SINGAPORE MEDICAL COUNCIL DISCIPLINARY TRIBUNAL INQUIRY FOR DR FONG WAI YIN HELD ON 25 JULY 2016

Disciplinary Tribunal:
Dr Joseph Sheares (Chairman)
Dr Swah Teck Sin
Mr Victor Yeo Khee Eng (Legal Service Officer)

Counsel for SMC:
Mr Philip Fong
Ms Shazana Anuar
(M/s Harry Elias Partnership LLP)

Counsel for the Respondent:
Mr Christopher Chong
Ms Vanessa Lim
Ms Audrey Sim
(M/s Denton Rodyk & Davidson LLP)

GROUNDS OF DECISION OF THE DISCIPLINARY TRIBUNAL

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

Introduction

1 The Respondent is a registered medical practitioner. He pleaded guilty before this Tribunal to all three charges preferred against him under section 53(1)(d) of the Medical Registration Act (Cap 174) (2004 Rev. Ed.) ("MRA"). For ease of reference, the three charges against the Respondent and the particulars are set out as follows:

> ***"1st CHARGE (AMENDED)***
>
> *That you **DR FONG WAI YIN** (MCR No. 03303J) are charged that in the period from 13 March 2013 to 18 March 2013 whilst practising as a general practitioner at Nanyang Centre Clinic, Block 959 Jurong West Street 92, #01-162, Singapore 640959, you failed to exercise due care in the management of your patient, namely one Mdm P ("the Patient") on 13 March 2013, 15 March 2013 and 18 March 2013 in that whereas the Patient had presented with red eyes and high pressure in her eyes, blurred vision and severe and persistent headache and vomiting, you breached Guideline 4.1.2 of the Singapore Medical Council Ethical Code and Ethical Guidelines ("ECEG") in that you:-*
>
> ***PARTICULARS***
>
> *(i) failed to adequately and comprehensively document the Patient's history in respect of the condition of her eyes, in particular the duration of the Patient's presenting complaints such as red eyes; and*

(ii) failed to adequately and comprehensively document the presence or absence of features associated with red eyes (other than headaches) such as itchy eyes, painful eyes, vomiting and/or blurring of vision or visual acuity;

and your aforesaid conduct amounts to such serious negligence that it objectively portrays an abuse of the privileges which accompany registration as a medical practitioner, and that in relation to the facts alleged you have been guilty of professional misconduct under section 53(1)(d) of the Medical Registration Act (Cap. 174) (2004 Rev. Ed.)

2nd CHARGE (AMENDED)

*That you **DR FONG WAI YIN** (MCR No. 03303J) are charged that in the period from 13 March 2013 to 18 March 2013 whilst practising as a general practitioner at Nanyang Centre Clinic, Block 959 Jurong West Street 92, #01-162, Singapore 640959, you failed to exercise due care in the management of your patient, namely one Mdm P ("the Patient") on 13 March 2013, 15 March 2013 and 18 March 2013 in that whereas the Patient had presented with red eyes and high pressure in eyes, blurred vision and severe and persistent headache and vomiting, you breached Guidelines 4.1.1.1 and 4.1.1.5 of the ECEG in that you:-*

PARTICULARS

(i) failed to carry out a physical assessment of the Patient for visual acuity, such as her ability to count fingers, where reduced visual acuity is an indicator that the Patient may be suffering from a condition more serious than conjunctivitis, whereas Dr PF had during a consultation with the Patient on 25 March 2013 found that the Patient had blurring of vision for two weeks prior and recorded a visual acuity of 'count fingers';

(ii) failed to carry out a proper assessment of the Patient's red eyes, in particular, failing to note whether the cornea was clear, hazy or opaque;

(iii) wrongly assumed that the Patient had acute conjunctivitis and failed to detect that the Patient had distorted mid-dilated pupils which were not reactive to light, whereas Dr PF had during a consultation with the Patient on 25 March 2013 found the Patient to have distorted pupils with poor light reflex;

and your aforesaid conduct amounts to such serious negligence that it objectively portrays an abuse of the privileges which accompany registration as a medical practitioner and that in relation to the facts alleged you have been guilty of professional misconduct under section 53(1)(d) of the Medical Registration Act (Cap. 174) (2004 Rev. Ed.)

