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Legal Reformulation of the Problematics of Doctor's Medical Licenses in Indonesia †

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Abstract: This paper intends to analyze the regulation of doctors' medical licenses in Indonesia, as well as find regulation loopholes in facing factual problems regarding these medical licenses. This paper uses socio-legal and juridical–normative research, as well as a case approach that scopes doctor medical license regulations and their problematics, especially in Indonesia. The findings of this research show that doctor profession ethics are the main key to receiving a medical license, and that collaboration is also needed to reformulate the regulation of medical licenses in Indonesia.

Keywords: medical license; doctor; profession ethics

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1. Introduction

Doctors belong to the most essential profession that has a big role in preventing disease and providing direct health services to the community. In carrying out their profession, doctors are allowed to perform actions in the form of medical interventions on the physical human body. As a result of this, before carrying out medical work, it is necessary for a doctor to have a legal registration certificate and a medical license in order to provide medical services in Indonesia [1]. Providing medical services to the community requires a knowledge and understanding of Indonesian laws and regulations that are currently applicable in Indonesia [2]. In order to maintain doctor quality in Indonesia, a series of competency exams are arranged for doctors to take from a theoretical and practical point of view by the professional organization of the Indonesian Doctors Association (IDI).

In March 2022, a national-scale polemic regarding medical licenses occurred in Indonesia [3]. It started with the recommendation letter of the Honorary Court of Medical Ethics (MKEK) Number 0280/PB/MKEK/02/2022, which was issued and addressed to the chairman of the IDI general board, containing the results of an MKEK decision following the plenary meeting of the MKEK at the IDI headquarters on 8 February 2022. The results of an MKEK decision was written because a doctor with the initial 'T' (hereinafter referred as Dr. T/Doctor T), the former head of the Gatot Soebroto Army Hospital and the former Minister of Health for the term of 23 October 2019–23 December 2020, was dismissed with the reason of considered to have violated severe ethics codes and conducted several controversies throughout 2018-2022 [4]. As for the main facts regarding the dismissal of Dr. T, he has not submitted evidence that he carried out ethical sanctions following MKEK Decree No. 009320/PB/MKEK-Decree/02/2018, dated 12 February 2018. Second, Dr. T promoted the Nusantara vaccine to the wider community before his research was completed. Third, Dr. T acted as chairman of the Indonesian Association of Clinical Radiology Specialists (PDSRKI), which was formed without going through the necessary procedures in accordance with the IDI Procedures and Organizations (PRTALA), or the endorsement process at the IDI Congress. Fourth, issued circular letter number 163/AU/Sekr.PDSRKI/XII/2021, dated 11 December 2021, contained instructions to all branch leaders and PDSRKI members throughout Indonesia to not respond to or attend PB IDI events. Fifth, Dr. T applied for a

membership transfer from the Central Jakarta branch of the IDI to the West Jakarta branch of the IDI [5].

The dismissal of Dr. T led to the revocation of Dr. T medical license for the doctor's profession. To this, the Minister of Law and Human Rights, Mr. Yasonna Laoly, responded, considering the IDI to have an overly broad power in affecting the ownership of a doctor's medical license. This issue has become a public controversy because Dr. T is a former government official. There are many opinions within the government community that argue subjectively, and a lot of civilians who also argue that the IDI is still needed to maintain the quality of doctors who will practice in the industrial world. Sociologically, the IDI is present to ensure the implementation of quality medical services [6]. Philosophically, the IDI maintains and enhances the dignity and honor of the medical profession [7]. Juridically, there is an expansion of the IDI's authority through Constitutional Court Decision No. 10/PUU-XV/2017, which causes disharmony within the regulations regarding medical licenses in Indonesia.

According to observer, there is legal uncertainty in Medical Practice Law that harms their constitutional rights due to article 14, paragraph (1), regarding the number of KKI members who come from the IDI, namely two people. The IDI board is also the commissioner of the KKI, which cause a potential conflict of interest. This issue is due to regulations that have been made, and applies to IDI administrators who are concurrently in office. In addition to this, there are also articles regarding the medical education law, whose contents should be included in the responsibilities of the medical collegium. This issue is because the medical education law enters the academic realm and the Indonesian academic body, which is the medical collegium of the IDI. However, in these articles, there is a statement of "professional organization". The articles are as follows: article 1, number 20; article 5, paragraph (2); article 7, paragraph (8); article 8, paragraph (4); article 11, paragraph (1); article 24, paragraph (1); article 36, paragraph (3); and article 39, paragraph (2).

