

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

---

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

Defendant: Dr MAK Hoi Ting (麥凱婷醫生) (Reg. No.: M15763)

Date of hearing: 31 May 2021 (Monday)

Present at the hearing

Council Members/Assessors: Prof. TANG Wai-king, Grace, SBS, JP  
(Chairperson of the Inquiry Panel)  
Dr CHOW Yu-fat  
Dr AU YEUNG Kam-chuen, Sidney  
Mr LAM Chi-yau  
Mr YEUNG Chi-wai, Edwin, MH

Legal Adviser: Mr Edward SHUM

Defence Solicitor representing the Defendant: Mr William CHAN of  
Messrs. Mayer Brown

Senior Government Counsel representing the Secretary: Miss Sanyi SHUM

The Defendant is not present.

1. The amended charges against the Defendant, Dr MAK Hoi Ting, are:

First Case (MC 17/408)

*“That in or about October 2017, she, being a registered medical practitioner, sanctioned, acquiesced in or failed to take adequate steps to prevent the publication on the Facebook Page of Clarus Aesthetic & Laser Centre (“the Centre”) of the promotional information and/or videos about the provision of beauty treatment(s) at the Centre with which she had a financial and/or professional relationship.*

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

Second to Fourth Cases (MC 18/223, MC 18/323 & MC 18/358)

*“That she, being a registered medical practitioner:*

- (a) from about 2014 to 2015, sanctioned, acquiesced in or failed to take adequate steps to prevent the publication of information in an internet blog (<https://babyalpha.hk/skin-problem-clarus/>) which promoted her practice in association with CLARUS 皮膚激光中心; and*
- (b) in or about May 2018, sanctioned, acquiesced in or failed to take adequate steps to prevent the publication of an article with the title of “女醫生醉心外在美 妙手「裝修」轉人生” in a newspaper, namely Hong Kong Economic Journal, the contents of which promoted her practice in association with CLARUS 皮膚激光中心”.*

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

- 2. The name of the Defendant has been included in the General Register from 2 July 2008 to the present. Her name has never been included in the Specialist Register.
- 3. Upon the direction of the Chairperson of the Inquiry Panel, inquiry into the above-mentioned amended disciplinary charges against the Defendant was consolidated into one pursuant to section 16 of the Medical Practitioners (Registration and Disciplinary Procedure) Regulation, Cap. 161E.

**Ruling on Submission of No Case to Answer**

- 4. After the Secretary’s case was closed, the defence solicitor made a submission of no case to answer in respect of amended disciplinary charge (b) in the Second to Fourth Cases. In considering whether there is a case for the Defendant to answer, we bear in mind that we can only look at this stage at the evidence adduced by the Secretary. It is not disputed that the newspaper article was published. There is however insufficient evidence, which even if accepted by us, from which we may come to the conclusion that the Defendant sanctioned, acquiesced in or failed to take adequate steps to prevent the

publication of the promotional information about her practice in association with the Centre.

5. We therefore rule that there is no case for the Defendant to answer in respect of amended disciplinary charge (b) in the Second to Fourth Cases. Accordingly, we also find the Defendant not guilty of this amended disciplinary charge.

### **Facts of the cases**

#### First Case

6. Briefly stated, the Secretary of the Medical Council received an e-mail from a person called [REDACTED] on 31 October 2017 complaining the Defendant of impermissible practice promotion by posting several videos in the Facebook Page of CLARUS Aesthetic & Laser Centre 皮膚激光中心 (“the Centre”).
7. Attached to the complaint e-mail was a hyperlink to the Facebook Page of the Centre at <https://www.facebook.com/clarushk/>; and from which promotional information of the Centre was downloaded and placed before us for our consideration today.
8. There is no dispute that the Defendant was at all material times the sole director and one of the shareholders of Clarus Medical Limited which operated the Centre. There is also no dispute that the Defendant was at all material times in private practice as a medical practitioner at the Centre.

#### Second to Fourth Cases

9. Briefly stated, complaints against the Defendant for impermissible practice promotion were received by the Secretary of the Medical Council from three persons, namely, [REDACTED], [REDACTED] and [REDACTED].
10. Attached to their complaints were a copy of an article published in the Hong Kong Economic Journal 信報, which now forms the subject of the amended disciplinary charge (b) against the Defendant in the Second to Fourth Cases.
11. Also attached to the complaint received from [REDACTED] were copy extracts from an internet blog at <https://babyalpha.hk/skin-problem-clarus/>, which now forms the subject of the amended disciplinary charge (a) against the Defendant in the Second to Fourth Cases.

## **Burden and Standard of Proof**

12. We bear in mind that the burden of proof is always on the Legal Officer and the Defendant does not have to prove her 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.
13. There is no doubt that each of the allegations against the Defendant here is a serious one. 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 her separately and carefully.

## **Findings of the Inquiry Panel**

### First Case

14. The Defendant admits the factual particulars of the amended disciplinary charge against her in the First Case and indicates through her solicitor that she is not going to contest the issue of professional misconduct. However, it remains for us to consider and determine on the evidence before us whether the Defendant has by her conduct in the First Case fallen below the standards expected of registered medical practitioners in Hong Kong.
15. It is clearly stated in section 18.2 of the Code of Professional Conduct (2016 edition) (“the Code”) that:

*“A doctor who has any kind of financial or professional relationship with, uses the facilities of, or accepts patients referred by, such an organization, must exercise due diligence (but not merely nominal efforts) to ensure that the organization does not advertise in contravention of the principles and rules applicable to individual doctors. Due diligence shall include acquainting himself with the nature and content of the organization’s advertising ...”*

16. In this connection, section 5.2.1 of the Code also provides that:

*“A doctor providing information to the public or his patients must comply with the principles set out below.*

5.2.1.1 *Any information provided by a doctor to the public or his patients must be:*

...

