SINGAPORE MEDICAL COUNCIL DISCIPLINARY COMMITTEE INQUIRY FOR DR KONG SIM GUAN @ SIM HENG GUAN HELD ON 29 AUGUST 2011, 31 AUGUST 2011, 1 SEPTEMBER 2011, 14 DECEMBER 2011, 16 MARCH 2012 and 24 MAY 2012

Disciplinary Committee:
Prof Lee Eng Hin (Chairman)
Dr Raymond Chua
Dr Francis Hui
Ms Serene Wee (Lay Member)

Legal Assessor:
Mr Joseph Liow
(M/s Straits Law Practice LLC)

Counsel for the SMC:
Ms Melanie Ho
Ms Yong Shu Hsien
Mr Alvis Liu
Ms Ng Shu Ping
(M/s WongPartnership LLP)

Counsel for the Respondent:
Dr Myint Soe
Mr Daniel Xu
Mr Ramakrishnan
(M/s Myint Soe & Selvaraj)

DECISION OF THE DISCIPLINARY COMMITTEE

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

Introduction

1. These proceedings arose from a complaint filed by the Complainant on the 23 of March 2010 against the medical practitioner, Dr Kong Sim Guan @ Sim Heng Guan, a medical practitioner practising at The Psychiatric & Behavioural Medicine Clinic (Ang & Kong) at Mount Elizabeth Medical Centre ("the Respondent")[1].

[1] Agreed Bundle of Documents (ABD) pages 5 to 63 – Complaint filed by Complainant

2. The gist of the complaint was that the Respondent had maintained a sexual relationship with the Complainant from 1996 to 2009 while the Respondent was her clinical psychiatrist[2].

The Charge

3. Upon the Complaints Committee referring this matter for further investigation, this Disciplinary Committee was constituted to hear the Charge preferred against the Respondent.

4. The relevant part of the Notice of Inquiry dated 19 January 2011 (i.e. "the Charge") read as follows:-

*That you DR **KONG SIM GUAN @ SIM HENG GUAN** are charged that, whilst a registered medical practitioner practising at the Psychiatric & Behavioural Medicine Clinic, located at 3 Mount Elizabeth #15-08, Mount Elizabeth Medical Centre, Singapore 228510 ("the Clinic"), you did have a long term sexual relationship with the Complainant whilst she was a patient under your care.*

PARTICULARS

(a) Your first consultation with the Complainant was on 1 December 1993.

(b) The Complainant was your patient from around December 1993 to May 2009.

[2] ABD-9; paragraph 32 of the Complaint

(c) You began a sexual relationship with the Complainant ("the Patient") in or around late 1996 and continued to have a sexual relationship with the Patient till in or around late 2009.

(d) You treated the Patient at the Clinic until June 1997 and thereafter you continued your treatment of the Patient by prescribing her medication from April 1999 to December 2009.

(e) On 13 July 2007, the Patient consulted you and you referred her to the Mount Elizabeth Hospital for her condition.

(f) Paragraphs 4.2.5 and 4.2.5.1 of the Singapore Medical Council's Ethical Code and Ethical Guidelines state that:-

"4.2.5 Close relationships with patients and their families

4.2.5. 1 <u>Personal relationships</u>
A doctor must not have a sexual relationship with a patient. This is to preserve the absolute confidence and trust of a doctor-patient relationship. A doctor must also not, as a result of his professional relationship, enter into an adulterous or any other improper association with the immediate members of the patient's family. Such a relationship would disrupt the patient's family life and damage the relationship of trust between the doctor and his family. A doctor's conduct must at all times be above suspicion."

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.)

The elements of the charge that Prosecution must prove beyond reasonable doubt

5. This Disciplinary Committee, having considered paragraphs (a) to (e) of the Charge, formed the view that for a finding of professional misconduct to be made out, the prosecution must show, beyond reasonable doubt, that:-

   (a) That the Respondent and the Patient had a sexual relationship; and

   (b) That when the sexual relationship occurred, the Patient was a patient of the Respondent.