Then, the applicant also discussed article 1, number 4 of the medical practice law which states: "Certificate of competence is a letter of recognition of the ability of a doctor or dentist to practice medicine throughout Indonesia after passing the competency test." This article forces new medical graduates to conduct second competency tests, which are carried out by the IDI for recertification. In fact, the applicant already achieve the competence of a doctor with education and training they experienced. Moreover, doctors formally obtain a professional certificate and a certificate of competence simultaneously upon completion of their medical education and the national competency test [8]. According to the applicant, proof of competence of a doctor is enough to obtain a professional certificate, which they receive after they pass the competency test of the doctor profession program. This issue is mentioned in article 29, paragraph (3), regarding the requirements to obtain a doctor's registration certificate, which include: a doctor's diploma as a specialist, dentist, or specialist dentist; a statement that they have conducted the Hippocratic Oath; a certificate of health; a certificate of competence; and a statement that they will comply and implement the provisions of professional ethics. This indicates that there will be a second competency test. In addition, the IDI the one that considered to have conducted monopoly practices in the issuance of professional certification, continuously facing a lawsuit, now even declared by the Constitutional Court as the only legal organization in which one can be a medical professional in Indonesia [9]. Furthermore, the IDI also does not have a supervisory board. According to Member of Commission IX of the House of Representatives, Irma Suryani Chaniago, the IDI requires its own supervisory board due to the dismissal of Doctor T. The IDI has failed to achieve its goals, of which there are at least three: prospering, developing, and protecting its members [10]. Therefore, it can be concluded that the power of the IDI is too broad and is considered a super-body by the government.

2. Legal Problems of Doctor's Medical License in Indonesia

On 25 March 2022, the results of the special session of the Honorary Council of Medical Ethics (MKEK) declared the permanent dismissal of doctor T. Chairman of the Presidium,

Abdul Azis, said that he decided, determined, and forwarded the results of the MKEK special meeting. As a result of the meeting, the MKEK decided on the permanent dismissal of colleague Dr. T as a member of the IDI, which was to be carried out within 28 working days. Consequently, the case became an internal organizational problem; thus, the Ministry of Health was only able to be a mediator between the two parties [11]. Reasons for the dismissal of Dr. T were shown, and one of those is regarding the *Terawan theory*, which concerns the medication of stroke by using a brainwashing method of the name Digital Subtraction Angiography (DSA).

Responding to this issue, various professions believe that the *Terawan theory* cannot be scientifically proven [12]. In 2017, there was a study conducted regarding doctors who advertise and the limitaion. According to the *Terawan theory,* doctors are not allowed to use their medical degrees and attributes to claim the well-being of medication and its products, and there should also be no element of self-praise [13]. This is also stipulated by the Indonesian Medical Code of Ethics (KODEKI), in which article 4 states "A doctor must avoid acts that are self-praise". Additionally, article 6 states "Every doctor shall be careful in announcing or applying any medical discovery of new techniques or treatments that have not been tested for truth and against things that can cause public unrest". Based on those articles, Doctor T violated two KODEKI articles. They cannot be subjected to arbitrary sanctions in the absence of community complaints of ethical transgressions or opposition from civilians to new medical discoveries made by IDI members.. However, right after Doctor T eventually completed a dissertation on his findings, the MKEK invited Doctor T regarding the IDI's subsequent objections. The MKEK served a summons to Doctor T five times. However, based on regulation, if a member has been summoned three times and does not attend, the MKEK sues in absentia [14].

