



City of Westminster Licensing Sub-Committee

Meeting: *Licensing Sub-Committee*

Date: *7 December 2017*

Classification: *General Release*

Premises: *Be Health Chinese Medical Centre Ltd
98 Shaftesbury Avenue
London
W1D 5EQ*

Licence Reference Number: *16/09470/LIMSTR*

Wards Affected: *St James's*

Financial Summary: *None*

Report of: *Director for Public Protection and Licensing*

1. Executive Summary

- 1.1 The Council has received a request from the City Inspectors to revoke the special treatment premises licence for Be Health Chinese Medical Centre Ltd, 98 Shaftesbury Avenue, London, W1D 5EQ.
- 1.2 The report sets out the revocation request details and legal context along with other considerations that the Licensing Sub-Committee requires to determine this request under Part 2 of the London Local Authorities Act 1991 (the Act).

2. Options

- 2.1 That following consideration of the information given orally at the hearing and in writing by the City Inspectors and licence holder, Members may;
 - 2.1.1 Revoke the licence.
 - 2.1.2 Deny the request to revoke and allow the licence to continue.

3. Details

- 3.1 The special treatment premises licence was granted on 23 December 2011 and has been renewed annually since that date. The current special treatment licence, 16/09470/LIMSTR, will remain in force until 22 December 2017 and permits the provision of massage and reflexology (see licence at **Appendix A1**).

- 3.2 The licence holder, Be Health Chinese Medical Centre Ltd, has already applied to renew their special treatment for the period 23 December 2017 – 22 December 2018. That application (17/09754/LIMSTR) has been granted under delegated authority and the licence has been issued with effect from 23 December 2017.
- 3.3 On 21 September 2017, the Council successfully prosecuted the licence holder in the City of London Magistrates Court for an offence under the Act. The offence related to a breach of licence condition 2(d) on 23 December 2016. Condition 2(d) reads as follows:
- “No soliciting for custom, including the distribution of leaflets, shall take place from the premises, immediately outside the premises or in the vicinity of the premises.”*
- 3.4 The premises has previously been identified as breaching the condition regarding touting in July 2015. Mr Francis Keegan, City Inspectors Team Manager, warned the premises at the time (see email at **Appendix B1**) and was reassured by Mr Qin Xiao that the company had retrained staff to avoid a repeat of this practice.
- 3.5 On Friday 23 December 2016 at 23:35hrs, City Inspectors Mr Tony Miah and Mr Tim Butterfield were touted by a female from within the premises who was knocking on the glass door to attract attention of people passing by. Both officers approached the premises and the female opened the door and offered massage for £30. City Inspector Tony Miah entered the premises and asked if the female was allowed to tout for the business in this manner. She appeared not to understand and pointed to a tariff displayed on a counter in the premises. Mr Miah’s witness statement is included as **Appendix B2**.
- 3.6 On 21 September 2017, the case proceeded to trial at City of London Magistrates’ Court (please refer to the attendance note by Senior Solicitor-Advocate (Litigation) Miss Kirsty Panton at **Appendix B3**). The Magistrates found the matter proved beyond all reasonable doubt and fined the licence holder £750.

4. Revocation request

- 4.1 Following the successful prosecution, on 23 October 2017, Mr Francis Keegan (City Inspector Team Manager) requested that the Licensing Sub-Committee hear the request to revoke the special treatment licence (see **Appendix B4**).

5 Applicants Submissions

- 5.1 The licence holder has submitted documents showing measures that have been imposed to combat touting at the premises. These are included as **Appendices C1 to C4**.
- 5.1.1 The licence holder has implemented a signed staff notice sheet which makes staff aware of the requirements of licence condition 2(d) (see **Appendix C1**). A revised version of this document has been provided at **Appendix C2**.
- 5.1.2 Copies of an agreement document signed by the licence holder and the staff member have been provided (see **Appendix C3**). The agreement document sets out the rules for the provision of massage at the premises. A revised version of the agreement terms has been provided at **Appendix C4** which highlights the consequences for breaching licence condition 2(d).

6. Legal Implications

6.1 Special treatment premises are licensed under Part 2 of the London Local Authorities Act 1991. S6 of Part 2 states:

- (1) No premises shall be used in the borough as an establishment for special treatment except under and in accordance with a special treatment licence granted under this section by the borough council.
- (2) The borough council may grant to an applicant and from time to time renew or transfer a licence on such terms and conditions and subject to restrictions as may be specified.
- (3) Without prejudice to the generality of subsection (2) above, such conditions may relate to-
 - (i) The manner in which the establishment is operated and the way it is advertised.

6.2 The Council has produced standard conditions for special treatment premises which are attached to all special treatment licences. Standard condition 2(d) states:

(d) No soliciting for custom, including the distribution of leaflets, shall take place from the premises, immediately outside the premises or in the vicinity of the premises.

6.3 Under s14(2) of the Act, if any premises in respect of which a licence is in force are used as an establishment for special treatment otherwise than in accordance with the terms, conditions or restrictions on or subject to which the licence is held, then the holder of the licence or other person concerned in the conduct or management of the premises shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

6.4 The Licence Holder has been found guilty of breaching standard condition 2(d) on their special treatment licence and fined accordingly.

6.5 Under s14(3) of the Act, the borough council may revoke a licence if its holder is convicted of an offence under s14(2) of the Act.

6.6 Therefore, the Licensing Sub-Committee may determine to:

- (a) Revoke the licence; or
- (b) Deny the request to revoke and allow the licence to continue.

6.7 Should the Licensing Sub-Committee determine to revoke the licence, the applicant may appeal to the Magistrates' Court within 21 days beginning with the date on which the applicant is notified of the refusal of his application. Should the licence holder determine to appeal a decision to revoke the special treatment licence, the licence shall be deemed to remain in force until the time for bringing an appeal has expired or the appeal is determined or abandoned.