The issues in these proceedings

6. The Respondent does not deny that he had a sexual relationship with the Patient. The Respondent does not deny that he had treated the Patient as a patient. What he denies is that he had sexual relations with the Patient when she was his patient.

7. The Respondent asserts that he had treated the Patient as a patient up to 5 June 1997[3]. He denies that there was any sexual relationship with the Patient prior to this date of 5 June 1997. He states that his sexual relationship with the Patient started only after 5 June 1997 when the Patient seduced him. He denies that the Patient was his patient or that

[3] AB-page 66; 3rd page of Respondent's Explanation to the Complaint's Committee dated 28 June 2010; paragraph 4 where the Respondent states, *"She last saw me on 5 Jun 1997, from which time on, she was no longer a patient under my care."*

he had treated her as a patient after 5 June 1997 up to the end of their sexual relationship in 2009.

8. Given the aforesaid, it was our view that the issues which we had to decide were as follows:-

   (a) When did the doctor-patient relationship between the Respondent and the Patient terminate?

   (b) When did the sexual relationship between the Respondent and the Patient commence?

The evidence

9. It appears to be common ground that the Patient had first consulted the Respondent at his clinic on 1 December 1993 and that between 1 December 1993 to 5 June 1997, the Patient obtained treatment and consultation at the Respondent's clinic.

10. It is not disputed that from 1 December 1993 to 24 December 2009, the Respondent had prescribed medication to the Patient[4]. It is also not disputed that on 22 January 2007, the Respondent provided the Patient a medical certificate[5] and on 13 July 2007, in a Doctor's Admission Assessment Form certified the Patient to be suffering from anxiety/depression and sought admission into hospital for the Patient[6]. This Assessment Form was signed by the Respondent as the Patient's "Admitting Doctor".

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4 AB pages 12 to 29; pages 103 to 115

5 AB-22

6 AB-23 and 24

Prosecution's Contentions

11. The prosecution contends that the doctor – patient relationship between the Respondent and the Patient had existed from 1 December 1993 throughout to 24 December 2009.

12. In support of this contention, the prosecution relied not only on the evidence of the Patient but on the following documents:-

(a) Prescription notes and prescriptions recorded or issued by the Respondent from his clinic from 1993 to 2009;
(b) A Medical Certificate issued by the Respondent dated 22 January 2007;
(c) A Doctor's admission assessment form dated 13 July 2007 and signed by the Respondent as the "Admitting Doctor";
(d) A letter written by the Respondent dated 20 August 2007 wherein he certified that the Patient had "*a long history of medical treatment for depression, and currently she is in the midst of a depression as a result of work stress and family problems*" and that "*she is strongly recommended for medical treatment, which is ongoing*"[7]; and
(e) The Respondent's own Explanation given to the Complaints Committee dated 28 June 2010 at paragraphs 11, 12 and 12a[8] where the Respondent stated that the Patient would call him from time to time for medical advice on various issues.

13. The prosecution further contends that there was no evidence that the Respondent had terminated the doctor-patient relationship. There was no

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[7] For particulars (a) to (c), please refer to footnotes 4, 5 and 6 above. For document referred to in particular (d), that can be found at AB-25.

[8] See AB-70 and 71

entry in the Respondent's clinical notes that indicated that he had discharged the patient on 5th June 1997 nor referred the patient for follow up of her psychiatric conditions in the medical case notes. Prosecution pointed out that the Respondent during his cross-examination gave evidence that he had told the Patient to see another psychiatrist and he stated that this was in 2005 or 2006. There was no documentary evidence or any other psychiatrist called to give evidence to collaborate the Respondent's evidence that he had referred the Patient to any other psychiatrist at any time.

14. The thrust of Prosecution's case is that (a) there was no termination of the doctor-patient relationship and that it had subsisted throughout the periods from 1993 to 2009; and (b) since the sexual relationship took place during that period when the Patient was a patient of the Respondent, the latter was guilty of professional misconduct.