In the organization and work procedures guidelines (ORTALA) of the MKEK, sanctions that are given to doctors who have committed ethical violations can be sanctioned via the lightest penalties, which take the form of advisory, oral, or written warnings, behavioral coaching, and re-education. Alternatively, they can receive the maximum penalty, which takes the form of an either temporary or permanent dismissal [15]. Doctor T himself was sanctioned based on MKEK Decree No. 009320/PB/MKEK-Decree/02/2018, which stated that the sanction imposed upon Doctor T was in the form of a temporary dismissal from the MKEK IDI for 12 months. This is one of the facts regarding the dismissal of Doctor T in SK MKEK 0280/PB/MKEK/02/2022, which was due to the fact that Doctor T did not submit evidence that he carried out the sanctions stated in the MKEK No. 009320/PB/MKEK-Decree/02/2018 decree. The temporary dismissal sanction is the third category of sanction in violation of medical ethics, and Doctor T may lose his rights and authority as a doctor and IDI member within the period of implementation of his sanctions. Doctor T can lose his rights and authority by having his license recommendation practice revoked. As a result, Dr. T will not able to conduct medical practices. In addition, his rights, authorities, and positions as IDI member and Organization under IDI position will also be removed [16].

During the period of the development of COVID-19 vaccines, Doctor T repeated his mistake when he initiated the *Terawan theory*. Doctor T is the initiator of the Nusantara vaccine, and in its progress, the Nusantara vaccine experienced problems, including clinical trials in which data were not coherent, as well as the resignation from the University of Gadjah Mada (UGM). The resignation was due to the non-involvement of UGM researchers in the clinical trial process. In addition, the Nusantara vaccine development process was also considered to not be in accordance with medical rules stipulated by the Food and Drug Supervisory Agency (BPOM). Moreover, if the vaccine progress remains in disagreement with research standards, the BPOM will not approve the existence of the next stage of clinical trials. Although the clinical trials have not been completed, Doctor T has injected the Nusantara vaccine into Indonesian officials [17]. Although Doctor T's research has not been completed, he conveyed to the public that the Nusantara vaccine has a high level of efficacy in dealing with the COVID-19 disease.

The third reason for Doctor T's dismissal regards the ethical sanctions that he made. Doctor T was appointed as chairman of the Central Radiology Specialist Association (PDSRI). However, this appointment was not in accordance with regulations; thus, it can be concluded that Doctor T was appointed as chairman unconstitutionally. Moreover, Doctor T, as chairman, also maneuvered by changing the name of the PDSRI to the Indonesian Association of Clinical Radiology Specialists (PDSRKI): this change did not go through the process of ratification at the IDI congress, and did not go through the necessary procedure in accordance with the IDI Procedures and Organizations (PRTALA). During his tenure as chairman of the PDSRKI, Doctor T also issued a leaflet that was memorably disobedient to the IDI, which was in the form of instructions that all branch chairmen and PDSRKI members throughout Indonesia should not respond to or attend events organized by the PB IDI. Promptly, the letter was discovered by the MKEK, which then became the fourth reason for the dismissal of Doctor T from IDI membership [18]. The last reason regards the transfer of membership that was requested by Doctor T to move from the Central Jakarta branch to the West Jakarta branch, which has conditions that should have been met in the membership mutation form, such as providing evidence in the form of a statement that has undergone sanctions [19]. After the announcement of the dismissal of Doctor T, the issue became the center of attention. Surely, this is due to the impact of the dismissal from IDI membership with Dr. T's medical license. Dr. T's medical license is still valid until 2025; however, his dismissal will make it difficult for him to extend his medical license. This is due to the need for a registration certificate to obtain a medical license which, according to article 29, paragraph (3) of medical practice law, requires the following conditions:

1. Ownership of a doctor's diploma as a specialist, dentist, or specialist dentist; ownership of an affidavit regarding the Hippocratic Oath; ownership of a health certificate;
2. Ownership of a certificate of competence;
3. Provision of a statement letter that states a willingness to comply with and implement the provisions of professional ethics.

The certificate of competence, or the SERKOM, must be renewed every 5 years by fulfilling 250 of the professional credit unit (SKP) within 5 years. In order to get the SKP, the doctor ought to become an IDI member. The reason for this is that, in order to receive and recommend the SKP for an extension of the SERKOM, which is a requirement for the extension of the STR and medical licenses, the IDI is necessary. By that, it can be concluded that a doctor is not capable of doing anything without being an IDI member [20]. This formed the assumption that the IDI is a *super-body* organization by various parties, including the government. In the general hearing meeting between Commission IX and the IDI, Irma Suryani Chaniago, who is a member of Commission IX of the House of Representatives, argued that the IDI needs to be dissolved, which due to IDI that made several doctors unemployed, after failing to attend the competency examination, and the dismissal of Doctor T, indicating that the IDI does not prosper its members [21].

