

**SINGAPORE MEDICAL COUNCIL DISCIPLINARY COMMITTEE INQUIRY
FOR DR HO MIEN HELD ON 21 JULY 2010, 15 AUGUST 2011,
22 AUGUST 2011 AND 16 DECEMBER 2011**

Disciplinary Committee:

A/Prof Benjamin Ong - Chairman
A/Prof Chin Jing Jih
A/Prof Ng Wei Keong Alan
Mr Chan Peng Kong (Lay Observer)

Legal Assessor:

Mr Andy Chiok
(M/s Michael Khoo & Partners)

Counsel for the SMC:

Mr Siraj Omar
Ms Dipti Jauhar
(M/s Premier Law LLC)

Counsel for the Respondent:

Mr Eric Tin
Ms Jessica Soo
(M/s Donaldson & Burkinshaw)

DECISION OF THE DISCIPLINARY COMMITTEE

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

1. These proceedings arose out of a complaint made against the Respondent by the Chairman of the House Officer Training Committee ("HOTC") to the Singapore Medical Council (the "SMC").
2. The following facts are agreed:
 - (1) In March 2008, the Respondent was practising as a House Officer at the Division of Medicine, Singapore General Hospital ("SGH").
 - (2) The Respondent was rostered to perform night call duty on 11 March 2008. He did not perform the duty and instead arranged for a colleague Dr A to do so. The Respondent later submitted a

monetary claim of \$110.00 for the duty performed by Dr A. After receiving payment, he handed over the full sum to Dr A.

- (3) The Respondent was rostered to perform night call duty on 15 March 2008. He did not perform the duty and instead arranged for Dr A to do so. The Respondent later submitted a monetary claim of \$150.00 for the duty performed by Dr A. After receiving payment, he handed over the full sum to Dr A.
- (4) On 2 October 2008, the Chairman of the HOTC, lodged a formal complaint with the Singapore Medical Council. A Complaints Committee (the "CC") was constituted to consider the Complaint. On 30 October 2008, the CC invited the Respondent to submit a written explanation. The Respondent submitted his written explanation on 4 December 2008.

The Charges

3. The Respondent faces the following Charges:

Amended 3rd Charge

“That you, Dr Ho Mien, a registered medical practitioner, did in or around March 2008 make claims for monetary compensation totaling S\$110.00 on the grounds of having completed night call duties on 11 March 2008 despite not having performed any such night call duties on 11 March 2008, and that in relation to the facts alleged, you have been guilty of an improper act or conduct which brings disrepute to the profession within the meaning of Section 45(1)(c) of the Act.”

Amended 4th Charge

“That you, Dr Ho Mien, a registered medical practitioner, did in or around March 2008 make claims for monetary compensation totaling S\$150.00 on the grounds of having completed night call duties on 15 March 2008 despite not having performed any such night calls duties on 15 March 2008, and that in relation to the facts alleged, you have been guilty of an improper act or conduct which brings disrepute to the profession within the meaning of Section 45(1)(c) of the Act.”

4. The Respondent and the SMC agreed to proceed with the adjudication of the Charges by way of written submissions, based on the agreed facts. Nonetheless, we allowed both the SMC and the Respondent to make rebuttal oral submissions.
5. The Respondent relied on the case of *Ling Uk Choon & anor v Public Accountants Board* [2004] 3 SLR 517 for his contention that there are 2 requirements for the misconduct alleged to be made out. They are:
 - (1) Whether the Respondent’s conduct was improper?
 - (2) If so, whether the said conduct brought disrepute to the medical profession?
6. Counsel for the SMC agreed with the above requirements.

Whether the Respondent’s conduct was improper?

7. The Respondent contended that it is not every incorrect step that amounts to improper conduct. It was further urged that only misconduct of a serious or persistent nature, or one involving a breach of professionalism needs to be addressed by disciplinary proceedings.

8. The Respondent also contended that his conduct was not improper, relying *inter alia* on the following grounds:
- (1) He was facing personal problems which affected his ability to perform night calls.
 - (2) It was a common accepted practice to swap or sell night calls.
 - (3) The Respondent did not derive any financial gain from making the claims for night call duties and had handed the full sum of the claims to Dr A.
 - (4) The Respondent did not intend to mislead anyone into thinking that he had performed the night calls or to defraud the SGH. There was no reason for him to mislead anyone since he did not receive the allowances.
 - (5) There was no information provided to house officers that they were not allowed to change night calls. The frequency of night calls was determined by manpower availability, and to the Respondent, only a concern dealing with welfare.
 - (6) The Respondent is a responsible and compassionate doctor, as supported by the testimonials annexed to his exculpatory statement.
9. The response by the SMC to the above points are:
- (1) Fraud, dishonesty or moral turpitude are not necessary elements for improper conduct to be made out. Mere inadvertence or negligence can suffice as improper conduct.

- (2) The circumstances of the case warrant a finding that the Respondent's conduct was improper.
- (3) It is not necessary that the Respondent's conduct violated a particular professional rule, regulation or guideline in order to establish that it was improper.
- (4) It must be considered how the conduct in question would be viewed by other medical professionals.
- (5) There were established procedures for house officers to change their scheduled duties. The Respondent did not follow the procedure.
- (6) The claim form for the night calls stipulates that the claim must be made on actual calls performed, and to be certified by the Supervisor or Head of Department. Dr B thus wrongly signed off the Respondent's claim on a mistaken belief that the Respondent had performed the call.
- (7) Even if there was a practice of "selling" night calls, such a practice was not accepted or authorised and cannot be condoned. The Respondent had shirked from his responsibility to perform night calls.
- (8) The fact that the Respondent did not receive monetary gain is not a relevant factor and does not exonerate him from the misconduct.