7. Human Rights Act and Equality Implications

7.1 In making a decision consideration will need to be given to the applicant's rights under the European Convention on Human Rights. The right to peaceful enjoyment of possessions (Article 1 of the First Protocol) and freedom of expression (Article 10) may be relevant. The Home Office Guidance suggests that "local authorities would be well

advised to consider whether any interference with the applicant's rights under Article 10 or Article 1, Protocol 1 of the European Convention on Human Rights is necessary and proportionate for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others, or in the case of Article 1, Protocol 1, can be justified in the general interest".

7.2 The Council in its capacity as Licensing Authority has a duty to have regard to its public sector equality duty under section 149 of the Equality Act 2010. In summary, section 149 provides that a Public Authority must, in the exercise of its functions, have due regard to the need to:

- (a) eliminate discrimination harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- (c) foster good relations between persons who share a relevant protected characteristics and persons who do not share it.

Section 149 (7) of the Equality Act 2010 defines the relevant protected characteristics as age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

Appendices

- A1 – Special Treatment Premises Licence
- B1 – Email from Mr Keegan to Mr Xiao
- B2 – Witness statement of Mr Tony Miah dated 22 January 2017
- B3 – Case notes from City of London Magistrates' Court dated 21 September 2017
- B4 – Email requesting licence revocation from City Inspectors dated 23 October 2017
- C1 – Be Health Staff Notice
- C2 – Revised Be Health Staff Notice
- C3 – Be Health and staff agreements
- C4 – Revised Be Health staff agreement

If you have any queries about this report or wish to inspect any of the background papers please contact: Nick Nelson on 020 7641 3431 or at nnelson@westminster.gov.uk

BACKGROUND PAPERS

London Local Authorities Act 1991
Special Treatment Rules of Procedure
Special Treatment Standard Conditions



City of Westminster

16/09470/LIMSTR

SPECIAL TREATMENT LICENCE

The CITY OF WESTMINSTER, under the provisions of Part II of the London Local Authorities Act 1991

hereby authorises BE HEALTH CHINESE MEDICAL CENTRE LTD

to use the premises BE HEALTH CHINESE MEDICAL CENTRE LTD
98 SHAFTESBURY AVENUE
LONDON
W1D 5EQ

as an establishment for SPECIAL TREATMENT.

This licence commences on 23 DECEMBER 2016
This licence is in force up to 22 DECEMBER 2017

The following treatments are permitted under this licence:

LOWER RISK TREATMENTS	HIGHER RISK TREATMENTS
Massage and Reflexology	N/A

Special Treatments may only be carried out in the permitted areas shown on the plans attached at APPENDIX 1.

This licence is granted subject to the Special Conditions at APPENDIX 2 and the Standard Conditions of the Council at APPENDIX 3.

SIGNED:

DATE : 8 SEPTEMBER 2016

pp Director – Public Protection and Licensing

APPENDIX 1:

PLANS

APPENDIX 2:

SPECIAL CONDITIONS

1. The following treatments are not permitted under the authority of this licence: facial, manicure, pedicure and nail extensions.

APPENDIX 3:

STANDARD CONDITIONS

GENERAL RULES RELATING TO MANAGEMENT, CONDUCT ETC

- 1 The relevant licence or a clear copy shall at all material times be prominently exhibited within the premises in a position where it can easily be read by patrons.
- 2 (a) The licensee shall take all reasonable precautions for the safety of all persons using the premises; shall ensure compliance at all times with the relevant provisions of the Health and Safety at Work etc Act 1974 and, except with the consent of the Council, shall at all material times retain control over all parts of the premises.

(b) The licensee shall be in charge of and upon the premises at all material times. The licensee may authorise in writing a duty manager to deputise for him. If he does so this written authorisation must be kept on the premises and be readily available for inspection by any police officer or authorised officer.

NOTE: Hereafter in these rules the term 'Duty Manager' will mean the licensee or the duty manager as appropriate.

- (c) The duty manager shall at all reasonable times admit to the premises any police officer or officer of the Fire Authority, or any authorised officer of the Council (whose written authority will be provided on request).
- (d) No soliciting for custom, including the distribution of leaflets, shall take place from the premises, immediately outside the premises or in the vicinity of the premises.

NOTE: This does not prohibit the distribution of leaflets to persons within the premises.

- (e) The licensee shall comply with any other statutory enactment relating to the construction and use of the premises.

NOTE: In this connection it is the Council's policy that generally applications for licences or for variation of licences will not be considered unless the activity to be authorised by the Council is lawful in planning terms.

- (f) The licensee shall take out third party insurance with a liability cover of at least £2,000,000 and shall submit evidence of such cover.

- 3 (a) The duty manager shall be familiar with all licence conditions including these rules which shall be kept on the premises.

(b) The duty manager shall not engage in any duties which will prevent general supervision of the premises. The duty manager shall whenever necessary be assisted by suitable adults.

(c) Before admitting the public the duty manager shall carry out all necessary safety checks.

NOTE: A specimen check list is provided in Appendix A of these rules.

- 4 (a) No poster, advertisement, photograph, sketch, synopsis or programme shall be displayed, sold or supplied anywhere by or on behalf of the licensee which is unsuitable for general exhibition. If the licensee is notified by the Council in writing that it objects under this rule to a poster, advertisement, photograph, sketch, synopsis or programme, it shall not be displayed, sold or supplied.

(b) The duty manager shall ensure that no noise shall emanate from the premises nor vibration be transmitted through the structure of the premises which gives rise to a nuisance.

NOTE: The Council may require clearly legible notices to be displayed at all exits from the premises requesting patrons to respect the needs of local residents and to leave the premises and area quietly.