As a result, the government has intervened in the form of a proposal for a reassessment by the Minister of Law on the IDI's authority, regarding the permit of doctor's practices so that medical practice law and medical education law can be improved/revised. According to Rahmad Handoyo as a member of Commission IX of the House of Representatives, in the regulations of the IDI, they are given great authority, even though the IDI is a professional organization that is beyond the executive realm. Moreover, the government is also not able to supervise the IDI [22]. Due to the government's helplessness in supervising and handling the IDI, the proposal regarding the establishment of the IDI supervisory board was made by Irma Suryani Chaniago, a member of Commission IX of the House of Representatives. According to Irma, "IDI should act more mature and all issues should not necessarily be determined by IDI. There should be an oversight over the IDI that corrects, gives advice, etc. to the organization of this profession. As a result, it does not become a 'superbody' and elitist" [23].

A section of the consideration point and of the medical practice law states "that health development is aimed at increasing awareness, willpower, and the healthy living ability for

everyone in order to realize optimal health degrees as one of the elements of the general welfare as intended in the preamble of the Constitution of the Republic of Indonesia in 1945". Development in the field of health and providing general welfare is, in essence, the fulfillment of health rights. Society became one of the goals during the making of the law on the practice of medicine. Article 28H, paragraph (1) of the 1945 Constitution states that "Everyone has the right to live a prosperous life born and inner, live, and get a good and healthy living environment and entitled to health services." The article mentions the rights that must be fulfilled by each individual, one of which is the right to obtain health services. For the fulfillment of these rights, it is necessary for the convenience for each individual to find and reach health facilities. Indonesia itself still lacks human resource health (HRK) and, until 2025, Indonesia is estimated to remain lacking in health workers by as much as 40–50%. With a fairly large population, human resources are needed in health development in Indonesia because HRK is also a determining factor for the success of health development [24].

In 2021, the ratio of health workers in the form of specialists and general doctors to the Indonesian population was 0.67%: 1000 population. The ratio was very visible when patients were exposed to the virus that spread in every hospital during the COVID-19 pandemic. Even in health centers and other facilities in Maluku and Papua, 50% still do not have a doctor health worker. In a webinar held on 18 December 2021, entitled *Towards COVID-19 Endemic Readiness*, by the public health faculty of the University of Indonesia, Deputy Minister of Health Dante Saksono Harbuwono stated that there are 12 thousand doctor graduates per year, although there is a need to reach 140 thousand personnel; therefore, it can be declared that this is still not enough [25]. This is further aggravated by these graduate doctors who will be unemployed because of the difficulty in obtaining a license to practice. With the increasing number of infected patients and the lack of health workers, especially doctors, to cope with it, will worsen the psychological condition of health workers due to too large a workload [26].

3. Legal Comparison of Medical Licenses in Malaysia and the UK

Health is an important aspect of human life. Nevertheless, health workers, especially physicians, have an important role to play in maintaining, creating, and developing health-care systems. People's perception of medical personnel is generally positive because people tend to often use the health system. This refers to the case of the COVID-19 pandemic that emerged at the end of 2019. The flow of public health services has increased due to the 153 million confirmed cases of COVID-19 by the WHO. Therefore, it is proven that doctors have a strong role in society, especially in the field of health [27,28].

A medical license is required for all health workers to be eligible to practice legally. In the implementation of the medical license, there are provisions that must be implemented and prepared. A doctor's license applies to all health workers, especially doctors, around the world. Of course, there are significant differences regarding the procedures and provisions of the medical license. These regulatory differences arise due to differences in legal systems in each country. In addition, a medical license is necessary in order to qualify for practices to be conducted to protect citizens in the fulfillment of qualified medical personnel by carrying out their duties in the health sector [29].

On the Asian continent, the ratio between doctors and the population is 1.6:1000. Based on this, the number of doctors who have a license to practice throughout the Asian continent is quite large. In Malaysia, all doctors who have a medical license are registered in the [30] *Malaysian Medical Council* system and can be accessed through the *Medical Register Information and Technical System* (MeRITS) website. In Malaysia, to be able to obtain a doctor's license legally, health practitioners, including doctors, must be registered with the Medical Council of Malaysia [31].