3rd CHARGE

*That you **DR FONG WAI YIN** (MCR No. 03303J) are charged that in the period from 13 March 2013 to 18 March 2013 whilst practising as a general practitioner at Nanyang Centre Clinic, Block 959 Jurong West Street 92, #01-162, Singapore 640959, you failed to exercise due care in the management of your patient, namely one Mdm P ("the Patient") on 13 March 2013, 15 March 2013 and 18 March 2013 in that whereas the Patient had presented with red eyes and high pressure in eyes, blurred vision and severe and persistent headache and vomiting on three visits*

over five days without improvement, you failed to provide a timely referral of the Patient to an ophthalmologist in a specialist clinic or hospital setting for immediate and urgent assessment,

and your aforesaid conduct amounts to such serious negligence that it objectively portrays an abuse of the privileges which accompany registration as a medical practitioner and that in relation to the facts alleged you have been guilty of professional misconduct under section 53(1)(d) of the Medical Registration Act (Cap. 174) (2004 Rev. Ed.)."

Background and Agreed Statement of Facts

2 The background and salient facts as agreed between the parties revealed that the Respondent, Dr Fong Wai Yin (the "Respondent") is a registered medical practitioner who was practising at Nanyang Centre Clinic, Block 959 Jurong West Street 92, #01-162, Singapore 640959 (the "Clinic") at the material time.

3 The Patient was Mdm P (the "Patient"). She consulted the Respondent at the Clinic on three occasions, namely, on 13 March 2013, 15 March 2013 and 18 March 2013.

4 During these consultations, the Patient presented with red eyes and high pressure in her eyes, blurred vision, and severe and persistent headache and vomiting.

5 The Respondent did not adequately and comprehensively document the Patient's history in respect of the condition of her eyes, in particular, the duration of the Patient's presenting complaints; and did not adequately and comprehensively document the presence or absence of features associated with her red eyes (other than headaches).

6 The Respondent neither carry out a physical assessment of the Patient for visual acuity nor properly assessed the Patient's red eyes. In particular, the Respondent did not note whether the cornea was clear, hazy or opaque, wrongly assumed that the Patient had acute conjunctivitis, and did not detect that the Patient had distorted mid-dilated pupils which were not reactive to light.

7 The Respondent also did not provide a timely referral of the Patient to an ophthalmologist in a specialist clinic or hospital setting for immediate and urgent assessment even though the Patient presented with red eyes and high pressure in eyes, blurred vision, and severe and persistent headache and vomiting on three visits over five days without improvement.

8 The Patient was subsequently diagnosed with Bilateral Acute Angle Closure Glaucoma ("AACG") at the Hospital A Glaucoma Specialist Clinic on 26 March 2013.

9 The Patient's son, Mr C subsequently lodged a complaint against the Respondent regarding the Respondent's treatment and management of the Patient's eye condition, and to which the present set of proceedings emanated.

Findings

10 As the Respondent pleaded guilty to all three charges in the Amended Notice of Inquiry dated 13 July 2016 and admitted to the Agreed Statement of Facts without any qualification, the Disciplinary Tribunal ("Tribunal") accordingly found the Respondent guilty of professional misconduct under section 53(1)(d) of the MRA.

Mitigation

11 Counsel for the Respondent tendered a written mitigation plea. In the mitigation plea, his Counsel highlighted that the Respondent has been a general practitioner since 1993. He has been in medical practice for some 34 years and this was the first time that the Respondent was involved in any disciplinary proceedings.

12 Counsel for the Respondent submitted many testimonials to show the Respondent's contributions to the community and society, and highlighted that the Respondent wished to be able to continue to serve the local community and perform his social work.

13 The Respondent was extremely remorseful and deeply regretted his offences. He had pleaded guilty at the earliest opportunity, thus saving considerable time and expense of the SMC and Tribunal. His Counsel also highlighted the Respondent's family background and circumstances.

14 In so far as the offences were concerned, the learned Counsel highlighted that bilateral AACG is a rare condition and not easily diagnosed by general practitioners and can be mistaken for conjunctivitis. Prior to this Patient's case, the Respondent had never encountered this condition in his many years of practice.