- (c) The duty manager shall maintain good order on the premises and in particular shall ensure that none of the following shall take place:
 - (i) unlawful possession and/or supply of drugs controlled by the Misuse of Drugs Act 1971;

- (ii) indecent behaviour, including sexual intercourse, except as permitted by the Theatres Act 1968;
 - (iii) the offer of any sexual or other indecent service for reward;
 - (iv) acts of violence against person or property and/or the attempt/or threat of such acts.
- (d) The duty manager shall ensure that no part of the premises are used by prostitutes, for soliciting or any other immoral purposes.
- (e) The duty manager shall not do, or permit in the establishment, any act of an indecent or disorderly character and shall take all necessary steps to exclude from the establishments a customer or any other person who has committed such an act in the establishment and shall cause all persons in his employ engaged in the establishment to be decently and properly attired,
- (f) The duty manager shall not permit the door of any room or place in the establishment for the time being in use for the giving of special treatment to be locked during the period that the client is therein. However, where a special treatment is being performed without a therapist in attendance (such as in the use of sunbeds or tanning booths) such booths or cubicles may be locked from the inside notwithstanding Regulation 6(f), provided that the staff have the means of opening the booth/cubicle in the event of an emergency.
- (g) The duty manager shall ensure that whenever more than one person is being treated in a room sufficient screening is provided to maintain privacy.
- (h) The duty manager shall ensure that with the exception of those persons receiving treatment in accordance with the conditions of the licence all clients present in any part of the establishment shall be decently and properly attired and separate changing accommodation for males and females shall be provided.
- 5 There shall be prominently and legibly displayed a comprehensive tariff of charges which shall be adequately illuminated and be placed in such a position that it can easily and conveniently be read by persons before entering the premises. Where this is impossible, the tariff may with the consent of the Council, be displayed in the reception area.
- 6 The type of treatment provided under the licence shall not be changed without the consent of the Council.
- 7 (a) No alterations (including temporary alterations) shall be made to the premises, without the consent of the Council. This condition shall not require notice to be given in respect of routine maintenance works.
- (b) Where the works necessitate the premises being closed for a period of time, the premises shall not re-open for the purpose of the licence without the consent of the Council.

NOTE: Any consent under this rule does not relieve the licensee of any need to seek a variation in the terms of the licence.

- 8 (a) Licensed treatments shall only be provided by a special treatment practitioner or by a person undertaking training who is under the direct supervision of a special treatment practitioner.
- (b) The licensee shall ensure that all special treatment practitioners providing licensed treatments are suitably qualified and trained as defined in the Council's Guidance on the Qualification and Training of Special Treatment Practitioners.
- (c) The licensee shall ensure that any person undertaking training to achieve the required level, as defined within the Council's Guidance on the Qualification and Training of Special Treatment Practitioners, is carrying out a licensed treatment under the direct supervision of a special treatment practitioner who has attained the relevant qualification and/or experience (as defined by the council) for that licensed treatment.
- (d) Records including copies of relevant qualifications and /or training shall be kept on the premises, in a form approved by the Council of every special treatment practitioner or trainee practitioner who provides licensed treatments on the premises.
- (e) The records described in paragraph (d) above shall be kept on the premises whilst the special treatment practitioner or trainee practitioner is employed and/or carrying out special treatments at the premises and for a period of 1 year from the date when that special treatment practitioner or trainee practitioner ceases employment and/or providing treatments at that premises.

- 9 (a) The duty manager shall ensure that any electrical or other special equipment (such as ultra-violet radiation equipment) is used and operated in accordance with any appropriate approved code of practice.
- (b) All electrical equipment used in the provision of special treatments shall be approved by the Council.
- 10 Records shall be kept at the premises, in a form approved by the Council, of persons receiving treatment. The record shall include the name of the person receiving treatment, the time of admittance for treatment and the name of the special treatment practitioner giving that treatment. In the case of persons undertaking training to meet the requirements of the Council's Guidance on the Qualification and Training of Special Treatment Practitioners, the entry shall include both the name of the person giving treatment and of the person supervising.
- 11 The licensee shall ensure that adequate sanitary accommodation is available in the premises for the free use of both staff and members of the public and in particular shall:
- (a) maintain each sanitary convenience in clean and efficient order;
- (b) ensure that any room which contains a sanitary convenience is suitably and sufficiently lit and ventilated and is kept clean;
- (c) ensure that in the sanitary accommodation provided there are installed and maintained suitable and sufficient wash-hand basins and that each basin is provided with an adequate supply of hot and cold water at a suitably controlled temperature, together with an adequate supply of soap and suitable hand drying facilities.
- (d) ensure that the premises are so constructed with the adequate provision of efficient drains, suitable wall, floor and ceiling finishes etc., in order that satisfactory sanitation can be maintained.
- 12 Each treatment room shall be provided with a suitable wash-hand basin with a suitable supply of hot and cold water, together with soap, a nailbrush and either a supply of disposable towels or a clean towel at all times.
- 13 Proper means to the satisfaction of the Council shall be provided for securing the cleanliness of all instruments, towels, materials and equipment used in the establishment and for their safe disposal.
- 14 A sufficient number of suitable receptacles with properly fitting covers shall be provided to the satisfaction of the Council for the purpose of receiving rubbish, dust and refuse from the premises. The receptacles shall be emptied whenever this becomes necessary.
- 15 The approved arrangements at the premises, including means of escape provisions, fire warning and fire fighting equipment, the electrical installation, including any electrical equipment, and mechanical equipment, shall at all material times be maintained in good condition and in full working order.

NOTE: Appendix B gives details of what is required in respect of the maintenance of fire appliances, fire alarms and water supply.

- 16 (a) The means of escape provided for the premises shall be maintained unobstructed, free of trip hazards, be immediately available and clearly identified in accordance with the approved arrangements.
- (b) No changes shall be made to the approved layout of the premises without the consent of the Council.
- (c) All exit doors shall be available at all material times without the use of a key, code, card or similar means. Any fastenings or electrically controlled locks shall be approved by the Council.
- (d) Any approved removable security fastenings shall be removed from the doors prior to opening the premises to the public. All such fastenings shall be kept in an approved position.
- (e) All fire doors shall be maintained effectively self closing and not held open other than by an approved device.
- (f) Fire resisting doors to ducts, service shafts and cupboards shall be kept locked shut.
- (g) The edges of the treads of steps and stairways shall be maintained so as to be conspicuous.
- 17 (a) Only hangings, curtains, upholstery and temporary decorations, complying with the relevant British

(or where appropriate European) Standard shall be used. Where necessary these shall be periodically tested for flame resistance and re-treated as necessary to the satisfaction of the Council.

