SINGAPORE MEDICAL COUNCIL DISCIPLINARY INQUIRY FOR DR ABP HELD ON 15 AND 16 SEPTEMBER 2010

Disciplinary Committee:
Dr Tan Kok Soo (Chairman)
A/Prof Siow Jin Keat
A/Prof Agnes Tan Beng Hoi
Ms Low Min Yong (Lay Person)

Legal Assessor:
Mr Joseph Liow
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Prosecution Counsel:
Mr Tan Chee Meng, S.C
Ms Chang Man Phing
Ms Kylee Kwek
Ms Maxine Ung
(M/s WongPartnership LLP)

Defence Counsel:
Mr Christopher Chong
Ms Sharon Liu
(M/s Rodyk & Davidson LLP)

DECISION OF THE DISCIPLINARY COMMITTEE

(Note: Certain information may be redacted or anonymised to protect the identity of the parties.)

Introduction

1. The Respondent Dr. ABP is an obstetrician and gynaecologist having his practice at Clinic A at the material time.

2. The Disciplinary Committee found the Respondent to have committed professional misconduct within the meaning of s.45(1)(d) of the Medical Registration Act (Cap. 174) (2004 Rev. Ed.) and accordingly convicted him of the charge preferred against him and sentenced him on 16 September 2010.

3. We now set out the grounds for our decision.

Charge

4. The charge against the Respondent was set out in Tab-1 of the Inquiry Bundle and reads as follows:-

> "*That you DR ABP are charged that whilst practicing at Clinic A located at* ***[address of clinic redacted]*** *("the Clinic"), by way of an advertisement titled "Anti-Aging & Aesthetic Medicine" found on a poster panel displayed in the Clinic ("the Advertisement"), a copy of which is attached at Annex A herewith, did offer stem cell for skin therapy and/or facial and body rejuvenation, a procedure which is not medically proven as a treatment, outside the context of a formal and approved clinical trial.*
>
> *Particulars*
>
> *(a) In the Advertisement, you offered your patients escorted tours to overseas locations for stem cell for skin therapy and/or facial and body rejuvenation.*
>
> *(b) Stem cell treatment for skin therapy and/or facial and body rejuvenation is not medically proven as a treatment. Accordingly, stem cell for skin therapy and/or facial and body rejuvenation is required to be carried out as a clinical trial with ethics approval.*
>
> *(c) You did not obtain ethics approval for stem cell for skin therapy and/or facial and body rejuvenation to be carried out as a clinical trial.*

and that in relation to the facts alleged, you have been guilty of professional misconduct under section 45(1)(d) of the Medical Registration Act (Cap.174) (2004 Rev. Ed.)."

5. The gravamen or the fundamental element of the charge was that the Respondent had offered a treatment that was not medically proven (in other words, the treatment was not evidence-based).

Prosecution's Case

6. The Prosecution's case was that the Respondent's conduct in offering such services that were referred to as 'stem cell' treatment were treatments that were not medically proven and that such conduct, being in breach of the SMC Ethical Code and Ethical Guidelines ("Ethical Code"), was professional misconduct. Prosecution referred to paragraph 4.1.4 of the Ethical Code which read:-

"4.1.4 Untested practices and clinical trials

A doctor shall only treat patients accordingly to generally accepted methods and use only licensed drugs for appropriate indications. A doctor shall not offer to patients, management plans or remedies that are not generally accepted by the profession, except in the context of a formal and approved clinical trial."

7. The evidence of PW1, Ms PW1, who was the complainant, was largely unchallenged. She had stated that she had seen the Advertisement placed outside the Clinic sometime in late 2007 or early 2008. She stated that it was a "full-sized poster" of about "1 – 1.5 m facing the passage way". During cross-examination, she stated that she was not a patient of the Respondent. She had gone to the Respondent's clinic as she was curious and was researching on a topic relating to stem cell treatment.

She did not realize that the Advertisement was in fact advertising two different services.

8. PW2 was Ms PW2 from the Health Science Authority ("HSA"). She gave evidence that the documents in Tab -3 of the Respondent's Inquiry Bundle (i.e. 3 letters from HSA all dated 5 August 2010) were cosmetic products. She also stated that some health products are also classified as cosmetic products and they are not relevant to medical products. During cross-examination, she testified that a licensed drug cannot be a cosmetic product.

9. Prosecution called Dr. PW3 (PW3) who had worked with the Health Regulation Division of the Ministry of Health, who explained that the Guidelines on Aesthetic Practices by Doctors had only come into force in July 2008. He also stated that MOH did not respond to the Respondent's query contained in his letter dated 27 July 2007 asking MOH to advise "if it is illegal for (the Respondent) to provide the treatment in overseas approved countries". PW3's answer was that it was not within the purview of MOH to comment on the legality of treatment overseas. During cross-examination, the Respondent's counsel questioned why the MOH did not respond to the Respondent's letter of 27 April 2007. PW3's answer was that MOH was not in a position to advise because they were formulating the Guidelines at that time and that MOH did not regulate treatment overseas.

