

**SINGAPORE MEDICAL COUNCIL DISCIPLINARY TRIBUNAL INQUIRY FOR
DR CHIO HAN SIN ROY HELD ON 28 AUGUST AND 1 SEPTEMBER 2015**

Disciplinary Tribunal:

Dr Wong Sin Yew (Chairman)
Prof Sonny Wang Yee Tang
Mr James Leong (Legal Service Officer)

Counsel for SMC:

Mr Burton Chen
Mr Tham Chang Xian
(M/s Tan Rajah & Cheah)

Counsel for the Respondent:

Mr Charles Lin
(M/s MyintSoe & Selvaraj)

DECISION OF THE DISCIPLINARY TRIBUNAL

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

Introduction

- 1 These proceedings emanate from the conviction of the Respondent, Dr Chio Han Sin Roy on 11 March 2013 before the Subordinate Courts (as it then was). Consequent to this, the Respondent was referred to this Disciplinary Tribunal ("DT") by the Singapore Medical Council ("SMC") and the Notice of Inquiry ("NOI") dated 13 May 2015 was duly served on him to attend a Pre-Inquiry Conference ("PIC") on 26 June 2015. The Respondent informed the DT through his Counsel at the outset that he was not contesting the charge in the NOI and a date was duly fixed for the hearing. The charge against the Respondent reads as follows:

"CHARGE

That you, Dr Chio Han Sin Roy (NRIC No. SXXXXXXXX), a medical practitioner practising at Famicare Bedok Clinic located at Block 158 Bedok South Avenue 3 #01-581, Singapore 460158, were on 11 March 2013, vide MOH-000012-DSC-2012, at the Subordinate Courts of the Republic of Singapore (as it then was), convicted of an offence under Section 62(a) of the Medical Registration Act (Cap 174) ("the Act"), to wit, by procuring a practising certificate from the Singapore Medical Council (the "SMC") by knowingly making a fraudulent declaration in writing by submitting a Letter of Undertaking to the SMC on 7 February 2012 that you were not involved in any active clinical practice since 1 November 2011, a declaration which you knew to be false, and you are thereby liable to be punished under Section 53(2) read with Section 53(1)(a) of the Act."

Agreed Statement of Facts

- 2 At the hearing on 28 August 2015, the Respondent admitted to the charge without qualification. Counsel for SMC and the Respondent agreed to the statement of facts marked PBN and the Annexes A and B thereto. The Agreed Statement of Facts read as follows:

"AGREED STATEMENT OF FACTS"

1. *The Respondent (NRIC No. SXXXXXXX) is a registered medical practitioner who, at all material times, was practising at a clinic known as "Famicare Bedok Clinic".*
2. *On 11 March 2013 at the Subordinate Courts (as it then was), of the Republic of Singapore ("Subordinate Courts"), the Respondent pleaded guilty to, and was convicted of, one charge (MOH-000012-DSC-2012) of procuring a practising certificate from the Singapore Medical Council ("SMC") by knowingly making a fraudulent declaration in writing, which is an offence under Section 62(a) of the Medical Registration Act (Cap. 174) ("MRA") ("the Criminal Charge").*
3. *In respect of the Criminal Charge, the Respondent was sentenced to a \$4,000 fine, in default of payment thereof 2 weeks' imprisonment.*

Annexed hereto and marked "A" are copies of the Criminal Charge and the Certificate under Section 45A of the Evidence Act (Cap. 97) in respect of the Respondent's conviction and sentencing dated 30 April 2013.

4. *The background and facts relating to the Criminal Charges are set out in the Statement of Facts dated 7 March 2013 tendered to the Subordinate Courts at the time of the hearing.*
5. *In summary:*
 - (a) *To obtain the renewal of his practising certificate from the SMC, the Respondent submitted a Letter of Undertaking to the SMC on 7 February 2012 to the SMC declaring that: "I have not been involved in the practice of Medicine since the expiry of my Practising Certificate and until I get a replacement PC. This is for the period from PC expiry on 31st October 2011"; and*
 - (b) *The declaration in the Letter of Undertaking was untruthful in that the Respondent was practising medicine from 1 November 2011 to 17 February 2012, before his renewed practising certificate was issued for the period from 20 February 2012 to 31 October 2013.*
6. *Annexed hereto and marked "B" are copies of the Statement of Facts dated 7 March 2013 in respect of the Criminal Charge and the Respondent's Letter of Undertaking that was submitted to the SMC on 7 February 2012.*

7. *In the circumstances, the Respondent is guilty of having been convicted of an offence involving fraud or dishonesty within the meaning of Section 53(1)(a) of the MRA as set out in the Notice of Inquiry dated 13 May 2015.*