- NOTE:
- (1) Appendix C sets out the method of seeking consent for permanently installed materials.
 - (2) In the case of temporary decorations a statement must be provided advising the period it is desired to retain the decorations.
- (b) Curtains and hangings shall be arranged so as not to obstruct fire safety signs, fire extinguishers or other fire fighting equipment.
 - (c) Curtains, where permitted across doors, shall be hung in two halves on a free running rail to enable them to be parted easily. Such curtains shall have a clearance of at least 25mm between the bottom of the curtain and the floor.
- 18 A log book shall be maintained in which shall be recorded all checks, tests and defects of fire fighting equipment and any fire alarm system. The log book shall be kept on the premises and be available for immediate inspection by an authorised officer.
- 19 Any fire alarm system shall be checked weekly to ensure it is fully operational. In addition the system shall be serviced yearly by a qualified engineer and all results recorded in the log book.
- 20 (a) All fire extinguishers and fire fighting equipment shall be checked yearly by a competent person and the test date recorded on the equipment. In the case of hose reels and sprinkler systems the test results shall be recorded in the log book.
- (b) Any extinguisher discharged shall be replaced or recharged immediately.
- 21 The Fire Brigade shall be called at once to any outbreak or suspected outbreak of fire, however slight, and details thereof shall be recorded in a log book. Suitable notices shall be prominently displayed indicating how the Brigade can be summoned.
- 22 All lighting (including escape lighting) shall be maintained in full working order.
- 23 The electrical installation for the premises and any equipment used therein shall be maintained in a safe working condition at all times as prescribed by the Electricity at Work Regulations for electrical installations BS 7671.
- 24 Unless otherwise decided by the Council:
- (a) at least once every 5 years the entire electrical installation for the premises (including the escape lighting) shall be inspected and a certificate of that inspection be submitted to the Council;
 - (b) at least once a year any electrical equipment used in connection with the special treatment shall be inspected and a certificate of that inspection be submitted to the Council;
 - (c) the inspection shall be in accordance with Guidance Note 3 to BS 7671; and
 - (d) the certificate shall be signed by a Corporate Member of the Institution of Electrical Engineers or by a contractor currently enrolled with the National Inspection Council for Electrical Installation Contracting or, with the approval of the Council, another competent person.
- 25 (a) The escape lighting installation, including its load, shall not be altered without the consent of the Council.
- (b) Any escape lighting battery shall be fully charged before the admission of patrons.
- (c) Should the normal lighting fail and the escape lighting system have a one hour capacity patrons shall leave the premises within 30 minutes unless within that time the normal lighting has been restored and the batteries are being re-charged. If the escape lighting system has a three hour capacity patrons shall leave the premises within one hour unless within that time the normal lighting has been restored and the batteries are being recharged.
- (d) If the patrons have left the premises they shall not be re-admitted until normal lighting has been fully restored and the battery or batteries fully recharged.
- (e) The escape lighting installation shall be tested at least once every 6 months in accordance with BS 5266 Part I and a copy of the certificate retained on the premises.

- 26 (a) The heating system and/or appliances used within the premises shall be fully maintained in good working order for use when required. Any guards required by the Council shall be securely held in position.
- (b) Portable heating appliances shall not be used without the Council's consent.
- (c) No alterations / additions to the approved heating system shall be made without the written consent of the Council.
- 27 No alteration shall be made to any part of the electrical, gas or mechanical ventilation systems without the consent of the Council.
- 28 Gas and electricity/mains intake enclosures shall not be used for any other purpose (e.g. storage).
- 29 Paraffin or other mineral oil shall not be used in any lamp stove or other appliance in premises except with the consent of the Council.

APPENDIX A SPECIMEN CHECKLIST

To be used as a guide by the Duty Manager or other persons carrying out a safety check before the public are admitted.

Date _____ Name of person carrying out inspection _____

Job title of person carrying out inspection _____

Tick only if everything is in order.

Do not open the premises until any problems have been rectified.

1. All exit doors are available for use.
2. Any chains or other removable fastenings are removed from exit doors and hung in their approved storage position.
3. Any panic bolts and panic latches are in working order.
4. Any doors, gates or shutters that should be kept open are locked in the open position.
5. All internal and external escape routes and exit doors are clear and free from obstruction.
6. All fire doors are shut unless held open by devices approved by the Council.
7. All exit routes including stairways and all fire safety signs are adequately illuminated.
8. Where two power supplies are provided e.g. mains and battery, both are operative throughout the premises.
9. There are no obvious fire hazards such as combustible waste or litter.
10. All fire fighting equipment is in position and available for use.
11. The first aid equipment is available for use.
12. Any public address system is in working order.
13. Any fire alarm system is in working order.

APPENDIX B

MAINTENANCE OF FIRE APPLIANCES, WATER SUPPLY AND FIRE ALARMS.

FIRE APPLIANCES

1. (a) The approved fire appliances shall be kept in the approved positions and be maintained in satisfactory working order so as to be available for instant use.
2. (b) Portable fire appliances shall be inspected at least once a year in accordance with the relevant British Standard and the date of the inspection clearly marked on the appliance or on a stout tab securely attached to it. Extinguishers which incorporate an antifreeze agent shall be inspected and recharged in compliance with the manufacturer's instructions.
- (c) Any hydraulic hose reels shall be inspected once a year to ensure that they are in working order and the date of the inspection clearly marked on the appliance and recorded in the log book.
- (d) Any drenchers or sprinklers shall also be inspected once a year to ensure that they are in working order and the date of the inspection clearly marked on the appliance or recorded in the log book.

