

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

DISCIPLINARY INQUIRY
MEDICAL REGISTRATION ORDINANCE, CAP. 161

Defendant: Dr TAM Man Kei Paul (譚文基醫生) (Reg. No.: M12373)

Date of hearing: 7 August 2015

Present at the hearing

Council Members/Assessors: Prof. LAU Wan Yee Joseph, SBS (Chairman)

Dr CHEUNG Hon Ming

Dr CHEUNG Tak Hong

Ms CHOY Hok Man Constance

Dr LEUNG Chi Chiu

Mr POON Yiu Kin Samuel

Legal Adviser: Mr Edward SHUM

Defence Solicitor representing the Defendant: Dr David KAN of Messrs. Howse Williams
Bowers

Senior Government Counsel representing the Secretary: Mr Mark CHAN

1. The charge(s) against the Defendant, Dr TAM Man Kei Paul, are :

“That in October 2011, he, being a registered medical practitioner, disregarded his professional responsibility to his patient Madam [REDACTED] (“the Patient”) in that:

- (a) he failed to carry out all proper and necessary physical examinations on the Patient and make proper diagnosis before advising the Patient to undergo the Platelet-Rich Plasma (PRP) treatment (“the treatment”);
- (b) he failed to properly and adequately advise the Patient about the nature, the procedure, possible risks and complications of the treatment before performing the treatment;
- (c) he performed the treatment on the Patient when he did not have the appropriate

trainings, supervision and/or experience in performing the treatment; and

- (d) canvassed for the purpose of obtaining patients by associating with a syndicate trading under the name of “秀身文化(180)有限公司” which engaged itself in provision of beauty parlour services.

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 23 July 1999 to present and in the Specialist Register under the specialty of Critical Care medicine since 17 June 2009.
3. The Defendant admitted the truth of the factual particulars of charges (a), (b), (c) and (d) against him.
4. The Defendant also admitted that PRP treatment was not accepted aesthetic practice and there was no scientific evidence to support that PRP treatment could achieve aesthetic purposes, including skin rejuvenation. He further admitted that PRP treatment could have serious risks and complications.
5. According to the Patient, she first visited the Clinic through introduction by her colleagues and friends on 26 September 2011. Initially, she intended to seek basic beauty treatment but eventually she was persuaded by the staff of the Clinic to enroll in an aesthetic treatment plan, which cost her \$90,000 in total.
6. There is no dispute that the Patient returned to the Clinic on 24 October 2011 for her first aesthetic treatment. The Defendant was the person who performed PRP treatment on the Patient. According to the Patient, right after administering the PRP injection, the Defendant repeatedly persuaded her to undertake hyaluronic acid injections on her nose and chin and she reluctantly agreed.

Burden and Standard of Proof

7. 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.
8. There is no doubt that each of the allegations made against the Defendant here are serious. 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 each of the charges separately.

Findings of the Council

9. The Defendant does not contest any of the charges against him. Nevertheless, it remains our duty to determine whether the allegations in the charges have been proven and that they constitute professional misconduct.
10. A doctor has the primary responsibility to provide proper medical care to his patients. Before advising his patients to undergo any treatment, a doctor should carry out all proper and necessary examinations, physical or otherwise, to ensure that a proper diagnosis has been made and which requires the suggested treatment. Before performing any treatment, a doctor must properly and adequately advise his patient about the nature, the procedure and possible risks and complications of the intended treatment. However, where the treatment requested is beyond the doctor's competence e.g. he does not have the appropriate trainings, supervision and/or experience, he should refrain from performing the requested treatment on his patients.
11. In our view, the Defendant's failure to discharge his professional responsibility to the Patient as evidenced by the unchallenged factual particulars of charges (a), (b) and (c) clearly constitutes professional misconduct. We therefore find him guilty of charges

(a), (b) and (c).

12. As to charge (d), we are troubled by the way in which this charge was framed. The Legal Officer sought to argue that by coercing the Patient to undertake hyaluronic acid injections right after performing PRP treatment on the Patient, the Defendant was guilty of canvassing the Patient to undergo a different treatment from the one for which she originally intended to undergo. However, this is not the charge that the Defendant is facing.
13. Although we strongly suspect that the Defendant was at all material times aware of the canvassing practice of 秀身文化(180)有限公司, the burden of proof is squarely on the Legal Officer. In our view, there is simply no evidence to show how by associating with 秀身文化(180)有限公司, the Defendant would be guilty of canvassing the Patient. In fact, the Patient had already enrolled in the aesthetic treatment plan before the Defendant first attended her on 24 October 2011. We therefore find him not guilty of charge (d).

Sentencing

14. The Defendant has a clear record.
15. In accordance with our published policy, we shall give him credit for his frank admission and cooperation both at the preliminary investigation stage as well as the hearing before us today.
16. The first principle in medicine is that a doctor should do no harm to his patients. Accordingly, a doctor may only provide medical treatment to a patient after proper consultation to ensure that the suggested medical procedure is appropriate. Moreover, consent has to be given voluntarily by the patient after having been informed of the relevant aspects of the medical procedure including the general nature, effect and risks and complications involved. But where the medical treatment requested by a patient is beyond the competence of a doctor, he should refrain from performing the medical procedure on the patient.

17. We find it unacceptable that the Defendant did not carry out proper and necessary physical examinations on the Patient before advising her to undergo the PRP treatment. In our view, the Defendant had clearly exposed the Patient to serious risk and complications of a treatment which he admitted did not represent accepted aesthetic practice. This was particularly true when the Defendant did not have the appropriate trainings, supervision and/or experience in performing the PRP treatment.
18. We accept that the Defendant had learnt a hard lesson and the chance of committing the same or similar disciplinary offences would be low.
19. Having considered the gravity of the charges for which the Defendant are convicted and what we have heard and read in mitigation, we order that:-
- (1) in respect of charge (a), the Defendant's name be removed from the General Register for a period of 6 months;
 - (2) in respect of charge (b), the Defendant's name be removed from the General Register for a period of 6 months;
 - (3) in respect of charge (c), the Defendant's name be removed from the General Register for a period of 3 months;
 - (4) the said removal orders to run concurrently; and
 - (5) operation of all the said removal orders be suspended for a period of 12 months.

Remarks

20. The Defendant's name is also included in the Specialist Register under the specialty of Critical Care Medicine and we shall leave it to the Education and Accreditation Committee to consider whether anything needs to be done in respect of his specialist registration.

Prof. LAU Wan Yee Joseph, SBS
Chairman, Medical Council