10. PW4, Dr PW4, was called as an expert witness for the Prosecution. Dr PW4 undoubtedly had considerable experience in stem cell research and this was not challenged by the Respondent. Dr PW4 explained his references to the "Guidelines on Aesthetic Practices" in his written opinion dated June 20, 2009 when he was asked to give an opinion arising from the complaint made by PW1. The crux of his evidence, as contained in his written opinion, was that current research on stem cells for treatment of skin conditions is mainly directed at the treatment of burns, scars and for wound healing. Research in these areas has been

carried out on animal models with some success and some researchers are just starting to translate their studies to human studies. His written opinion, went on further to say that at this time, there is no published evidence in peer-reviewed scientific or medical journals on the usefulness of stem cells for skin regeneration "to generate new skin cells for a fresher, younger look" as claimed by the Advertisement. In short, his view was that the treatments exalted in the Advertisement were not medically accepted and not evidence-based.

11. In his oral testimony, he stated that bone marrow transplants are essentially a form of stem cell treatment for leukaemia and thalassemia and such stem cell treatments are available in Singapore. In that sense, he would agree that there are many stem cell centres in Singapore. However, he pointed out that even the use of stem cells in the regeneration of cartilage is done on a clinical trial basis here in Singapore and that if the Respondent meant that there were many stem cell centres in Singapore offering non-medically accepted treatment, he was of the view that you could not call these places 'stem cell centres'. PW4 was shown a document which appears to have been produced by StemLife which is based in Malaysia and a document which appears to describe certain treatments provided by Aeskulap in Switzerland. PW4 was of the view that these were merely 'brochures'; that he could not tell whether they came from peer-reviewed publication or from a medical journal. The thrust of his evidence was, as far as these documents from StemLife and Aeskulap were concerned, that he did not consider the treatment described therein as 'medically approved'.

12. In particular, when he was referred to the purported use by Aeskulap of animal stem cells as treatment and asked whether he would be concerned about such prescribed treatment, PW4 stated that he would be very concerned about introducing stem cells from a different species or 'crossing species'. PW4 stated that there were many dangers related to xenograft procedures including rejection by one's own immune system to what would essentially be a foreign body.

Defence's Case

13. The Respondent did not call any witness. The Respondent started practice in 1972 and his area of speciality was obstetrics and gynaecology. He told this Committee that Clinic A started its operations some 4-5 years ago. He explained that he started offering the services of regenerative medicine as a result of his experience with male menopause. He iterated how he sought treatment and had enrolled in a hormone replacement therapy and why he decided to understudy a French doctor who provided this treatment. He described his services as a holistic program to wellness and that he provided aesthetic medicine which included Botox and IPL. He stated that aesthetic medicine was only one part of his practice; he also practices internal medicine at his clinic.

14. The Respondent denied that he was guilty as charged since the offered services described as "stem cell for skin therapy" were merely the topical application of stem cell creams. The gist of this defence was that he was not providing any medical treatment but that he was merely selling cosmetics to his patients. His own evidence, when asked by his own counsel as to why he used 'stem cell' to describe the product which he categorized as a cosmetic product, was that he understood that the term stem cell could be confusing but that the stem cell used was actually the stem cell from apple trees in Switzerland.

15. With regard to the services described as 'escorted tours' in relation to the offered services of 'stem cell therapy' for 'facial and body rejuvenation', the Respondent stated that patients will be escorted by the foreign parties providing such services and he does not get paid for services performed overseas. The Respondent conceded that he does have indirect benefit from referring such facial and body rejuvenation treatment as he does the pre- and post-treatment follow-up and would attend to any side effects that patients may have after such treatment. He referred

this Committee to his Inquiry Bundle at Tab-2 at page 3 and pointed out that he carries out only Part I and Part III of a programme referred to as the "Stem Cells Programme". The Respondent said that he would explain to all his patients the risk involved in such stem cell treatment, and would advise them on what to expect. He said that he had no idea that stem cell therapy was not legal in Singapore and believed that he was not doing any harm.

16. During cross-examination, the Respondent agreed that stem cell treatment was not generally accepted in Singapore in 2007 and should be done under a clinical trial environment. He however said that he did not know it was wrong to refer patients overseas for such treatment. He agreed that patients who wished to seek stem cell therapy would first consult him and he would determine their suitability for Part II of the stem cell treatment (which would be done overseas). He agreed with the Prosecution Counsel that his patients would only move on to Part II of the treatment on his advice. The Respondent asserted that he had researched into the stem cell treatment in Switzerland and that he was comfortable with referring his patients there. He gave evidence that the type of stem cell therapy performed by an entity called Aeskulap in Switzerland was accepted as a clinical trial in that country. However, when challenged to produce any medical literature to demonstrate that the treatment offered by StemLife (an entity based in Malaysia) or by Aeskulap was medically acceptable, the Respondent was not able to produce any medical literature or peer-reviewed papers.

