



SINGAPORE MEDICAL COUNCIL

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PRESS RELEASE APPEAL AGAINST THE DISCIPLINARY COMMITTEE'S VERDICT IN DR LIM MEY LEE SUSAN

Dr Susan Lim's Appeal Dismissed With Costs

1. Dr Lim Mey Lee Susan ("**Dr Lim**")'s appeal to the Court of Three Judges arose from a decision by the Disciplinary Committee ("**DC**") in the matter of the Disciplinary Inquiry ("**Inquiry**") against Dr Lim. On 17 July 2012, the DC ordered that Dr Lim:
 - a) be suspended from practice for a period of **3 years**;
 - b) be ordered to pay a financial penalty of **\$10,000**;
 - c) be censured in writing;
 - d) be required to undertake, after her return to practice, to charge her patients no more than a fair and reasonable fee for her medical services; and
 - e) pay to the SMC the costs and expenses of and incidental to the disciplinary proceedings, including the First DC, such costs to include the fees, disbursements and other expenses of counsel for the SMC and the fees, disbursements and other expenses of the legal assessor appointed to this DC.
2. On 16 August 2012, Dr Lim filed an appeal to the Court of Three Judges. In Dr Lim's appeal, Dr Lim applied for:
 - a) the DC's decision to be set aside or alternatively, varied; and
 - b) the costs and expenses of and incidental to the proceedings before the DC, the First DC and the appeal, to be borne by the SMC.
3. Dr Lim's appeal was heard by the Court of Three Judges on 15 January 2013.
4. On 1 July 2013, the Court of Three Judges released its decision on Dr Lim's appeal. The Court of Three Judges upheld the DC's decision on both conviction and sentence and dismissed Dr Lim's appeal with costs.

Background

5. A DC of the Singapore Medical Council ("**SMC**") held a disciplinary inquiry for Dr Lim, a registered medical practitioner whose primary area of practice is in general surgery. Dr Lim was at the material time practising at Susan Lim Surgery Pte Ltd, Block 6 Napier Road #02-17-20 Gleneagles Medical Centre Singapore 258499, and is also in private practice at the Gleneagles Hospital and Mount Elizabeth Hospital.
6. The proceedings arose following a complaint by the Ministry of Health to the SMC dated 3 December 2007 relating to fees charged by Dr Lim for the services which she and other doctors provided to a patient ("**Patient**") between January and June 2007. For these services, Dr Lim issued invoices amounting to an aggregate of about \$26 million (inclusive of GST).
7. Following a preliminary inquiry into the complaint, 94 charges of professional misconduct were laid against Dr Lim. The charges can, in summary, be categorised into 2 broad groups as follows:
 - a) The first group of charges comprises 83 charges relating to professional misconduct by overcharging ("**Category I**"); and
 - b) The second group of charges comprises 11 charges relating to professional misconduct by falsely representing in Dr Lim's invoices that the fees charged in those invoices were fees levied by third-party doctors when in fact Dr Lim had added a significant and undisclosed markup to the actual charges of those third-party doctors ("**Category II**").
8. The evidential hearing before the First DC took place in the period of January to April 2010. The Prosecution had called 10 factual witnesses and 3 expert witnesses to prove its case.
9. After the close of the Prosecution's case, the First DC recused itself on 29 July 2010 following an application by Dr Lim. A new DC was appointed and the proceedings before the new DC were held in abeyance, with the parties' agreement, pending the outcome of Dr Lim's application for judicial review of the decision to appoint a new DC. The High Court dismissed Dr Lim's application in May 2011 and the Court of Appeal dismissed Dr Lim's appeal in November 2011.