WATER SUPPLY

2. The Duty Manager shall notify the Fire Authority immediately if the water supply to any hydrant, hose reel, sprinkler, or other fire extinguishing installation is cut off or restricted.

FIRE ALARMS

3. Any fire alarm system shall be maintained in satisfactory working order. The system shall be maintained and serviced in accordance with BS 5839 and tested regularly in accordance with conditions imposed by the Council.

APPENDIX C

PERMANENTLY INSTALLED CURTAINS, HANGINGS, UPHOLSTERY

1. CURTAINS AND HANGINGS

Applications for consent to use curtains and hangings shall be made in writing and shall be accompanied by full details including a certificate in respect of fire-retardancy issued by a recognised laboratory e.g. one accredited by NAMAS showing that each fabric has been tested using the methods in BS 5438 1989 Tests 2A and 2B using a 10 second flame application time in each case. The results of tests on each fabric shall show that no part of any hole nor the lowest boundary of any flaming reached the upper or either vertical edge of any specimen and that there was no separation of any flaming debris.

Where any fabric is stated to be durably flame retarded this means that it has been chemically treated to render it flame retarded. Prior to the above ignitability tests each flame retarded fabric shall be subject to the appropriate wetting or cleansing procedure in BS 5651: 1989. The minimum procedure required shall be that in BS 5651: 1989, Paragraph 3, 'Water soaking procedures'.

2. UPHOLSTERY

Application for consent for all upholstery (whether provided new or second-hand) shall be made in writing and shall be accompanied by full details, including a certificate in respect of fire-retardancy issued by a recognised laboratory e.g. one accredited by NAMAS showing that the upholstery composite of each item has been tested using the methods in BS 5852: 1990, Section 4 or Section 5, and has been classified as "not ignited" using ignition source 0 (cigarette test), ignition source 1 (simulated match flame) and ignition source 5 (timber crib test);

- NOTE:
- (1) Tip-up seating should be resistant to ignition using the method in BS 5852 : 1990, (as amended) Section 5, 20.34 using crib ignition source 5.
 - (2) All seating in public areas should also be resistant to deliberate ignition from below and should therefore pass additional tests as set out in BS 5852 : 1994 Section 5, 20.5 using at least ignition source 1.

NAMAS

NAMAS is the National Measurement Accreditation Service, it is the UK national unified accreditation service for calibration and testing laboratories. It is a service of the National Physical Laboratory, Queens Road, Teddington, Middlesex, TW11 OLW.



Signed:

pp Director – Public Protection and Licensing

DATE : 8 SEPTEMBER 2016

CITY OF WESTMINSTER, Licensing Service, Westminster City Hall, 64 Victoria Street, London SW1E 6QP
Telephone : 020 7641 6500 Email : licensing@westminster.gov.uk

18/07/15 at 00:55 by fkeegan

18/07/15 at 00:55 by fkeegan

18/07/15 at 00:52 by fkeegan

See below for email sent, and apology received..... (F Keegan)

=====

Dear Francis,

I am writing regarding your recent visit to both venue. The company has train the staff under the required regulation and also set the straight rule to avoid the same matter happen again. As company officer, we will certainly follow the regulations. Please do not hesitate to contact me if further info needed

Regards

Qin Xiao

To: Mr Qin Xiao / Be Health Chinese Medical Centre Ltd.

I refer to my recent visit to your special treatment licensed venue at 98 Shaftesbury Avenue, during which I spoke to Dr Bi by telephone (although I now know that she is no longer an officer of the company).

On this occasion I was touted by a young lady as I tried to walk past the shop, in clear breach of the terms of the company's licence . This is why I entered the venue and asked for the manager.

The manageress seemed to have little idea of the terms of the licence, and she certainly had little control over what was going on. Furthermore, the letter of delegation produced at my request related to a different venue (No 108 Shaftesbury Avenue).

These matters are of obvious concern and so I would be grateful to receive your urgent written comments.

Thank you.

Francis Keegan
City Inspector Team Manager - City Operations Public Protection and Licensing
City of Westminster
4th Floor Westminster City Hall
64 Victoria Street
London
SW1E 6QP
Tel: 020 7641 4429



City of Westminster

Official - WITNESS STATEMENT

(C.J. Act, 1967, s.9; M.C. Act 1980, ss.5A(3) (a) and 5B; Criminal Procedure Rules 2005, r.27.1 (1))

Statement of: Tony Miah
 Age if under 18 Over 18 (if over 18 insert 'over 18') Occupation City Inspector

Address and Telephone Number: Westminster City Council
 City Co-ordination
 Public Protection and Licensing
 City of Westminster
 Portland House
 Bressenden Place
 London SW1E 5RS

Tel: 0207 641 3385/8511

This statement (consisting of 1 page(s) signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated: _____

Signature: 22.01.2017

I am a City Inspector employed by Westminster City Council within the Public Protection and Licensing Team. On Friday, 23rd December 2016 at about 23:35hrs I was on duty with my colleague, Mr Tim Butterfield on Shaftesbury Avenue, London W1. We were carrying out visits to various premises in the area in relation to the Licensing Act 2003. As we were walking along Shaftesbury Avenue, towards Cambridge Circus I heard a knocking sound, I turned to my right and saw a female of Chinese appearance knocking on the glass door from within a premises. I looked up at the signage which identified the premises as Be Health, a Chinese herbal medicine shop which I now know to be 98 Shaftesbury Avenue, London W1. There were posters in the window advertising the various treatments provided which included massage.