The Respondent's Contentions

15. The Respondent contends that (a) the doctor-patient relationship had been terminated in June 1997; and (b) the sexual relationship between the respondent and the Patient commenced only after 1997 instead of the alleged 1996 timeframe stated by the Patient.

16. In support of his contention that the doctor-patient relationship had terminated in June 1997 and did not continue thereafter, the Respondent asserted that since the authenticity of the clinical notes were not challenged, there was no dispute that the Patient had gone to the Respondent's clinic only up to June 1997.

17. The Respondent asserts that he is not aware of any standard practice in medical clinics by doctors to expressly document that a patient is discharged.

18. The Respondent further contends that the fact that the prescription/payment cards in relation to the Patient showing that unused medication were returned and the costs refunded to the Patient was an indication that she was no longer his patient.

19. The Respondent contends that there are no guidelines or parameters published as to when a person is a patient or when an ex-patient becomes a patient.

20. He further contends that a doctor giving prescription to his spouse, children or family members or close friends would not create a doctor-patient relationship. He contends that since a mistress is recognised in many countries as a 'de facto' wife, providing prescription to one's mistress cannot constitute a doctor-patient relationship.

21. The respondent also contends that the times when he met the Patient for dinner and sex were unsuited for psychiatric consultations (thus alluding to the fact that there was no doctor-patient relationship).

22. In support of the contention that the Respondent did not start a sexual relationship with the Patient until 1997 after she was no longer his patient, the Respondent pointed out to the Patient's inability to name the hotel where they first had the sexual encounter, that at that time, the Patient had just recovered from her traumatic sexual assaults by her music teacher and still having adverse symptoms in 1996 and was still on treatment until February 1997 with anti-depressants. The Respondent contends that the fact that the Patient was prescribed with only

tranquilizers after February 1997 that the Patient was on the road to recovery. The Respondent contends that the evidence of the Patient should not be believed.

23. Apart from the above contentions, the Respondent contends that the Patient had 'borderline personality' and that she was out to trap him from January 2007 and to destroy him. He further contends that the Patient's actions in getting the Respondent to issue admission forms to hospitals and a medical report (both in 2007) were with that same motive i.e. to destroy him through the present disciplinary proceedings.

Witnesses called

24. Apart from the Patient, the prosecution called the following witnesses to give testimony:
    a. PW2; and
    b. PW3.

25. It appears to us that both PW2 and PW3 were called as corroborative witnesses. The evidence in chief of PW2 and PW3 were summarized in letters addressed to the SMC dated 21 March 2011 and 14 March 2011 respectively[9]. PW2's evidence was that the Patient had in late 1996 indicated to him that she was "going out" with the Respondent and at that time, he also learnt that the relationship was both romantic and sexual in nature. PW3's evidence was that sometime in early 1997, he had established that the Patient was a patient of the Respondent and that she was having a sexual relationship with him. For that reason, he had declined to be the Patient's psychiatrist.

[9] Prosecution's Bundle of Reports pages 1 and 3.

26. The Respondent, in his defence, elected to give evidence and in addition called the following witnesses:-

    a. DW2;

    b. DW3; and

    c. DW4.

27. DW2, a gynaecologist, gave testimony that the Patient was referred to her by the Respondent after the Patient complained of being sexually assaulted and that, upon her examination of the Patient, no sperm was found on the Patient. DW3, the Respondent's wife, apart from largely stating how the discovery of the affair had affected her marriage with the Respondent, recounted an incident where she was travelling in a car driven by the Respondent, when she noted a person resembling the Patient staring very hard at her from a nearby car. DW4 gave expert testimony that it was possible for the Patient, who was suffering from "hallucinations, inconsistency in her self-image, promiscuity, adultery" to "vividly recollect an event that was only previously imagined or thought about". DW4's evidence was an expert opinion that it was possible that the Patient's recollection of the sexual relationship with the Respondent in 1996 was a false memory.

28. Prosecution challenged the qualification of DW4. It also challenged the independence of DW4 as an expert witness in view of her business association with the Respondent in respect of a business called "Centre for Mind and Culture LLP".