10. Following the dismissal of Dr Lim's application for judicial review, the inquiry before the new DC was reconvened. Dr Lim indicated to the new DC that she wished to proceed with the Inquiry and opened her defence on the basis of the Prosecution evidence adduced before the First DC. The new DC acceded and a hearing was fixed for two tranches in March and April 2012 for Dr Lim to take the stand and/or adduce evidence through her witnesses.
11. However, in February 2012, Dr Lim informed the new DC that she was then of the view that the evidence adduced by the Prosecution had not established any of the Charges against her. Dr Lim further indicated that she did not intend to call any evidence in her defence and wished to proceed to tender closing submissions to the new DC. Accordingly, the new DC gave directions for the parties to deliver their written closing submissions and fixed a 3-day hearing from 21 to 23 May 2012 for both parties to deliver their oral closing submissions.
12. In her closing submissions, Dr Lim contested all 94 charges. Dr Lim asserted, in summary, as follows:
 - a) There was a purported fee agreement with the Patient, entitling Dr Lim to charge sums "*well into six figures for a single [treatment] day's fees*". This fee agreement allegedly arose via a course of dealing from 2001 to 2006 during which the party paying the Patient's fees had approved and paid each of Dr Lim's invoices and the Patient returned for more treatment in 2007.
 - b) The invoices which Dr Lim issued were rendered in batches. As a result, Dr Lim asserted that the invoices issued in any particular batch must be looked at holistically as a global charge.
 - c) In any event, even if there was no fee agreement, there is no ethical obligation which limits what a doctor can charge her patient to a fair and reasonable fee or to a fee which is not excessive.
 - d) Further, when a doctor renders an invoice to a patient, that is nothing more than a request for payment and does not amount to "charging" the patient. The invoice is merely the first step in a process of negotiation between doctor and patient to arrive at an agreed fee.
 - e) In particular, in relation to the Category II charges, Dr Lim asserted that there was no evidence that she knew or ought to have known that the representation in her invoices was false and that there was no evidence that the party who received the invoices was misled.

13. At the conclusion of the hearing and having considered all the evidence as well as submissions from both counsel, the new DC convicted Dr Lim on all 94 charges. The DC found, in summary, that:
- a) Dr Lim, like all doctors who practise medicine in Singapore, is subject to an ethical obligation to charge a fair and reasonable fee for her services. It is one of the essential hallmarks of a profession that a member of a profession who charges for her professional services would have an ethical obligation to limit what she can charge for those services to what is a fair and reasonable fee for those services. This ethical obligation exists to safeguard the interests of the patient, the public and the profession and binds all doctors, including Dr Lim, whether or not there was a fee agreement in place with the patient in question.
 - b) In any event, the DC found on the facts that there was no fee agreement in place between Dr Lim and the Patient. The fact that previous invoices from 2001 to 2006 were paid without qualification does not give rise to a fee agreement by conduct. There was no other objective evidence of the fee agreement. On the contrary, the objective evidence indicated that there was no such agreement.
 - c) Dr Lim's fees were not fair or reasonable and were far in excess of and disproportionate to the fees that Dr Lim was entitled to charge. The DC thus found that Dr Lim had breached the ethical obligation to charge a fair and reasonable fee for her services.
 - d) The DC rejected Dr Lim's argument that presenting an invoice to a patient is merely a request for payment and not charging a fee. The DC also rejected Dr Lim's submission that the invoices were rendered holistically in batches; this assertion was contrary to the objective documentary evidence as reflected in the plain wording of Dr Lim's invoices.
 - e) In respect of the Category II charges, Dr Lim falsely represented in the relevant invoices that the fees had been charged to Dr Lim or would be payable by Dr Lim to the third-party doctors identified in those invoices. In any event, the DC found that Dr Lim also breached the ethical obligation to charge a fair and reasonable fee for her services in respect of the undisclosed markup which she added in each Category II invoice for her own fees, in that these latter fees were far in excess of and disproportionate to the fees that Dr Lim was entitled to charge.
14. Accordingly, the DC found that Dr Lim's conduct in relation to each Category I charge and each Category II charge constitutes professional misconduct because it was an intentional, deliberate departure from the standards observed or approved by members of the profession of good repute and competency.