(d) *presented in a balanced manner (when referring to the efficacy of particular treatment, both the advantages and disadvantages should be set out).*

5.2.1.2 *Such information must not:*

...

(d) *aim to solicit or canvass for patients;*

(e) *be used for commercial promotion of medical and health related products and services ...;*

(f) *be sensational or unduly persuasive;*

...”

17. Through her solicitors, the Defendant submitted to the Preliminary Investigation Committee of the Medical Council that “[a]ll the information about treatments provided on the Centre’s Facebook page were based on published medical literatures...” It is however evident to us from the said Facebook Page that promotional information about the provision of beauty treatment(s) at the Centre was presented in such a manner that only their advantages but not disadvantages had been set out.
18. We also noted from reading the promotional information published on the said Facebook Page that unduly persuasive and/or sensational statements like “擊碎底層黑色素” and “淨白無斑的秘密” were made about the efficacy of beauty treatment(s) provided at the Centre.
19. There is no doubt in our minds that publication of the said promotional information aimed at soliciting and/or canvassing patients for the Centre with which the Defendant had a financial and/or professional relationship.
20. For these reasons, in sanctioning, acquiescing in or failing to take adequate steps to prevent the publication on the Facebook Page of the Centre of the promotional information about the provision of beauty treatment(s) at the Centre with which she had a financial and/or professional relationship, we are satisfied on the evidence before us that the Defendant has by her conduct in the First Case fallen below the standards expected of registered medical practitioners in Hong Kong.

21. Accordingly, we find the Defendant guilty of misconduct in a professional respect as charged in the First Case.

#### Second to Fourth Cases

22. The Defendant also admits the factual particulars of the amended disciplinary charge (a) against her in the Second to Fourth Cases and indicates through her solicitor that she is not going to contest the issue of professional misconduct.

23. There is no dispute that the subject internet blog, which lasted from April 2014 to October 2015, contained laudatory comments which promoted the Defendant's practice in association with CLARUS 皮膚激光中心 like:

“... 因為皮膚敏感看過無數醫生 ... 在她創辦的CLARUS 皮膚激光中心做過 consultation 及皮膚分析，才驚發我有玫瑰痤瘡的問題 ...” [see: blog posted on 22 April 2014];

“分享了那麼多皮膚問題，就是要定立目標，見證著 Dr. Mak 為我變美的開端！...” [see: blog posted on 22 April 2014];

“...她家的護膚品是專門為整形醫院及皮膚科醫生病人於手術後使用...” [see: blog posted on 21 May 2014]; and

“...最緊要搵到一間良心 beauty centre，用正確方法去改善問題！係啦～講左咁多，其實今次有送禮，就係免費專業皮膚諮詢 & 半價美白補濕針乙枝！（名額 10 個）雖然講過好多次都忍唔全[住]再讚 Dr. Mak 對美感睇法，佢對美嘅執著同專業會令人更加靚...” [see: blog posted on 21 October 2015].

24. It is also evident to us from reading the subject internet blog that the blogger was invited by the Centre to meet with the Defendant. Unlike the case where a doctor does not even know that someone is going to talk about her professional practice and services in the social media, the Defendant ought in our view to take the proactive steps in the circumstances to remind the blogger that the article that she wrote would not be promotional of the Defendant's practice in association with the Centre.

25. In sanctioning, acquiescing in or failing to take any adequate steps to prevent the publication of information in the subject internet blog which promoted her practice in association with the Centre, the Defendant has in our view by her conduct fallen below the standards expected of registered medical practitioners in Hong Kong.

26. Accordingly, we find the Defendant guilty of misconduct in a professional respect as per amended disciplinary charge (a) in the Second to Fourth Cases.

### **Sentencing**

27. The Defendant has a clear disciplinary record.
28. In line with our published policy, we shall give the Defendant credit in sentencing for her frank admission and not contesting the amended disciplinary charges.
29. We bear in mind 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.
30. It is clearly stated that in section 5.1.3 of the Code that:
- “Persons seeking medical service for themselves or their families can nevertheless be particularly vulnerable to persuasive influence, and patients are entitled to protection from misleading advertisements. Practice promotion of doctors’ medical services as if the provision of medical care were no more than a commercial activity is likely both to undermine public trust in the medical profession and, over time, to diminish the standard of medical care.”*
31. We accept that the Defendant has learnt her lesson. However, we are particularly concerned about the extensive promotion in the internet blog posts which spread over a relatively long period of time.
32. Taking into consideration the nature and gravity of the disciplinary charges for which we find the Defendant guilty and what we have heard and read in mitigation, we shall make a global order in respect of the amended disciplinary charge in the First Case and the amended disciplinary charge (a) in the Second to Fourth Cases that the Defendant’s name be removed from the General Register for a period of 3 months. We further ordered that the operation of the removal order be suspended for a period of 18 months.

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