Mitigation

- 3 In his written and oral mitigation, Counsel for the Respondent highlighted the Respondent's personal circumstances, highlighting at [23] of the written mitigation how *"his work was adversely affected by his many personal troubles and problems leading to great stress and anxiety. After his acrimonious divorce ended in 2010 and an order for payment of heavy maintenance made; his father's accident and death..."* occurred. All these troubles and stress had an effect on his health. The written plea in mitigation marked RMP was not disputed by Counsel for SMC.
- 4 In essence, the Respondent had been of the view that the time and effort spent by him as the Founding President of the Anti-Ageing and Aesthetic Medicine Society of Singapore ("AAAMSS") would count towards the purpose of Continuing Medical Education ("CME") Points for 2009/2010. After being informed by SMC of the potential shortfall of 26 points, he wrote in March 2011 with regard to the educational activities of the AAAMSS but was unable to respond to SMC's further queries in a timeous fashion in view of his father's unfortunate fall at work in April 2011. Being the only doctor in the family, the responsibility of managing his father's treatment and the related legal matters fell on his shoulders until his father's demise on 17 November 2011, which was why he missed the 31 October 2011 deadline to renew his Practising Certificate ("PC"). Upon confirmation that his AAAMSS work would not be counted, he immediately started to gather CME points and managed to do so and apply for the renewal of his PC on 1 February 2012.
- 5 Characterising Dr Chio's offences as technical breaches, it was submitted that the Respondent should not be suspended and a censure would be appropriate. Urging compassion, it was highlighted that there was no need for any *"... precedent as such cases are unlikely to recur as the CME system has been changed."* It was also submitted that if a fine was appropriate, a sum of no more than \$2,000 would be the correct tariff.

Submissions on Sentencing

- 6 In their oral and written submissions, Counsel for SMC made reference to various sentencing precedents at Annex A of their written submissions marked PS. At [10] and [11] of PS, reference was made to the guideline judgment of the Court of Three Judges in *Singapore Medical Council v Kwan Kah Yee [2015] SGC3J 1* ("Kwan Kah Yee") where the Court observed at [51] that *"the concept of public interest which guides sentencing in medical misconduct extends further than just the danger which the doctor may pose to his patients"* and at [56] that where a doctor's action *"... led to the erosion of public trust in the medical profession"*, the concept of general deterrence was applicable as a sentencing principle.

7 Reference was also made at [13] of PS to the observations of the DT in the Inquiry for Dr Woffles Wu (2014) that:

“We cannot overemphasise that every medical practitioner is expected to carry the hallmarks of integrity and honesty whether in his professional or personal capacity. Any act of dishonesty from a medical practitioner tarnishes and brings disrepute to the medical profession as a whole.”

8 In essence, Counsel for SMC submitted that the conviction for a fraudulent declaration was a serious offence involving fraud or dishonesty. Based on the sentencing precedents highlighted, Counsel for SMC urged the DT to suspend the Respondent’s registration for 4 months.

Analysis

9 In arriving at our decision, we were guided by the observations of the Court of Three Judges in Kwan Kah Yee cited by Counsel for SMC at [6] above. Each case would, of course, have to be determined on its own facts and circumstances. In this regard, as noted by the Court of Three Judges in *Singapore Medical Council v Kwan Kah Yee* at [52], public interest considerations weighed heavily in favour of imposing a stern sentence on the facts as the issuance of a false death certificate was a very grave breach of a doctor’s ethical and professional duties with far reaching actual and potential consequences. The Court of Three Judges, citing the considerations of general and specific deterrence elaborated upon by V K Rajah J (as he then was) in *Tan Kay Beng v Public Prosecutor [2006] 4SLR(R) 10*, further found that both general and specific deterrence was appropriate on the facts of that case.

10 We also agreed with the observations of the DT in the Inquiry for Dr Woffles Wu at [7] above. Integrity and honesty are non-negotiable hallmarks of medical practitioners and any acts of dishonesty would tarnish and bring disrepute to the Medical Profession as a whole.

11 In this regard, we agreed in principle with Counsel for SMC that a fraudulent declaration was indeed a serious matter. We were also unable to agree with Counsel for the Respondent’s characterisation of the offences (both proceeded with and taken into consideration) before the Subordinate Courts as technical breaches. In any event, it is axiomatic that ignorance of the law is never an excuse to breach the law. Given the gravity of the offences, we were of the view that Counsel for the Respondent’s submission that a censure and / or a fine of no more than \$2,000 would be totally inadequate in the circumstances of the case. We were also not persuaded or impressed by the Respondent’s attempts to attribute his shortfall in CME points to SMC not recognising his AAAMSS work. Given that such work had hitherto never been recognised, the Respondent was not able to show any reasonable basis for such an expectation.