The Malaysian Medical Council was formed under *the Medical Act* in section 4E and section 3 of *the Medical Act 1971*, which was amended in 2012. This institution was created to conduct the evaluation and implementation of registration of medical practitioners, which is

regulated in section 4A of the Medical Act 1971, which has been amended. Based on section 3 of *the Medical Act*, the legislation addresses regulations relating to the registration of medical practitioners, the regulation of medical licenses, the regulation of certain provisions on the working period of medical practitioners in performing public services, and contains provisions on matters related to them.

The Malaysian Medical Council requires prospective doctors to conduct an examination for Provisional Registration (EPR) in order to obtain a license to practice in Malaysia. This is stipulated in the Medical Act 1971. Before the prospective doctors participate in the EPR, the Malaysian Medical Council attaches some provisions before conducting the exam. In addition, for doctors who are going to do further studies, in order to support their medical practices, based on the Medical Law (Amendment) 2012, the *National Specialist Registration* (NSR) must be carried out by candidates with regard to existing provisions.

Based on section 2 *of the Medical Act*, the medical license refers to the certificate of practice, which is further based on section 20, article 1. This must be extended to no later than December 1st of each year by applying in the form of a predetermined form and making payments that are also determined for the certificate of practice as a doctor.

The Medical Act also strictly addresses the sanctions for doctors who commit violations of the law. Article 7 of section 20 explains that, for people who practice medicine but do not have a certificate of practice in connection with their applicable self, partner with a person who has been registered as a doctor but does not have a certificate of practice, hire a person who has been registered as a doctor but does not have a certificate of practice and is hired to run the business of a medical practitioner on behalf of a person who does not have a certificate of practice, are declared to have violated the law and are not entitled to their rights in the form of rewards or payments.

Unlike on the Asian continent, in Europe, the ratio between doctors and EU population in 2018 was 1:3700. In one of the countries in continental Europe, the United Kingdom, the implementation of a medical license is regulated by a special institution called *the General Medical Council (GMC).* The GMC was formed under the *Medical Act*, which was established because, in 1841, about one-third of doctors in England were not competent, and the GMC was formed to regulate the standards of doctors in England. Not only does the GMC regulate the licensing of doctors' practices in the UK, but it also serves as an institution authorized to revoke doctors' licenses [32].

The GMC in issuing licenses to doctors in England is always guided by the *Medical Act* 1883, which is contained within 8 chapters and 57 articles concerning the practice of medicine in England. The registration and qualifications of doctors in the UK is stipulated in chapter 3 of the law, namely *registration by virtue of the primary United Kingdom or primary European qualifications.* Prospective physicians must take or complete a qualified medical program, and subsequently take a nationally held test in order to be eligible for registration as a fully registered medical practitioner.

In article 2 of section 10 of the *Medical Act* 1883, the regulatory system for prospective doctors to obtain a license to practice in England was reaffirmed. Prospective doctors are required to take resident practice within the specified period of time in the designated institutions. Furthermore, article 3 again explains that prospective doctors can apply for a certificate of practice if they have met the conditions specified by the GMC.

The Medical Act of 1883 also clearly explains the sanctions imposed on doctors if they commit violations. Under section 36 of article 1, if there is a violation committed by a doctor, then the state can remove the perpetrator's name from the EU medical database. Additionally, the perpetrator's license certificate can be suspended for no more than 12 months, or no more than 3 years if the violation committed endangers the community.

Asia and Europe are two continents that have different characteristics in terms of region and culture, which have their own uniqueness. Regarding the health sector, especially in the medical license section, the income of the permit is not very significant. For example, both Malaysia and the UK remain based on applicable legislation and require several stages to obtain a medical license, such as tests conducted nationally. Therefore, it

is appropriate for every prospective doctor to have the same ease and right in obtaining their medical license.

4. Legal Reformulation to The Problematics of Doctor's Medical Licenses

The revocation of a medical license is not only be based on the doctor's error in treating the patient, but also on all work-related acts and omissions, i.e., actions and omissions that are closely related to actual medical activity and, depending on the severity of the violation, criminal offenses outside the scope of judicial activities. This explains that the ethics of the doctor's profession becomes one of the determinants in their right to hold a medical license in the profession. Not only ethics in behavior, but also in the ethics of a publication or theory found must be tested in accordance with the standardization of national professional organizations and international regulations that overshadow the profession of a doctor [33].