At this point the female opened the door and offered Mr Butterfield and I massage by saying 'massage £30' and repeated the phrase. I approached the female who and asked if she was permitted to tout for business in this manner. She appeared not to understand the question and opened the door wider beckoning me to enter the premises. I entered the premises and asked again if she was permitted to tout, offering massage as she was. She then showed a tariff list stuck to a glass counter top. At this point I showed her my Westminster ID and asked again if she was allowed to tout for business. Upon seeing the ID she said 'No, sorry sorry'. I gave the female a verbal warning and told her to stop touting in this manner. While in the premises I noticed two other females sitting by the counter. All three were dressed in tight clothing not in keeping with the attire normally worn by massage therapists.

Signature _____ **Signature witnessed by:** _____

IN THE MAGISTRATES COURT
AT CITY OF LONDON

WESTMINSTER CITY COUNCIL

- v -

BE HEALTH CHINESE MEDICAL CENTRE LIMITED

TRIAL

DATE: 21st September 2017
COURT ROOM: 4
CORAM: 3 Lay Justices
PROS: Miss K Panton
CONTRA: Richard Barca

I was instructed to represent WCC at the trial in relation to the above named defendants, for an offence under the London Local Authorities Act 1991.

PRE-HEARING:

I spoke with Mr Barca who confirmed that the trial was still proceeding. Ms (Dr) Bey was in attendance as director of the company. There were also 2 defence witnesses in attendance, Miss Long and Miss Ruan, employees of the business.

Tony Miah and Tim Butterfield were in attendance to give live evidence on behalf of the prosecution. Francis Keegan was also in attendance in case Mr Barca took issue with his evidence, particularly in relation to the adoption of the legislation.

As the issue for trial was simply that they did not offer the massage, I spoke to Mr Barca to confirm most of the evidence was agreed and the witnesses could be led on this point. Mr Barca confirmed this was acceptable.

We then commenced the trial.

HEARING:

I proceeded to open the case, providing the Magistrates with a summary of the legislation and took them through the points the prosecution had to prove, making particular reference to the fact this offence is one of strict liability.

However, Mr Barca then took issue with my opening saying that 'nothing was agreed and nothing can be led'. This naturally changed the dynamics of the trial and length of time it would take.

To prove the prosecution's case, I called Tony Miah and Tim Butterfield to give live evidence.

Following my examination-in-chief they were all cross-examined by Mr Barca.

Once the prosecution case was concluded it was for the defence to put their case.

Miss Long gave live evidence first, followed by Miss Ruan and Ms Bey. I cross-examined all 3 defence witnesses.

In summary Miss Long is the receptionist and she said she works every Friday from 9pm until about midnight and 'never leaves the desk'. However, it was established through cross-examination that she would need to leave the desk for toilet breaks etc and, in fact, she couldn't recall exactly what happened on the 23rd December 2016.

Miss Ruan is a masseuse who would mainly be in the basement working when she had clients. It was also established through cross-examination that she also couldn't recall exactly what happened on the 23rd December 2016.

Ms Bey gave evidence as to the instructions she gives her staff about touting and produced a document which the staff would sign to confirm that they understand they mustn't tout or distribute leaflets. However, this document only had approximately 8 signature entries for November 2016. When all 3 witnesses were cross-examined about this document they had varying responses. Miss Long said she have to sign it every shift, Miss Ruan said maybe just once and Ms Bey was unclear. They were also unable to produce any further documents showing signatures for December when I cross-examined them on this point.

2 of the witnesses also referred to "WeChat" which is a group app that the employees and Ms Bey use. It was said in their examination in chief that they were also told on the group chat not to tout. However, during cross-examination they were unable to produce any printouts of such conversations (although this would not assist that they hadn't touted in any event, as it is a strict liability offence).

During cross-examination Ms Bey confirmed she wasn't even present on 23rd December so would be unable to provide evidence as to what would have happened on this occasion.

I then made my closing speech for the prosecution's case, followed by Mr Barca's closing speech.

The Magistrates retired to deliberate.

Decision:

When the Magistrates returned they said the following;

“We found the evidence of both the council inspectors credible and we believe them. Mr Miah was the officer involved after his attention was drawn to the window and he was quite clear he was offered a massage for £30. Mr Butterfield remembered more than 1 member of staff being present and Mr Miah made notes and these were quite clear. We were told by the receptionist that there would be 3 or 4 members of staff working at any one time, we only heard from 2 of them and they said they couldn't be clear what happened. We therefore find the matter proved beyond all reasonable doubt”.

Sentence:

Fine: £750
Costs: £1,500.00
VS: £75

The company is to pay the full amount within 28 days.

Miss K. Panton
Senior Solicitor-Advocate

From: [Keegan, Francis: WCC](#)
To: [Nelson, Nicholas: WCC](#)
Cc: [Miah, Tony: WCC](#); [Ralph, Andrew: WCC](#)
Subject: Be Health 98 Shaftesbury Avenue
Date: 23 October 2017 13:12:58
Attachments: [disclosure_sch_non-sens - Be Health.doc](#)
[Exhibits.doc](#)
[File Note FWK July 2015.docx](#)
[History.doc](#)
[23.12.16 Witness Statement Be Health 98 Shaftesbury Ave.docx](#)
[3848852.pdf](#)
[Be Health Chinese Ltd.msg](#)
[Brief Facts - Be Health 98 Shaftesbury Avenue.doc](#)
[Case Paper Front Sheet - Be Health 98 Shaftesbury Avenue.doc](#)

Importance: High

Nick,

This is a fairly basic case of touting in breach of the Standard Conditions resulting in a recent conviction (see attached).

Sentence:

Fine: £750
Costs: £1,500.00
VS: £75

Can you please consider putting this case to the LSC as soon as possible with a recommendation that the current licence be revoked ?

Thank you.

Francis Keegan

City Inspector Team Manager – City Operations
Public Protection and Licensing

Portland House
Bressenden Place
Victoria
London
SW1E 5RS

Tel: 020 7641 4429

fkeegan@westminster.gov.uk

www.westminster.gov.uk

Please don't print this e-mail unless you really need to.