12 At the same time, we noted the distinction drawn by Counsel for the Respondent compared to the other decided cases as to the lack of direct monetary benefit as compared to the more serious cases that involved tax evasion or illicit gain. In this

regard, we also accepted that the facts in the Inquiry for Dr Woffles Wu that involved an element of perversion of the course of justice were far more serious as compared to the instant case. There was also a distinct lack of remorse on the part of Dr Woffles Wu. We were also mindful of the observations of Chan Sek Keong CJ in *Wuu David v PP* [2008] 4SLR 83 highlighted by Counsel for the Respondent that for “one-off” offenders, prosecution for the offences committed was in itself some form of deterrence in most cases as highlighted at [38] of *Public Prosecutor v Kulandaivelu Padmanaban* [2010] SGDC 407.

- 13 As for the most direct precedent involving a fraudulent declaration in the case of Dr Ong Theng Kiat stated at [10] of Counsel for SMC’s written submissions, this was unfortunately of not much assistance to the DT since the two other charges that Dr Ong Theng Kiat had been convicted of were for far more serious offences involving consensual sex with a minor for which he was ordered to be struck off the Register. The nature of the false declaration when Dr Ong Theng Kiat was under criminal investigation was also far graver.
- 14 In arriving at the appropriate sentence, we gave full regard to the Respondent’s early plea of guilt both before the Subordinate Courts and the DT, which we felt was a very strong sign of remorse. We noted that he was a first offender with no criminal and SMC antecedents. We also considered the testimonials submitted on his behalf. We empathised with his trying personal family circumstances at the relevant time and appreciated the significant personal stress he would have experienced, although that could never be a valid excuse for offending.
- 15 Considering the dearth of direct sentencing precedents in situations such as this, the DT was guided by the approach adopted in the Legal Profession as set out by the Court of Three Judges in the *Law Society of Singapore v Kurubalan s/o Manickam Rengaraju* [2013] 4 SLR 91 at [36] as follows:
- “36 We begin with the general sentencing principles set out in *Law Society of Singapore v Ong Lilian* [2005] SGHC 187 at [9]:
- This court had in numerous cases declared that the disciplinary powers under s 83 of the LPA serve three distinct objects ... The first is to punish the errant solicitor for his misconduct. The second is to deter other like-minded solicitors from similar defaults in the future. The third is to protect public confidence in the administration of justice.”*
- 16 Having regard to all the circumstances of the case and considering the submissions and precedents cited, we were of the view that a significant fine of \$10,000 rather than a suspension was called for. In our view, this would serve as adequate specific and general deterrence against any future transgressions by the Respondent and other members of the Medical Profession. Moreover, we understand that the procedure for the application for PCs has since been refined, minimising the risk of similar offending. In the DT’s view, the five figure quantum of \$10,000 was sufficient to protect public confidence in the Medical Profession.
- 17 In the course of the hearing of this case and two other related cases involving different doctors, the DT sought submissions from both Counsel on the possibility of

ordering the Respondent to attain more than the minimum CME points requirement. While Counsel for the Respondent was open to this possibility as an additional sentencing option, Counsel for SMC took the view that while such an order was administratively and legally permissible, it was not appropriate in the circumstances of the case since the essence of the charge was dishonesty rather than any lack of medical skill or training. To this end, Counsel for SMC reiterated their position that a sentence of suspension was needed as a deterrent.

- 18 In our view, a deterrent sentence did not necessarily mean or invariably require a sentence of suspension and the stiff fine, coupled with the other orders that we made would achieve the ends of justice. Each case must be considered on the facts and circumstances. In the instant case, the Respondent had a shortfall of 26 CME points which constituted more than 50% of the requirement at the material time. Noting that the root cause of the failure to qualify for the issuance of the PC was the insufficiency of CME points, the DT felt that a more direct and effective way to reiterate the importance of CME and deter reoffending is to impose a requirement for the Respondent to fulfil no less than an additional 30% of the CME points requirement for the renewal of his PC at the next renewal cycle. In arriving at this percentage, we considered the fact that his PC was up for renewal on 1 January 2017 leaving him less than the full two years to meet the additional points imposed. In our view, such an order which is permissible under Section 53(1)(h) read with Section 49(1)(d) of the Medical Registration Act (Cap 174) was fitting and proper in the circumstances of the case.
- 19 All things considered, we were of the view that the orders below would send a strong and clear signal that PC renewal matters must be taken seriously and that false declarations and dishonesty of any kind is never condoned.

Orders by this Disciplinary Tribunal

- 20 Accordingly, the DT determines that the Respondent:-
- a) pay a penalty of **\$10,000**;
 - b) fulfil no less than an additional 30% of the CME points requirement for the period 1 January 2015 to 31 December 2016 for the renewal of his PC on 1 January 2017;
 - c) be censured;
 - d) give a written undertaking to the SMC that he will not engage in the conduct complained of and any similar conduct; and
 - e) pay the cost and expenses of and incidental to these proceedings, including the costs of the solicitors to the SMC.

Publication of Decision

- 21 We order that the Grounds of Decision be published.
- 22 The hearing is hereby concluded.

Dated this 1st day of September 2015.