

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr LUI Ngo Yin (呂傲研醫生) (Reg. No.: M14088)

Date of hearing: 26 October 2022 (Wednesday)

Present at the hearing

Council Members/Assessors: Prof. TANG Wai-king, Grace, SBS, JP
(Chairperson of the Inquiry Panel)
Prof. CHOW Yat-ngok, GBS, MBE
Dr KWOK Kam-hung
Ms HUI Mei-sheung, Tennessy, MH, JP
Mr MO Pak-kuen

Legal Adviser: Mr Stanley NG

Defence Solicitor representing the Defendant: Mr Warren SE-TO of
Messrs. Mayer Brown

Government Counsel representing the Secretary: Mr Raymond LAM

1. The charge against the Defendant, Dr LUI Ngo Yin, is:

“That in or about July 2020, he, being a registered medical practitioner, engaged in impermissible promotion of himself or his practice by sanctioning, acquiescing in or failing to take adequate steps to prevent a video entitled “[CORPHUB] 重拾青春 醫美成就更美好的自己 - 專訪 Collagen+ 醫學美容營運總監 呂傲研” (<https://www.youtube.com/watch?v=tJ6KwtxQ6WQ>) to be available on the internet.

In relation to the facts alleged, 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 3 July 2003 to the present. His name has never been included in the Specialist Register.
3. Briefly stated, a complaint was received by the Medical Council (“the Council”) via email against the Defendant for impermissible practice promotion of himself and his practice. Attached to the email was a YouTube video entitled “[CORPHUB] 重拾青春 醫美成就更美好的自己 - 專訪 Collagen+ 醫學美容營運總監呂傲研” (“the Video”).

Burden and Standard of Proof

4. 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.
5. 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 Inquiry Panel

6. At today’s inquiry, the Defendant admitted that in or about July 2020, he was seen appearing in a video publicly accessible and viewed on YouTube and Facebook. The Defendant also admitted that in or about July 2020, he had engaged in

impermissible promotion of himself or his practice by failing to take adequate steps to prevent the Video from being available on the internet.

7. The Secretary's case is that the Defendant engaged in impermissible promotion of himself or his practice by sanctioning, acquiescing in or failing to take adequate steps to prevent the publication of the Video on the internet. There is however no evidence adduced by the Secretary to show that the Defendant had sanctioned or acquiesced in the publication.
8. It remains for us to consider and determine on the evidence whether the Defendant's 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:-

...

(b) be comparative with or claim superiority over other doctors;

...

(d) aim to solicit or canvass for patients;

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

...

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 Video was shown to us at the inquiry. It was 2 minutes 53 seconds long. During the entire video, the Defendant discussed generally about scientific study for aesthetic products or treatments. The Defendant's full name was shown and underneath his full name was the title "MANAGING DIRECTOR, COLLAGEN+

LASER SKIN CARE CENTRE”. There was a video shot which captured a card with these words “呂醫生：「thermage 聖手」！ May”. There was a video shot which captured a certificate obtained by the Defendant and his full name and “Dr.” title could be clearly seen. There were also video shots which captured some awards. Two of the awards were given by Sculptra, which showed the following contents “COLLAGEN+ 榮獲 2017 年度十大銷售醫學美容中心 TOP 10 SALES ACHIEVEMENT AESTHETIC CENTER” and “COLLAGEN+ 榮獲 2018 年度十大銷售醫學美容中心 TOP 10 SALES ACHIEVEMENT AESTHETIC CENTER”. There were also video shots which captured the Defendant operating a service machine and a reception area look-alike with the name “COLLAGEN +” on the wall behind. Near the end of the Video, the Defendant talked about the different types of treatments or services which were available at COLLAGEN +.

11. In his submissions to the Preliminary Investigation Committee (“PIC”) of the Council, the Defendant produced some letters, which showed that he was employed by Collagen+ Medical Skincare Laser Centre (“Collagen+”). The Defendant explained that Collagen+ was nominated and chosen for the Hong Kong Most Outstanding Services Awards 2020 by Corphub Corporation (“Corphub”), and the Video was used to allow the Awards Committee of Corphub to understand Collagen+ and it was his understanding that it was only to be shown at the Awards Ceremony. The Video was filmed by the Corphub’s production team. The Defendant said he did not know the card with contents “呂醫生：「thermage 聖手」！ May” was filmed and put in the Video. As for the different awards and certificates, the Defendant said it was the cameraman who believed the contents of those awards and certificates could prove his company’s service performance. The Defendant said he did not know that Corphub would put the Video onto the Corphub’s Facebook and YouTube channel.
12. In our view, the video shots which captured the card with the words “呂醫生：「thermage 聖手」！ May” and the various awards and certificates, which showed that Collagen+ was the top 10 sales achievement aesthetic center, certainly gave viewers the impression that the treatments and services of the Defendant and/or Collagen+ were superior and recommended. The contents of the Video, when viewed as a whole, clearly amounted to impermissible promotion of the Defendant and his practice.

13. The Defendant as a medical doctor and who was the only person who appeared in the Video should be vigilant as to what video shots were taken by the cameraman and what contents would be finally included in the Video. Even if it was the case, as alleged by the Defendant in his PIC submission, that he did not know what camera shots were taken at the time, what he should have done was to ask for advance viewing of the draft Video so that he could have edited out the impermissible contents. We disagree what the Defendant's solicitor said in his submission that the Defendant had no role in editing the Video. The Defendant had simply done nothing at all to ensure that there would be no impermissible contents in the Video. The Defendant had also done nothing at all to ensure that the Video would not be misused, and as in this case, by being placed onto Corphub's Facebook and YouTube channel, which were accessible by the public.
14. There is no doubt that the Defendant had failed to take adequate steps to prevent the Video to be available on the internet. The Defendant's conduct had in our view fallen below the standards expected of registered medical practitioners in Hong Kong.
15. Accordingly, we find the Defendant guilty of misconduct in a professional respect as charged.

Sentencing

16. The Defendant has a clear disciplinary record.
17. In line with our published policy, we shall give the Defendant credit in sentencing for his admission and not contesting the disciplinary proceedings before us today.
18. 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.
19. On 23 June 2006, the Council issued a clear warning that all future cases of unauthorized practice promotion 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. The same warning was repeated in subsequent disciplinary decisions of the Council.

20. We are told in mitigation that as soon as the Defendant was notified of the complaint, he had asked Corphub to remove the Video from its Facebook and YouTube Channel, and the Video was removed. The Defendant also told us that he had taken remedial measures to ensure that in all future video interviews he gave there would be no impermissible contents and if the Code could not be complied with, he would not publish the videos.

21. Taking into consideration the nature and gravity of the disciplinary charge for which we find the Defendant guilty 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 1 month. We further order that the operation of the removal order be suspended for a period of 6 months.

Prof. TANG Wai-king, Grace, SBS, JP
Chairperson of the Inquiry Panel
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