Global city, strong neighbourhoods, thriving community

THIS AGREEMENT is made the 4th day of November 2016

BETWEEN:

(1) BE HEALTH CHINESE MEDICAL CENTRE LTD (“the Company”) and

(2) Ying Wang of 35 Hawthorn Hatch TW8 8NY
 (“the Masseuse”).

NOW THIS AGREEMENT WITNESSES as follows:

1. This Agreement sets out the terms and conditions upon which the Masseur agrees to and will operate at the Company’s premises at 98 Suffolk Ave London W1 (“the Premises”), pursuant to the terms of a Special Treatments Licence (“the Licence”) granted to the Company by Westminster City Council (“the Council”)
2. The Masseuse confirms that the documents of identification and qualification that have been supplied to the Company are genuine and that they relate to the Masseuse, and that they have completed a relevant training course from a duly authorised training provider, and obtained a recognised certificate of qualification.
3. The Masseuse confirms that she is at the date hereof, and whilst this Agreement subsists, remains entitled to work without restriction in the United Kingdom, and is over the age of 18 years at the date of this Agreement. The Masseuse agrees that she is free work such hours each week as are agreed with the Company in advance but that she is free to leave the Premises at any time.
4. The Masseur acknowledges that she is engaged on a self-employed basis and confirms that she is responsible for payment of their own income tax and National Insurance, and if required, public liability insurance. The Masseur will provide upon request evidence of her Self Assessment tax references and will be responsible to register for VAT if her earnings are over the relevant VAT threshold at the time applicable.
5. The Masseur can arrange appointments for their own clients to attend at the Premises. The Masseur acknowledges however that the choice of room in which the treatment for such clients is carried out by her shall be at the complete discretion of the Company

6. The Masseuse agrees that any treatment or massage supplied by them will be lawful and in accordance with the terms of the Licence, and agrees further to indemnify the Company against any claims for personal injury, loss or damage that may be made by any client of the Masseur in respect of any massage carried out by her on the Company's premises.
7. The masseuse understands and accepts that no sexual services of any kind can be supplied by her, and if a complaint is made that she has done so, she will not be permitted to remain at the Premises
8. The Masseuse agrees that she is aware of the conditions of the Licence held by the Company and in particular of conditions 4 (c), (d) (e) (f), and hereby acknowledge that she has been supplied with a copy of the Licence by the Company and will abide by the conditions of the Licence.

Executed as a deed by the parties the day and date first above written

Signed as a deed for BE HEALTH

CHINESE MEDICAL CENTRE LTD

in the presence of:

Signature of Witness..... Qi Ren

Name: Qi Ren

Address: 32 Turpike Lane

Occupation: (TCM) Doctor

Signed as a deed by the above-named Ying

in the presence of:

Signature of Witness..... Qi Ren

Name: Qi Ren

Address: 32 Turpike Lane

Occupation: (TCM) Doctor

THIS AGREEMENT is made the 4th day of Nov 2016

BETWEEN:

(1) BE HEALTH CHINESE MEDICAL CENTRE LTD ("the Company") and

(2) Tian Qiu Xiang of Penrose House Flat 11 ("the Employee Masseuse").
Penrose Street, London. SE17 3DU

NOW THIS AGREEMENT WITNESSES as follows:

1. This Agreement sets out the terms and conditions upon which the Masseur agrees to and will operate at the Company's premises at 98 Shaftesbury Avenue, London W1 ("the Premises"), pursuant to the terms of a Special Treatments Licence ("the Licence") granted to the Company by Westminster City Council ("the Council")
2. The Employee Masseuse confirms that the documents of identification and qualification that have been supplied to the Company are genuine and that they relate to the Masseuse, and that they have completed a relevant training course from a duly authorised training provider, and obtained a recognised certificate of qualification.
3. The Employee Masseuse confirms that she is at the date hereof, and whilst this Agreement subsists, remains entitled to work without restriction in the United Kingdom, and is over the age of 18 years at the date of this Agreement.
4. The Employee Masseur can arrange appointments for their own clients to attend at the Premises. The Employee Masseur acknowledges however that the choice of room in which the treatment for such clients is carried out by her shall be at the complete discretion of the Company
5. The Employee Masseuse agrees that any treatment or massage supplied by them will be lawful and in accordance with the terms of the Licence, and agrees further to indemnify the Company against any claims for personal injury, loss or damage that may be made by any client of the Employee Masseur in respect of any massage carried out by her on the Company's premises.

6. The Masseuse agrees that any treatment or massage supplied by them will be lawful and in accordance with the terms of the Licence, and agrees further to indemnify the Company against any claims for personal injury, loss or damage that may be made by any client of the Masseur in respect of any massage carried out by her on the Company's premises.
7. The masseuse understands and accepts that no sexual services of any kind can be supplied by her, and if a complaint is made that she has done so, she will not be permitted to remain at the Premises
8. The Masseuse agrees that she is aware of the conditions of the Licence held by the Company and in particular of conditions 4 (c), (d) (e) (f), and hereby acknowledge that she has been supplied with a copy of the Licence by the Company and will abide by the conditions of the Licence.

Executed as a deed by the parties the day and date first above written

Signed as a deed for BE HEALTH

CHINESE MEDICAL CENTRE LTD



in the presence of:

Signature of Witness..... Qi Ren

Name: Qi Ren
 Address: 32 Turnpike Lane
 Occupation: (TCM) Doctor

Signed as a deed by the above-named 李淑玲

in the presence of:

Signature of Witness..... Qi Ren

Name: Qi Ren
 Address: 32 Turnpike Lane
 Occupation: (TCM) Doctor

THIS AGREEMENT is made the 4th day of November 2016

BETWEEN:

(1) **BE HEALTH CHINESE MEDICAL CENTRE LTD** ("the Company") and

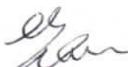
(2) **SHU ZHEN LI** of 022 Grenvie Poplin Square
("the Masseuse").