15 Moreover, the Respondent had genuinely believed that the Patient was returning to China for further treatment and therefore did not refer her to a specialist. His Counsel urged the Tribunal to consider that there was no deliberate non-compliance with the accepted medical standards or recklessness by the Respondent.

16 Counsel also highlighted that the Respondent has learnt from this incident and taken active steps to improve his practice and is determined not to repeat his mistakes.

17 In light of the mitigating factors and the sentencing precedents cited, his Counsel urged the Tribunal not to impose a suspension on the Respondent, and submitted that a fine and censure, together with an undertaking not to repeat the conduct concerned and the usual costs order, would be an appropriate sentence.

Submission on Sentencing

18 In its written submission on sentencing, Counsel for SMC highlighted several aggravating factors and submitted that the appropriate sentence in this case was *inter alia*:

(a) suspension for a period of at least five months;
(b) censure; and
(c) a written undertaking from the Respondent not to repeat such conduct.

19 Counsel for SMC highlighted that the Respondent did not have a sense of responsibility towards the Patient and did not treat her case with urgency even after the third consultation when her complaints and condition remained unchanged. Instead of being more alert to the Patient's complaints of severe headache and vomiting, as well as her eye pain which are symptoms not typically associated with conjunctivitis but suggested a more serious condition, the Respondent repeatedly assured the Patient that there was no cause for alarm and his advice remained the same without taking further steps.

20 Furthermore, the Patient had visited the Respondent's clinic on three occasions over five days and the frequency and closeness of her visits ought to have raised the Respondent's index of suspicion in respect of the Patient's eye condition. Despite having had the opportunities to further investigate the Patient's complaints to determine the correctness of his original diagnosis, the Respondent failed to do so and failed to treat the Patient's case with urgency.

21 Counsel for SMC also highlighted the Respondent's complacency in the management of the Patient by his lack of adequate documentation in his case notes, such as the duration of the red eyes and the other presenting complaints, and important negatives such as eye pain, vomiting and acuity. In particular, the case note entries on the condition of the Patient's cornea were not very specific as to whether the corneas were clear, hazy or opaque.

22 Counsel for SMC highlighted the expert report of Dr PE1, a Family Physician at (Name of practice place redacted), who noted that the Respondent should have but failed to carry out an assessment of the Patient's visual acuity at each visit and ought to have at least assessed whether there was any blurring of vision.

23 In this regard, Counsel for SMC submitted that the assessment for visual acuity was especially critical in view of the Patient's complaints of impaired and/or blurred vision. However, the Respondent failed to carry out such an assessment and was contented to persist with his original diagnosis of acute viral conjunctivitis.

24 Furthermore, had the Respondent carried out an assessment of the Patient's visual acuity, he might have come to a different diagnosis from that of acute viral conjunctivitis and the Patient could very well have benefited from timely and appropriate treatment. As opined by the SMC's expert, Professor PE2, Senior Consultant , (Name of practice place redacted), in his report, reduced visual acuity was a sign that the Patient might be suffering from a condition more serious than conjunctivitis. Professor PE2 also noted that it was likely that the Patient already had blurring of vision even on the first consultation on 13 March 2013.

25 Counsel for SMC highlighted that the Respondent ought to have but failed to refer the Patient to a specialist in view of the gravity of her symptoms and his failure and delay caused more harm to the Patient. Citing Professor PE2's expert report, in view of the Patient's clinical presentation and repeated close consultations, the Respondent ought to have been more alert to the Patient's symptoms and complaints and referred her to a specialist or a hospital in a timelier manner.

26 It was only fortuitous that the Patient decided to seek a second opinion from another family physician, one Dr PF on 25 March 2013, and Dr PF immediately referred the Patient to the Accident and Emergency Department of the Hospital A ("Hospital A") where she was diagnosed to have bilateral AACG and received proper medical treatment.

27 Counsel for SMC highlighted that the Complainant had indicated in his Complaint that because of the delay in the medical diagnosis and treatment, it was not possible for the Patient to recover her full vision and the Patient now suffers from tunnel vision and is not able to see more than a few feet in front of her. This has affected her way of life as she is unable to take care of herself and requires assistance from caregivers in her daily routines.

