

MEDICAL REGISTRATION ORDINANCE (Chapter 161)

ORDER MADE BY THE MEDICAL COUNCIL OF HONG KONG  
DR LAM PANG ERIC (REGISTRATION NO.: M12574)

It is hereby notified that after due inquiry held on 8 November 2016 in accordance with section 21 of the Medical Registration Ordinance, Chapter 161 of the Laws of Hong Kong, the Medical Council of Hong Kong found Dr LAM Pang Eric (Registration No.: M12574) guilty of the following disciplinary offence:—

‘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.’

Dr LAM 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.

According to Dr LAM, 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’.

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’. According to Dr LAM, 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- (iii) the Article would not be published in the same issue of ‘JESSICA’ as any promotional material or advertisement for Allergan’s own bimatoprost product, ‘LATISSE’; and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.*’.

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’).

In the Article, reference to the interview with Dr LAM 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, Dr LAM 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.

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.

The Medical Council subsequently received the present complaint against Dr LAM on 15 September 2011.

By a letter dated 29 April 2015, Allergan HK informed Dr LAM 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) Dr LAM 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 Dr LAM which he subsequently approved; and
- (iii) their internal document records related to the Latisse advertisement in question did not indicate that Dr LAM was aware at time of the interview or prior to publication of the Article that there would be an advertisement for Latisse in JESSICA.

By a letter dated 27 October 2016, Allergan HK replied to the Medical Council Secretariat that they did not have record to verify if the draft article approved by Dr LAM 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 Dr LAM.

Dr LAM 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. Dr LAM 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.

In the Medical Council's view, Dr LAM 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'. Therefore, the crux of the matter lay in whether he had already exercised due diligence to prevent this from happening.

Dr LAM 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.

In the Medical Council's view, the Article taken as a whole would lead the readers into thinking that Dr LAM 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. Dr LAM 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 was 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.

The Medical Council therefore considered that Dr LAM's conduct had fallen below the standards reasonably expected of registered medical practitioners in Hong Kong and found Dr LAM guilty of professional misconduct as charged.

Taking into account the whole circumstances of this case and Dr LAM's plea of mitigation, the Medical Council ordered that Dr LAM's name be removed from the General Register for a period of one month and the removal order be suspended for a period of one year.

The orders are published in the Gazette in accordance with section 21(5) of the Medical Registration Ordinance. The full decision of the Medical Council is published in the official website of the Medical Council of Hong Kong (<http://www.mchk.org.hk>).

LAU Wan-ye, Joseph *Chairman, The Medical Council of Hong Kong*