Whether the Respondent's conduct brought disrepute to the medical profession?

10. The Respondent contended that the applicable test here is an objective one i.e. whether a reasonable person, having knowledge of all the factual circumstances would conclude that the Respondent's conduct had lowered the reputation of the medical profession.
11. Counsel for the Respondent maintained that the Respondent's conduct, even if it was improper, did not bring disrepute to the medical profession. The Charges do not allege any fraud, dishonesty or ill-intent by the Respondent. The acts by Respondent were simply that of claiming allowances to pay a colleague who had taken over his night call duties. If the Respondent is sanctioned then it would open the floodgates for sanctions for honest and minor offences.
12. Conversely, counsel for the SMC argued that the test is not an objective one, but that of a standard to be seen through the eyes of the Disciplinary Committee in accordance with S45(1)(c) of the Act. The medical profession must maintain its high standards.

Our views

13. The Respondent's conduct that is now under scrutiny concerns the Respondent's night call duties. It is undisputed that the Respondent made claims for 2 night calls that he did not perform. It is also not disputed that the Respondent was paid the allowances for the 2 night calls and had in turn paid it over to Dr A.
14. In the course of submissions, counsel for the SMC does not dispute that it is an accepted practice for house officers to change their scheduled night calls, so long as it was properly done. On this point, our attention was drawn to the orientation materials for the SGH produced by the Respondent which sets out a procedure in SGH to inform both the Division of Medicine and the telephone operator.

15. In the course of his rebuttal submissions, counsel for the Respondent stated that the Respondent had informed the telephone operator of the changes of his night calls. While we are prepared give the Respondent the benefit of doubt that he had done so, it remains that there is no evidence of the Division of Medicine being informed and in this regard, what the Respondent did was improper. From another angle, it is evident that the Respondent's supervisor did not know that the Respondent did not perform these night calls as he signed off that the Respondent had performed these night calls, by cross-checking it with the official roster which reflected that the Respondent had performed these night calls. Further, it remains unclear whether the Respondent's team was aware that he was not performing his scheduled night call.
16. Even if it was a common practice amongst house officers to change their night calls or to allow a colleague to take over a scheduled night call (which is not established), the Respondent's actions had undermined a system that was in place to ensure that house officers are rostered for night calls as part of their training requirement. We bear in mind that these night calls impose responsibilities on house officers, as well as play a part in their training.
17. Finally, in connection with the making of the relevant claims for the allowances, it is also clear to us that the actions of the Respondent would invariably entail the making of the claims by him that he had performed the night call when he did not in fact perform them. This is a strong point for our view that the conduct is improper.
18. For the above reasons, we are of the view that the Respondent's conduct was improper.
19. We now turn to the next issue whether the Respondent's conduct brought disrepute to the medical profession. We accept the SMC's

arguments that given the wording of S45(1)(c), it is for the Disciplinary Committee to make the determination.

20. We are of the view that such conduct will have a significant impact on the training of doctors. The call roster system is implemented with a view towards the proper training of house officers. The Respondent's conduct would erode the integrity of the training system that is in place. Furthermore, while counsel for the Respondent had labeled such act as "an administrative breach", we are unable to agree that it is trivial in nature. If left unchecked, such conduct can have a detrimental effect on the training of doctors. We are concerned with the wrong message that would be sent to doctors under training if we were to condone the Respondent's acts.
21. In the course of submissions, the Respondent had relied on the test as set out in *Wong Kok Chin v Singapore Society of Accountants* [1989] 2 SLR 633 i.e.

"... A practical test could have been if reasonable people, on hearing about what he had done, would have said without hesitation that as an accountant he should not have done it."
22. We are of the view that in applying the above test, we have no hesitation to arrive at the conclusion that the Respondent should not have done what he did. The medical profession has high standards that need to be maintained, and this present case concerns standards of training. We therefore find that the SMC has successfully proved the 2 Charges against the Respondent and convict him accordingly.
23. We now turn to the issue of an appropriate sentence to be imposed. Counsel for the Respondent drew our attention to the testimonials

furnished in his favour. The following points were also made on the Respondent's behalf:

- (1) The Respondent did not derive any monetary gain from the misconduct.
- (2) There was no harm resulting from the Respondent's conduct.
- (3) The Respondent had not been signed off as a house officer and his training has been held in abeyance.

Counsel for the Respondent urged that the Respondent be merely censured without a fine.

24. Counsel for the SMC cited various precedents and sought for a sentence involving the imposition of a fine, censure and an undertaking not to repeat the misconduct.
25. Given our views and concerns as set out above, a substantial punishment would be appropriate so that practitioners are deterred from such conduct.
26. Nonetheless, we are appreciative of the fact that there are substantial and impressive testimonials in the Respondent's favour of his abilities as a doctor and in respect his contributions to public service. We also note that this incident of misconduct took place early in the Respondent's career and we are reluctant to impose a financial hardship on him as an act of mercy. These proceedings had taken some time, during which the Respondent could not complete his training as a doctor. In our view, this is an important factor in sentencing.

27. In light of all the circumstances, after due consideration this Committee determines as follows:

- (1) that the Respondent shall be censured;
- (2) that the Respondent shall give a written undertaking to the SMC that he will not engage in the conduct complained of or any similar conduct; and
- (3) that the Respondent shall pay the costs and expenses of and incidental to these proceedings, including the costs of counsel to the SMC and the Legal Assessor.

28. Finally, we also order that the outcome of this inquiry be published.

29. The hearing is hereby concluded.

Dated this 16th December 2011