

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr LAM Man (林民醫生) (Reg. No.: M11680)

Date of hearing: 19 June 2023 (Monday)

Present at the hearing

Council Members/Assessors: Dr CHOI Kin, Gabriel
(Chairperson of the Inquiry Panel)
Dr IP Wing-yuk
Prof. WONG Kwok-chu, George
Mr WONG Hin-wing, Simon, MH
Mr LAW Yu-wing

Legal Adviser: Mr Stanley NG

Defence Counsel representing the Defendant: Mr Eddie NG, instructed by
Messrs. Kennedys

Senior Government Counsel (Acting) representing the Secretary: Mr Ryan LEE

1. The charge against the Defendant, Dr LAM Man, is:

“That in or about December 2020, he, being a registered medical practitioner, sanctioned, acquiesced in or failed to take adequate steps to prevent the following promotional statements or information on a website (<http://www.whthk.org/about-us.html>) relating to his experience, skills and/or practice :

- (i) 德信植髮中心是由林民醫生親自創立的。林民醫生從事植髮工作已經超過十年了…；
- (ii) 林醫生十年來將FUE研究得透徹，無論是技巧還是速度，都能做出優秀的水平，並且是其中一位可以每小時取得超過1000-2000根頭髮的醫生，無論是移植1000根還是5000根頭髮，林民醫生都可以在一天內完成。；and/or

- (iii) 除了植髮外，林民醫生也有幫病人植眉，眼睫毛，鬚子，手術，燙傷，電療留下的疤痕或者天生沒有頭髮的部位，我們也可以將頭髮移植上去。

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 6 October 1997 to the present. His name has never been included in the Specialist Register.
3. Briefly stated, on 28 December 2020, the Medical Council received an email from a complainant, complaining against the Defendant for impermissible practice promotion on a website <http://www.whthk.org/about-us.html> (“the Website”).
4. At the inquiry, the Secretary adduced as evidence, *inter alia*, a printout of the Website on 28 December 2020 (“the Printout”).

Burden and Standard of Proof

5. 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.
6. There is no doubt that the allegation 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 the disciplinary charge against him carefully.

Findings of the Inquiry Panel

7. At the inquiry, the Secretary presented the case as three separate charges, but in our view it is only one charge with three different particulars.

8. The Defendant admitted to all the particulars of the charge against him. Despite the Defendant's admission, it remains for us to consider and determine on the evidence whether his conduct had fallen below the standards expected of registered medical practitioners in Hong Kong.
9. It is stipulated in the Code of Professional Conduct (2016 edition) ("Code") that:

"5.1.3 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.

...

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

...

5.2.1.2 Such information must not:-

- (a) be exaggerated or misleading;*
- (b) be comparative with or claim superiority over other doctors;*
- (c) claim uniqueness without proper justifications for such claim;*
- (d) aim to solicit or canvass for patients;*
- ...
- (f) be sensational or unduly persuasive;*
- ...
- (h) generate unrealistic expectations;*
- ...

5.2.2 Practice promotion

5.2.2.1 Practice promotion means publicity for promoting the professional services of a doctor, his practice or his group ... Practice promotion in this context

will be interpreted by the Council in its broadest sense, and includes any means by which a doctor or his practice is publicized, in Hong Kong or elsewhere, by himself or anybody acting on his behalf or with his forbearance (including the failure to take adequate steps to prevent such publicity in circumstances which would call for caution), which objectively speaking constitutes promotion of his professional services, irrespective of whether he actually benefits from such publicity.

5.2.2.2 *Practice promotion by individual doctors, or by anybody acting on their behalf or with their forbearance, to people who are not their patients is not permitted except to the extent allowed under section 5.2.3.*

...

18.2 *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 ..."*

10. The Printout shows the name of an entity known as “德信植髮中心” (“the Centre”) with contact phone numbers and Facebook address. It also shows the name, doctor’s title, photograph and qualifications of the Defendant.

11. The Printout contains *inter alia* the following statements:

- (i) 德信植髮中心是由林民醫生親自創立的。林民醫生從事植髮工作已經超過十年了... ;
- (ii) 林醫生十年來將 FUE 研究得透徹，無論是技巧還是速度，都能做出優秀的水平，並且是其中一位可以每小時取得超過 1000-2000 根頭髮的醫生，無論是移植 1000 根還是 5000 根頭髮，林民醫生都可以在一天內完成。 ; and

(iii) 除了植髮外，林民醫生也有幫病人植眉，眼睫毛，鬚子，手術，燙傷，電療留下的疤痕或者天生沒有頭髮的部位，我們也可以將頭髮移植上去。（“the Statements”）

12. The Statements refer to the Defendant as the founder of the Centre and had more than 10 years of experience. The claims that the Defendant had attained a certain level of excellence in terms of skills and speed in hair transplant, that he could harvest 1,000 to 2,000 strands of hair within an hour, and that he could finish transplanting 1,000 to 5,000 strands of hair in a day are in our view sensational and unduly persuasive, asserting uniqueness without proper justification and implicating superiority over other doctors. We have no doubt that the Statements were promotional of the Defendant’s experience, skill and/or practice at the Centre. The purpose of the Statements was to canvass for patients, which was impermissible under the Code.
13. The Defendant admitted to all the particulars of the charge. The question of knowledge is not in issue. The Defendant practised as a medical practitioner at the Centre. Clearly the Defendant had a professional relationship with the Centre. The Defendant had a personal responsibility to ensure that the Website complied with the Code and did not contain any impermissible promotional and/or canvassing materials. However, the Defendant had done nothing to ensure compliance.
14. We are satisfied that in or about December 2020, the Defendant had sanctioned, acquiesced in and failed to take adequate steps to prevent the publication of the offending promotional and canvassing statements in the Website. The Defendant had in our view fallen below the standards expected of registered medical practitioners in Hong Kong. Accordingly, we find the Defendant guilty of misconduct in a professional respect as charged.

Sentencing

15. The Defendant has a clear disciplinary record.
16. 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.
17. In line with our published policy, we shall give credit to the Defendant in sentencing for his admission and not contesting the charge before us today.

18. In June 2006, the Council adopted that all future cases of practice promotion not allowed under the Code would be dealt with by removal from the General Register for a short period with suspension of operation of the removal order; and in serious cases the removal order would take immediate effect.
19. The Defendant told us that he had already removed all the offending promotional and canvassing statements from the Website. The Defendant told us that since the incident, he has become more alert and aware of the circumstances that call for exercise of caution in respect of information about his practice, skills and experience. We are satisfied that the incident was one-off and the risk of re-offending is low.
20. In mitigation, the Defendant's counsel quoted to us the different qualifications of the Defendant and emphasized that the Defendant therefore had a special interest in hair transplant. This submission is of no help. None of the quoted qualifications relate to the expertise of hair transplant. Further, even if it is the case that the Defendant has a special interest in hair transplant, it is not a reason or excuse for publishing impermissible promotional and canvassing materials.
21. We also would wish to stress to the Defendant that he has to in future proactively check the materials to be published, rather than, as we gather from the mitigation submission to us, retrospectively.
22. Taking into consideration the nature and gravity of the disciplinary charge for which the Defendant is convicted and what we have heard and read in mitigation, we order that:-
 - (i) the Defendant's name be removed from the General Register for a period of 1 month; and
 - (ii) the operation of the removal order be suspended for a period of 12 months.

Dr CHOI Kin, Gabriel
Chairperson of the Inquiry Panel
The Medical Council of Hong Kong