Looking at the results of the analysis in the previous discussion that compares existing regulations in Indonesia, Malaysia, and the United Kingdom related to the process of obtaining a medical license, it can be seen that only Indonesia still involves the executive. In Indonesia, the health office determines whether a doctor will get a medical license after being given a recommendation from professional organizations and a registration permit from the Indonesian Medical Council. The governments of Malaysia and the United Kingdom provide legal protection to professional organizations in selecting doctors before they provide medical services to the community. From this, it can be interpreted that Malaysia and the United Kingdom are fully confident in professional organizations in their ability to produce qualified doctors, without direct intervention from the government. However, the government is limited to only being a regulator to prevent occurrences that are detrimental to professional organizations and doctors, as well as patients, later.

Health is a key factor that can be used as one of the parameters of people's welfare. Therefore, all holders of power, both executive and legislative, should be able to collaborate to produce better legal protection in producing qualified doctors. A study assessed the impact of partnership alliances in improving health quality, concluding that cross-sectoral collaboration to promote health between the public, private, and non-governmental sectors has always been successful [34]. *The Penta-helix* theory is the most appropriate theory to dissect and produce a reformulation of the problem of doctors' license practices in Indonesia (Figure 1), in which this theory demands collaboration to achieve a goal which is, in this case, a *healthy state* and a *welfare state* [35].

Figure 1. Reformulation of medical license with *Penta-helix* theory.

The collaboration above aims to produce a qualified doctor profession to serve the community to realize a *healthy state*, without direct intervention from the government. The author firstly hopes that the IDI, as a professional organization, maintains the authority to

combine all potential doctors from all over Indonesia, maintain and improve the dignity and honor of the medical profession, develop medical science and technology, and improve the health of the Indonesian people in order to lead a healthy and prosperous society. Secondly, the KKI regulates, endorses, assigns, and fosters doctors who practice medicine, in order to improve the quality of medical services internally. Third, the Ministry of Culture, Research, and Technology (Kemendikbud) equalizes the curriculum at the university level in order to produce equal quality doctors, without any overlap. Scientific-level equality should not only be based on the comparison of subjects or study content, but should also correspond; in the context of scientific equality assessment, the effectiveness of teaching scientific content must also be taken into account for each prospective doctor. Fourth, the MKEK is an ethics institution that examines, prosecutes, and makes decisions on any ethical conflicts that have the potential for medical disputes between devices and the ranks of the IDI, and any medical disputes between its complainant doctors that have not been or are not handled by the Honorary Assembly of the Indonesian Medical License. Fifth, the doctor profession supervisory board is a new institution to supervise the IDI, KKI, and MKEK so as not to become a super-body [36] in order to guarantee the fundamental rights of a doctor. In addition, it is expected that the supervisory board of the doctor profession can also become an advanced mediator or decide the results of the decision from the advanced MKEK, or it can be called to an appeal to determine whether the dispute can be decided appropriately or not. As an institution resulting from collaboration between the executive and the legislature, it is hoped that the institution can provide legal certainty for all doctors from all tasks that have been given to the IDI, KKI, and MKEK. Therefore, a reconsideration and evaluation are needed in order to adjust Law No. 29 on Medical Practice of 2004 (UUPK) in Indonesia.

5. Conclusions

The case of Doctor T has become a very hotly discussed case in Indonesia. However, cases that arose due to the use of *digital subtraction angiography (DSA)* are the root cause of the revocation of Doctor T's practice license from. Regardless of the case, a license to practice is very important for a doctor to be able to medically practice, which applies to all doctors in the world. In the implementation of the medical license, there are provisions that must be implemented and prepared, including in Malaysia and the United Kingdom, with little visibility regarding the income of the permit, either regarding the governing law or the national institution that oversees the task. In addition, the professional code of ethics is closely related to the granting of the right to a license to practice to doctors. Specialized institutions are needed to obtain a license to practice from, without involving the executive, to produce qualified doctors without direct intervention from the government. In addition, collaborations based on the *Penta-helix* theory can be conducted to produce an increasingly qualified doctor profession to realize a *healthy state* within the community.

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