Closing submissions

17. Both counsels produced written closing submissions.

18. For the Respondent, counsel in his written submissions submitted that since the treatment for skin therapy was merely the application of a cosmetic product and the sale of this particular type of cosmetic product in Singapore was not unlawful or improper, the Respondent could not be

guilty of the charge. It was also submitted since clinical trials for stem cell therapy for facial and body rejuvenation treatments were carried out overseas, approval from the Singapore authorities for such clinical trial overseas was not required. In oral submissions, counsel for the Respondent pointed out that the Prosecution had the burden of proving that the treatment that were carried out overseas were not in the context of clinical trials.

19. The Prosecution submitted that all elements of the charge were made out and pointed out that the gravamen of the charge was one of offering medical treatment which was not medically proven as a treatment. It stressed that it had shown that the treatment that was offered by the Respondent, or the treatment that was carried out by others overseas that the Respondent would have recommended to his patients, were treatments that had not been medically proven.

Grounds of Decision

20. We found the Respondent guilty as charged for the following reasons:-

(a) The burden of proving that the treatments carried out overseas were not in the context of a clinical trial did not lie with the prosecution. The prosecution has proven beyond reasonable doubt that the medical services offered by the Respondent, namely stem cell skin therapy and stem cell therapy for facial and body rejuvenation, were not medically proven. Once the prosecution had proven the above, the evidentiary burden lay on the Respondent to prove that the treatment was done in context of an approved clinical trial.

(b) The Respondent's position that he was merely providing topical creams for skin and that such products were merely cosmetics,

and that he was therefore not guilty of any misconduct, was untenable.

By the Advertisement referred to in the charge, the Respondent held himself out to his patients that he was providing “Aesthetic Medicine” and “Stem Cell Therapy”. Such words would have led members of the public to believe that he or she would be receiving medical treatment from the Respondent, and that the treatment that he or she would be receiving would be medically proven and accepted. The public’s trust in the medical profession would certainly, in our view, be violated if a doctor sold cosmetic products instead of providing a medically proven treatment.

The Committee also took into cognizance that there was nothing in the Advertisement, in the Respondent’s website or in the documents provided by the Respondent that were available to his patients, that would have indicated to his patients that the treatment was in the nature of cosmetics only. A patient has a reasonable expectation that when he sees a doctor for aesthetic reasons, that he will be offered a form of medical treatment and/or medical management plan that is medically proven.

(c) With regard to the facial and body rejuvenation treatment, the fact that the stem cell treatment was carried out overseas does not absolve the Respondent from his misconduct. The fact remained that the Respondent knew or ought to have known that the services offered by the entities overseas were not medically proven. Despite his claim that he had researched into the treatment provided overseas, the Respondent could not produce any medical literature to contradict the expert evidence adduced by the Prosecution that the claimed treatments of StemLife and Aeskulap were medically accepted. We found it incredulous that, if the document provided by the Respondent describing who

Aeskulap was and the treatments they provided was to be believed, such an entity of over 70 years' experience in stem cell research did not have any medical literature on its treatment.

Taking into account the fact that the Respondent was providing a holistic program for facial and body rejuvenation and that he offered to advise his patients as to their suitability for the actual stem cell therapy to be carried out overseas, we have no problem finding that the Respondent was guilty as charged.

We bore in mind that the gravamen of the charge is one of offering to carry out a treatment that was not medically proven. It matters not where the objectionable treatment was carried out. The mischief here is that doctors should not be offering any medical treatment to any patient that was not medically proven. In this case, patients would have looked to the Respondent as the primary doctor. He offered to advise his patients as to their suitability for the stem cell treatment (which would have led his patients to reasonably expect the Respondent to endorse such treatment) and he offered to follow up on his patients after they received the treatment overseas.

In these premises, we have no difficulty finding that if the Respondent had indeed offered to provide a treatment that was not medically proven.

Sentencing

21. Having regard to the above submissions made by both counsels on the appropriate sentencing and taking into consideration the nature of the misconduct and our views as expressed above, it is this Committee's decision that the appropriate sentence is as follows:-

(a) that the Respondent be fined the sum of **$10,000.00**;

(b) that the Respondent be censured;

(c) that the Respondent provides a written undertaking to the Medical Council that he will not offer or continue to offer to patients management plans or remedies that are not generally accepted by the medical profession, except in the context of a formal and approved clinical trial, and

(d) that the Respondent shall pay to the Medical Council the costs and expense of and incidental to these proceedings.

22. In coming to our decision on sentencing above, we took into account that there was no evidence of any actual harm suffered by any of the Respondent's patients.

Dated this 28th day of September 2010.