The findings of this Disciplinary Committee

29. Having considered all the evidence, this Disciplinary Committee FINDS as follows:-

a. That the doctor-patient relationship did not terminate in June 1997 and there is proof beyond reasonable doubt that the doctor-patient relationship continued until 2009.

b. That the Respondent did not discharge the Patient as a patient in the manner as described in the Ethical Guidelines[10]. This fact coupled with the incontrovertible documentary evidence that the Respondent provided medical advice, prescriptions, admission notes, medical certificates and medical reports to and for the benefit of the Patient after June 1997 puts it beyond reasonable doubt that the Patient continued to be treated as a patient of the Respondent. The evidence irresistibly points to the conclusion that the Respondent continued the doctor-patient relationship post June 1997. As an example, since only a doctor can prescribe medicine, the person who receives that medicine must necessarily be a patient. If a doctor sets out in a medical report and/or admission note that the person named within that medical report is unwell and/or requires admission into a hospital, the person referred to in that medical report and/or admission note must clearly be a patient.

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[10] See paragraph 4.2.6 of the Singapore Medical Council's Ethical Code and Ethical Guidelines which states, "*When a doctor-patient relationship is to be terminated by a doctor, he has the responsibility of offering to another doctor who will take over the entire care of the patient. The referring doctor shall also ensure that sufficient information is communicated to the new doctor to enable a seamless transition of care*.", and "*Where a doctor-patient relationship is terminated by a patient, a doctor should not withhold medical information from the patient or another doctor to whom the patient subsequently goes, if required by the patient.*"

c. The Respondent's contention that he was merely treating a family member or a close friend does not assist him. Firstly, regardless of whether one treats a family member, a close friend or a complete stranger, the fact remains that the doctor is providing *treatment as a doctor*. Secondly, even if there is some exception that allows a doctor to treat a close family member or close friend, this cannot condone improper association with a patient. Save for one's own spouse, a medical practitioner does not have a sexual relationship or improper association with family members or close friends. The gravamen of this Charge is one of having an **improper association** with a patient.

d. The Respondent's attempt to liken a mistress with a wife is misconceived. This is because the Respondent's relationship with the Patient had started as one of a doctor-patient relationship and the Patient was clearly a person with deep emotional issues back then when he first met her. We are cognizant of the fact that the medical issues faced by the Patient were related to her mental well-being and as her psychiatrist, the Respondent should have been more than aware that his sexual relationship with her can only be interpreted as taking advantage of her troubled state and vulnerability, let alone exacerbating and complicating her marital problems.

e. The aforesaid finding by this Disciplinary Committee that the doctor-patient relationship between the Respondent and the Patient did not terminate in 1997 and in fact continued up to 2009, is sufficient to find the Respondent guilty of professional misconduct as set out in the charge, since there is no dispute that there was a sexual relationship between 1997 to about 2008.

There is therefore no necessity for this Disciplinary Committee to make any finding as to *when* the sexual relationship started.

30. The Patient was a psychiatric patient who was no doubt a vulnerable patient. She was clearly a troubled patient with marital issues.

31. Despite treatment, advice and medication received from the Respondent, he still noted that she was 'still unwell' in his clinical notes of 20 August 2009.

32. Whilst we are prepared to give the Respondent the benefit of doubt that the Patient did initiate the relationship, or even seduced him, the Respondent could have stopped the Patient from taking this matter further. We, however, find that that he encouraged her, directly or indirectly, by visiting the Patient at her home, taking her to her physiotherapist and accompanying her to a hotel.

33. There was a long period of improper association with his patient. We do not agree with counsel for the Respondent that we should not take any period prior to 3rd April 1998 into account i.e. the date that the revised Medical Registration Act of 1998 was enacted.

34. In the general scope of misconduct, the misconduct of having sexual relationship with a patient is particular grave and brings disrepute to the medical profession and such an ethical obligation surely existed prior to the revised edition of the Medical Registration Act of 1998.

35. Accordingly, we FIND beyond reasonable doubt that the Respondent did have sexual relationship with the Patient during such times when there existed a doctor-patient relationship between the Respondent and the

Patient. As such the Respondent is guilty of the professional misconduct as charged.