28 Finally, Counsel for the SMC also cited several sentencing precedents for the different categories of offences and submitted that given the particular facts and circumstances of this case, an appropriate global sentence for all three charges was a suspension period of at least five months.

Reasons for the DT's Orders

29 First and foremost, the Tribunal gave full weight to the mitigation plea of the Respondent, in particular, that the Respondent had an unblemished record and was truly remorseful and had pleaded guilty early to all three charges. The Tribunal also noted that the Respondent has taken active steps to improve his practice and further noted the Respondent's contribution to the community in Singapore and abroad.

30 While the Tribunal agreed that bilateral AACG may be a rare condition and can be mistaken for conjunctivitis, the Tribunal was also of the view that the Respondent ought to have checked for visual acuity at each consultation given that a reduced visual acuity was a sign that the Patient might be suffering from a condition more serious than conjunctivitis. Furthermore, as pointed out by both experts from SMC, the Patient's complaints of eye pain and persistent headaches were not typically associated with conjunctivitis but suggested a more serious condition. Quite clearly, the lack of improvement should have raised some concerns on the part of the Respondent.

31 The Tribunal was deeply concerned that the Respondent had failed to document the duration of the Patient's complaints of bilateral red eyes, the duration of her headaches, and a record of other important negatives such as eye pain, vomiting and visual acuity. Moreover, he was also not specific in his case notes whether the corneas were clear, hazy or opaque and failed to carry out an assessment of the Patient's visual acuity at each of the three visits. The Tribunal was of the view that the Respondent ought to have assessed whether there was any blurring of vision, and at the very least, the Respondent should have carried out a quick examination on the Patient's ability to count fingers but perplexingly, this was not done.

32 Instead, the Respondent was content to assure the Patient that there was no cause for alarm and his advice remained the same without taking further steps or to refer her to a specialist. As a result of the Respondent's wrong assumption of conjunctivitis and his

continued treatment of her for this condition, the Patient suffered an injury or loss in her vision. In this respect, the Tribunal was not able to accept the excuse that the Respondent had never encountered this condition in his many years of practice or that he had genuinely believed that the Patient was returning to China for further treatment. The Tribunal agreed with the SMC's submission that the Respondent ought to have referred the Patient to a specialist in view of the non-improvement of her illness and the gravity of her symptoms and the multiple consultations he had with her over a span of five days.

33 Counsel for the Respondent submitted that there had been no deliberate non-compliance with the accepted medical standards or recklessness by the Respondent. Nevertheless, the Tribunal could not ignore the fact that the Respondent's failures and non-referral for specialist management had failed to meet the standard of care expected of a general practitioner. Considering that the Respondent is an experienced doctor with 34 years of general practice in medicine, one would have expected the Respondent to set an exemplary standard of duty of care to his patients. Regrettably, his unacceptable standard of care amounted to such serious negligence that it objectively portrayed an abuse of the privileges which accompany registration as a medical practitioner.

34 With due respect to the learned Counsel for the Respondent, the Tribunal did not agree with the submission that the factors highlighted by the SMC were not aggravating factors but merely constituted the elements of the offences committed by the Respondent. There was no doubt that the Respondent had breached Guidelines 4.1.2, 4.1.1.1 and 4.1.1.5 of the SMC Ethical Code and Ethical Guidelines and had also failed to provide a timely referral of the Patient to an ophthalmologist in a specialist clinic or hospital setting in spite of her presenting complaints and symptoms.

35 In determining the appropriate sentence to impose, the Tribunal was of the view that it ought to assess the Respondent's professional misconduct in its entirety and consider all the facts and circumstances of the case, in particular, the serious breaches on the part of the Respondent constituting each of the three charges. To that extent, the Tribunal also considered the gravity of the Patient's illness and that if untreated, or an undue delay in treatment, could potentially lead to a permanent loss of vision by the Patient. The Patient had trusted the Respondent with her care and management and consulted him three times before she sought a second opinion. It was purely fortuitous that the Patient was immediately referred by Dr PF to Hospital A that she was properly diagnosed to have bilateral AACG.

Sentencing Precedents

36 The Tribunal next considered the sentencing precedents cited by both the SMC and Respondent's Counsel. For brevity, the Tribunal shall discuss the more pertinent cases.