15. The DC was of the view that Dr Lim's professional misconduct was particularly serious. The fees charged by Dr Lim were unconscionable, whether viewed per diem or holistically, whether viewed with or without the discount she allegedly offered, and after giving her the benefit of the doubt for the nature, scope and quality of her services. The DC noted that when a practitioner, particularly one of Dr Lim's experience and seniority, breaches so egregiously her ethical obligation to limit the fees she charges for her services, it inevitably has a deep corrosive effect on the relationship of trust and confidence that must subsist between the medical profession and the public.
16. The DC was also of the view that a penalty of a censure or of a financial penalty alone is wholly inappropriate in this case. The DC emphasised that Dr Lim had breached her ethical obligation to charge fees which were fair and reasonable by the widest and clearest margin, and the evidence before the DC in relation to the Patient showed a systematic pattern over a sustained period of time of charging fees which were far in excess of and disproportionate to the services Dr Lim rendered to the Patient. The DC found that Dr Lim's conduct showed a level of integrity, probity and trustworthiness which falls far short of what the profession and the public are entitled to expect of a medical practitioner.

Findings of The Appellate Court

17. The Court of Three Judges opined that "*the idea that the practice of medicine is, above all, a calling of the highest order is a historical cornerstone of the medical profession...Indeed, the proposition that the spirit of public service and the existence of ethical obligations underpin all professional practice applies with equal (and arguably, even greater) force to medical practitioners, whom we collectively entrust with our health, our well being and, in certain circumstances, our lives.*"
18. The Court found that "*it is therefore clear, in our view, that every doctor is under an ethical obligation to charge a fair and reasonable fee for services rendered to his or her patient. The corollary of this is that overcharging would constitute an abuse of trust and confidence placed by the patient...and this would (in turn) constitute conduct that is dishonourable to the doctor as a person as well as in his or her profession, ie, it would constitute professional misconduct.*"

19. The Court found that there was clearly sufficient evidence to make out all 94 charges of professional misconduct for overcharging against Dr Lim and the DC had examined all the charges and arrived at the correct decision in convicting Dr Lim of every charge. It was noted that "*the DC's conclusions are supported in the fullest measure possible by the available evidence....*".
20. The Court found that Dr Lim's arguments to the contrary were unmeritorious and rejected the argument that contract or commercial obligations trump ethical obligations. The Court also rejected Dr Lim's challenge of the expert witnesses and commented that "this argument, whilst attractive superficially, fails to take into account the context which the Respondent's experts were commenting on. As such, the experts would be able to assess whether the Appellant had in fact engaged in overcharging.
21. In the review of the invoices, the Court found that "*what is immediately apparent from the above invoices is not only the excessiveness of the fees set out therein, but also the somewhat opaque manner in which they were issued...Moreover, in the course of the analysis, we have also demonstrated that the Appellant's invoices were rendered in an overwhelmingly unsystematic, arbitrary and, ultimately, opportunistic manner, further buttressing our finding that the Appellant's fees were in fact excessive and bore no relation to the services actually provided.*".
22. In relation to other invoices, the Court found that Dr Lim "*was simply charging whatever she liked in amounts that were truly unconscionable and which therefore constituted serious professional misconduct.*".
23. In relation to invoices involving third party specialists, the Court stated that "*A recurrent pattern observed in the above charges is that the Appellant's invoices fees were often many multiples of the amounts invoices by the third-party specialist concerned. In the circumstances, it is clear, in our view, that there had indeed been excessive overcharging by the Appellant...*".
24. In endorsing the DC's decision on all grounds, the Court observed that this was "*clearly one of the most serious cases (if not the most serious case so far) of overcharging in the medical profession in the local context*". Given the grave nature of Dr Lim's professional misconduct, the Court of Three Judges noted that "*it is not surprising that the DC meted out the severe sanction which it did*" and affirmed the sentence meted out by the DC.

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