Sentence

36. Having heard counsels for the SMC and the Respondent on sentencing, we formed the view that there were aggravating factors on the conduct of the Respondent:-

(a) The Patient was a psychiatric patient who was no doubt a vulnerable patient. She was clearly a troubled patient with marital issues.

(b) Despite treatment, advice and medication received from the Respondent, he still noted that she was 'still unwell' in his clinical notes of 20 August 2009.

(c) Whilst we are prepared to give the Respondent the benefit of doubt that the Patient did initiate the relationship, or even seduced him, the Respondent could have stopped the Patient from taking this matter further. We, however, find that that he encouraged her, directly or indirectly, by visiting the Patient at her home, taking her to her physiotherapist and accompanying her to a hotel.

(d) There was a long period of improper association with his patient. In the course of submissions on sentencing, the Respondent's counsel suggested that this Committee should not take any period of misconduct prior to 3rd April 1998 into account i.e. the date that the revised Medical Registration Act of 1998 was enacted. In his view, the medical tribunal was created by the Medical Registration Act only after 3 April 1998 and could not have jurisdiction on

hearings of professional misconduct prior to that date. We disagree with this position. Firstly, there is no limitation imposed in the Medical Registration Act preventing this tribunal from hearing and dealing with misconduct on the part of any doctor. If the Respondent's argument was correct, the moment that the Medical Registration Act came into being in 1998, all cases of misconduct by medical practitioners could not be dealt with by a Disciplinary Committee. Secondly, it is our view, that having sexual relationship with one's patient is a grievous misconduct even prior to the revised Medical Registration Act of 1998. Given the length of the improper conduct that we have noted, continuing up to 2009, we would not have differed in our position on sentencing even if we were to ignore the ethical breaches that occurred prior to the enactment of the revised Medical Registration Act of 1998.

(e) In the general scope of misconduct, the misconduct of having sexual relationship with a patient is particularly grave one and brings disrepute to the medical profession.

37. We disagree with counsel for prosecution that the fact that the Respondent took a robust position with the Patient during cross examination would amount to an aggravating factor. In this particular instance, prosecution took objection to the fact that the counsel for the Respondent tried to categorise the Patient as having a relationship with a Mr A whereas the Patient insisted that she was raped by Mr A. In this regard, we take note that there was some basis for counsel of the Respondent for this line of questioning since the Patient's letter 20 March 1996[11] suggested that the Patient was convinced that there was no incident of rape.

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[11] See page 10 of the Respondent's Bundle of Documents

38. We accept that there are mitigating factors in favour of the Respondent. We have taken into account his otherwise unblemished record for over 30 years as a medical practitioner and his extensive service to the professional community and the community at large. We accept that he is well regarded by his peers in the medical profession and that other professionals and his patients speak well of him.

39. In coming to our ultimate decision on sentencing, we considered and agreed with the counsel for the Respondent that misconduct by way of having sexual relations with a patient does not automatically attract removal from the Register. We accept the view taken in the case of *General Medical Council v Professor David Southall [2005] AB 365* that a doctor's loss to the profession and patient would be serious and could be accorded substantial weight. We also accept the view taken in *Giele V General Medical Council [2005] EWHC 2143* that in the case of misconduct, by having sexual relationship with a patient, the approach is not to ask if there are exceptional circumstances to avoid erasure but to look at the misconduct and mitigation and then decide which sanction was appropriate.

40. Taking into account all of the above, the Disciplinary Committee imposed the following sentence:-

    (a) That the Respondent be suspended for a period of **3 years**; and
    (b) That the Respondent be fined a sum of **$10,000.00**.

Further Order by this Disciplinary Committee

41. The Disciplinary Committee further ordered the Respondent to pay the costs of and incidental to these proceedings, including those of the solicitor of the Council and the Legal Assessor.

42. The Disciplinary Committee further ordered that the written Grounds of Decision is to be published provided that the name of the Patient be redacted.

Dated this 24th day of May 2012