NOW THIS AGREEMENT WITNESSES as follows: London SW1V 3LX

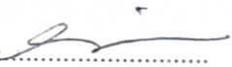
1. This Agreement sets out the terms and conditions upon which the Masseur agrees to and will operate at the Company's premises at 98 Shatteshbury Avenue London W1 ("the Premises"), pursuant to the terms of a Special Treatments Licence ("the Licence") granted to the Company by Westminster City Council ("the Council")
2. The Masseuse confirms that the documents of identification and qualification that have been supplied to the Company are genuine and that they relate to the Masseuse, and that they have completed a relevant training course from a duly authorised training provider, and obtained a recognised certificate of qualification.
3. The Masseuse confirms that she is at the date hereof, and whilst this Agreement subsists, remains entitled to work without restriction in the United Kingdom, and is over the age of 18 years at the date of this Agreement. The Masseuse agrees that she is free work such hours each week as are agreed with the Company in advance but that she is free to leave the Premises at any time.
4. The Masseur acknowledges that she is engaged on a self-employed basis and confirms that she is responsible for payment of their own income tax and National Insurance, and if required, public liability insurance. The Masseur will provide upon request evidence of her Self Assessment tax references and will be responsible to register for VAT if her earnings are over the relevant VAT threshold at the time applicable.
5. The Masseur can arrange appointments for their own clients to attend at the Premises. The Masseur acknowledges however that the choice of room in which the treatment for such clients is carried out by her shall be at the complete discretion of the Company

6. The Employee Masseuse understands and accepts that no sexual services of any kind can be supplied by her, and if any complaint is made that she has done so, she will be dismissed for gross misconduct.
7. The Employee Masseuse agrees that she is aware of the conditions of the Licence held by the Company and in particular of conditions 4 (c), (d) (e) (f), and hereby acknowledge that she has been supplied with a copy of the Licence by the Company and will abide by the conditions of the Licence.

Executed as a deed by the parties the day and date first above written

Signed as a deed for **BE HEALTH**)
CHINESE MEDICAL CENTRE LTD) 
By a director

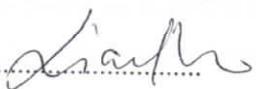
in the presence of:

Signature of Witness 

Name: LIN ZHOU
Address: Dean Street 79
Occupation: Receptionist

Signed as a deed by the above-named employee))

in the presence of: 

Signature of Witness 

Name: Lian Niu
Address: 79 Dean Street
Occupation: Analyst

THIS AGREEMENT is made the *4th* day of *November* 2016

BETWEEN:

(1) **BE HEALTH CHINESE MEDICAL CENTRE LTD** (“the Company”) and

(2) *Wei Ruan* of *37 Boswall Court NW9 5WU*
 (“the Masseuse”).

NOW THIS AGREEMENT WITNESSES as follows:

1. This Agreement sets out the terms and conditions upon which the Masseur agrees to and will operate at the Company’s premises at *98 Shaftesbury Avenue* London W1 (“the Premises”), pursuant to the terms of a Special Treatments Licence (“the Licence”) granted to the Company by Westminster City Council (“the Council”)
2. The Masseuse confirms that the documents of identification and qualification that have been supplied to the Company are genuine and that they relate to the Masseuse, and that they have completed a relevant training course from a duly authorised training provider, and obtained a recognised certificate of qualification.
3. The Masseuse confirms that she is at the date hereof, and whilst this Agreement subsists, remains entitled to work without restriction in the United Kingdom, and is over the age of 18 years at the date of this Agreement. The Masseuse agrees that she is free work such hours each week as are agreed with the Company in advance but that she is free to leave the Premises at any time.
4. The Masseur acknowledges that she is engaged on a self-employed basis and confirms that she is responsible for payment of their own income tax and National Insurance, and if required, public liability insurance. The Masseur will provide upon request evidence of her Self Assessment tax references and will be responsible to register for VAT if her earnings are over the relevant VAT threshold at the time applicable.
5. The Masseur can arrange appointments for their own clients to attend at the Premises. The Masseur acknowledges however that the choice of room in which the treatment for such clients is carried out by her shall be at the complete discretion of the Company

6. The Masseuse agrees that any treatment or massage supplied by them will be lawful and in accordance with the terms of the Licence, and agrees further to indemnify the Company against any claims for personal injury, loss or damage that may be made by any client of the Masseur in respect of any massage carried out by her on the Company's premises.
7. The masseuse understands and accepts that no sexual services of any kind can be supplied by her, and if a complaint is made that she has done so, she will not be permitted to remain at the Premises
8. The Masseuse agrees that she is aware of the conditions of the Licence held by the Company and in particular of conditions 4 (c), (d) (e) (f), and hereby acknowledge that she has been supplied with a copy of the Licence by the Company and will abide by the conditions of the Licence.

Executed as a deed by the parties the day and date first above written

Signed as a deed for **BE HEALTH**

CHINESE MEDICAL CENTRE LTD *Qian*

in the presence of:

Signature of Witness... *Qi Ren*

Name: *Qi Ren*
 Address: *32 Turnpike Lane*
 Occupation: *(TCM) Doctor*

Signed as a deed by the above-named *Qian*

in the presence of:

Signature of Witness... *Qi Ren*

Name: *Qi Ren*
 Address: *32 Turnpike Lane*
 Occupation: *(TCM) Doctor*

8. The Masseuse agrees that he/she is aware of the conditions of the Special Treatment licence held by the Company and, in particular, the Standard Conditions which form part of the licence and hereby acknowledges that he/she has been provided with a copy of the said licence and Standard Conditions, and will abide by them.

9. In accordance with Standard Condition 2(d), the Masseuse will ensure that *'no soliciting for custom, including the distribution of leaflets, shall take place from the premises, immediately outside the premises or in the vicinity of the premises'*. **Failure to comply with this, or any of the conditions of this licence (including the Standard Conditions) will result in Disciplinary action, and may result in Dismissal!**