Mr Chris Howse of Messrs. Howse  
Williams Bowers

Senior Government Counsel representing the Secretary: Mr Eric KO

1. The amended charge against the Defendant, Dr LAM Pang Eric, is:

“That he, being a registered medical practitioner, sanctioned, acquiesced in or failed to take adequate steps to prevent the publication of his name, title, photograph, statements and/or observations in an article or a series of articles published in the August 2011 Issue of “JESSICA” endorsing and/or promoting a bimatoprost ophthalmic solution, namely “Latisse”.

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 Defendant was at all material times a registered medical practitioner. His name has been included in the General Register from 15 March 2000 to present and his name has never been included in the Specialist Register.
3. According to the Defendant, some time in or around August 2011, he was invited by one Ms Frances Ma (“Ms Ma”), the then Marketing Manager for Allergan Hong Kong Limited (“Allergan HK”) to be interviewed for a magazine article about the use of bimatoprost for the treatment of eyelash hypotrichosis (“the Article”). Ms Ma also told him that the Article would be published in a local magazine called “JESSICA”.
4. There is no dispute that Allergan HK was at all material times an affiliate of Allergan, Inc., the manufacturer of a bimatoprost ophthalmic solution which was marketed and sold in Hong Kong under the trade name “Latisse”.
5. According to the Defendant, he agreed to do the interview on the basis that Allergan HK, had through Ms Ma, provided him assurances that:-
  - (i) the Article would be for the purpose of public health education only;
  - (ii) there would be no reference in the Article to any specific brand of bimatoprost (or to the name of Allergan);
  - (iii) the Article would not be published in the same issue of “JESSICA” as any promotional material or advertisement for Allergan’s own bimatoprost product, “LATISSE”; and
  - (iv) a statement would be inserted at the foot of the Article stating that the information was *“provided by the interviewed doctor for public education purposes only but not for personal or product promotion purposes. Readers should seek medical advice before choosing or undergoing any treatment.”*.
6. There is however no dispute that the Article which appeared at page 155 of the August 2011 issue of JESSICA was actually placed at 2 pages in front of an advertisement for a bimatoprost ophthalmic solution product under the trade name “Latisse” (“the Product”).
7. In the Article, reference to the interview with the Defendant was preceded by words to the effect that unlike general eyelash extension products, a brand new

eyelash growth serum, which was approved by the US Food and Drug Administration (“FDA”), had shown obvious results in growing and lengthening eyelashes. Moreover, the Defendant was quoted in the Article of having witnessed a number of successful cases in which women who were born with sparse eyelashes would notice obvious growth of eyelashes after using that serum.

8. There is also no dispute that in the advertisement for “Latisse”, which appeared at page 157 of JESSICA, the Product was stated to be, *inter alia*, (1) clinically proven to grow eyelashes; (2) the only such treatment approved by the FDA; and (3) a prescription medication.
9. The Medical Council subsequently received the present complaint against the Defendant on 15 September 2011.
10. By a letter dated 29 April 2015, Allergan HK informed the Defendant that Ms Ma who managed the launch of Latisse was no longer with their company and therefore they were not in a position to confirm the communication between him and Ms Ma. However, Allergan HK confirmed in the letter that:-
  - (i) the Defendant had requested that a statement be inserted at the foot of the Article stating that the information given by him was for health education purposes only and not for promotion of any product, and such statement had been included in the Article;
  - (ii) a draft of the Article was sent to the Defendant which he subsequently approved; and
  - (iii) their internal document records related to the Latisse advertisement in question did not indicate that the Defendant was aware at time of the interview or prior to publication of the Article that there would be an advertisement for Latisse in JESSICA.
11. By a letter dated 27 October 2016, Allergan HK replied to the Secretary that they did not have record to verify if the draft article approved by the Defendant was exactly the one published in the August 2011 issue of JESSICA (i.e. text of the Article together with photographs and diagrams) but they noted from the advertising agency which managed the case that a draft of the text of the Article was approved by the Defendant.
12. The Defendant did not deny that the draft Article that he approved was the same as the Article published in JESSICA save and except the 2 captions at the top of

the page. The Defendant also admitted that he did not request for a written undertaking from the publisher of JESSICA that (1) the Article would not be published in a manner which might reasonably be regarded as suggesting his endorsement of the Product; and (2) the Article would not be placed in close proximity to any advertisement for the Product.

### **Burden and Standard of Proof**

13. We bear in mind that the burden of proof is always on the Legal Officer 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.
14. There is no doubt that the allegation made against the Defendant here is a serious one. Indeed, it is always a serious matter to accuse any registered medical practitioner of misconduct in a professional respect. We need to look at all the evidence and to consider and determine the disciplinary charge against him carefully.

### **Findings of the Council**

15. The Defendant was undoubtedly aware of the possibility that the information that he gave in the interview might be used in the promotion of Allergan's own bimatoprost product, "Latisse". In our view, the crux of the matter lies in whether he had already exercised due diligence to prevent this from happening.
16. The Defendant fairly accepted that he ought to have requested for a written undertaking from the publisher of JESSICA that (1) the Article would not be published in a manner which might reasonably be regarded as suggesting his endorsement of the Product; and (2) the Article would not be placed in close proximity to any advertisement for the Product.
17. It still remains for us to decide on the evidence whether the Defendant's conduct amounts to misconduct in a professional respect. In this connection, we need to bear in mind that the burden of proof in disciplinary inquiry is always on the Legal Officer. The Defendant needs not prove his innocence.

18. In our view, the Article taken as a whole would lead the readers into thinking that the Defendant was endorsing and/or promoting a brand new eyelash growth product. The fact that the trade name of the Product had not been mentioned in the Article was of no consequence.
19. The Defendant ought to ensure that the information that he gave in the interview was not to be used in such a manner that would be regarded as commercial promotion of the Product. It is inadequate to merely insert a statement at the foot of the Article stating that the information given by the Defendant was for health education purposes only and not for promotion of any product.
20. For these reasons, we are satisfied on the evidence the Defendant's conduct had fallen below the standards reasonably expected of registered medical practitioners in Hong Kong. Accordingly, we find the Defendant guilty of the amended charge.

### **Sentencing**

21. The Defendant has a clear disciplinary record.
22. We bear in mind that the 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 the high standards and good reputation of the profession.
23. In this case, the Defendant pleaded guilty to the amended charge after the close of the Secretary's case. This is a sensible decision which reflects upon his insight into his wrongdoing and remorse. Not only shall we give him credit in sentencing, the insight and remorse that he demonstrated also assure us that the chance of his repeating the same or similar breach would be low.
24. The Medical Council has issued repeated warnings that cases of product promotion would be dealt with by removal from the General Register for a short period with suspension of the removal order; and in serious cases the removal orders would take effect immediately.

25. Having considered the nature and gravity of this case and what we have heard and read in mitigation, we order that the Defendant's name be removed from the General Register for a period of one month. We further order that the removal order be suspended for a period of one year.

Prof. Felice LIEH-MAK, GBS CBE JP  
Temporary Chairman,  
Medical Council