37 First, the Tribunal noted the similarities in the case of ***Dr C*** [S/No. 5 of exhibit P2, and cited as ***Dr AAD (2008)*** in exhibit R3, Tab B] with the present case. In that case, Dr AAD had failed to timely refer his premature paediatric patient to a consultant ophthalmologist for Retinopathy of Prematurity ("ROP") screening, which was the

standard practice, and further management, with a consequent loss of vision of the patient's left eye. Dr AAD was convicted of gross negligence after a trial and he was, *inter alia*, suspended for three months from medical practice.

38 Although the circumstances of that case were not entirely identical to the present case, the Tribunal noted that the third charge against the Respondent was that he had not timely referred his Patient to an ophthalmologist for further investigation and management, resulting in the patient's tunnel vision and not being able to see more than a few feet in front of her as reported by her son. Furthermore, Dr PF1 (a medical officer at Hospital A) also stated in her medical report that explanations had been given to the Patient regarding possible existing optic nerve damage from her episodes of high intraocular pressures.

39 Counsel for the Respondent sought to distinguish the case on the ground that Dr AAD was a consultant paediatrician and should have been aware that the patient was at risk of ROP, which was common among infants, and therefore the need to refer for eye screening. Also, the defence was based on a flawed assessment of the patient's gestational age and ignored clinical features of great significance. On the other hand, the Respondent was a general practitioner who mistook a rare eye condition as conjunctivitis. Hence, Counsel submitted that the Respondent's conduct was less egregious than Dr AAD, who ought to have been familiar with eye screening requirements for extremely premature and extremely low birth weight infants.

40 With due respect to the learned Counsel for the Respondent, the Tribunal was not persuaded by the submission. In this case, the Respondent had similarly based his diagnosis of conjunctivitis on a flawed history-taking and examination of the patient, and ignored clinical features of great significance. It was a common assumption that if the Patient returned on three occasions with no apparent improvement in her illness, then the initial diagnosis was very likely wrong, and she should be referred in a timely manner for specialist management, which the Respondent failed to do so.

41 In contrast, the Tribunal noted that Dr PF, the general practitioner who saw the Patient on 25 March 2013 had noted the Patient's complaints of intermittent loss of vision for two weeks, which would include the times when she had consulted the Respondent. Although Dr PF had not apparently diagnosed bilateral AACG, nevertheless, from his examination of the Patient, he recognised that the Patient should be referred in a timely manner to a specialist for management. In short, the Tribunal was of the view that being ignorant of the correct diagnosis was not an acceptable excuse for not recognising that the treatment of the Patient was beyond the expertise of the Respondent.

42 Similarly, in the case of ***Dr AAX (2009)*** (Exhibit R3, Tab 6), the Tribunal could not agree with the Respondent's Counsel's attempt to distinguish the case on the ground that Dr AAX was a consultant haematologist and that chemotherapy was a well-known factor in re-activating Hepatitis B, for which Dr AAX ought to have been alive to. Whereas, the Respondent is a general practitioner who encountered a rare eye condition which he misdiagnosed as conjunctivitis.

43 The Respondent's Counsel also cited the 2005 SMC Annual Report, Case 5 (Exhibit R3, Tab 2) and submitted that the case was on all fours with the Respondent's case

and should be followed. The medical practitioner in that case was convicted for two charges of professional misconduct: firstly, for failing to keep proper medical records of the consultation with the patient, and secondly, for failing to adequately assess the medical condition of the patient and to refer him to a hospital for further management of appendicitis. The doctor was fined $10,000 for both charges, censured, ordered to pay costs of the proceedings and to provide an undertaking to refrain from the conduct complained of.

44 With due respect to the learned Counsel, the Tribunal was not persuaded that the precedent Case 5 was on all fours with the Respondent's case for the reasons that the types of misconduct were exactly the same: (a) inadequate medical records; (b) inadequate assessment of the patient; and (c) failure to refer. In that case, the patient's appendicitis condition had not improved despite earlier treatment by another general practitioner and so the doctor should have been alerted that there could be a serious underlying condition that merited a referral to the hospital.

45 However, a very significant difference in the Respondent's case was that the Patient consulted him on no less than three occasions over a span of five days without improvement in her illness and this should have alerted the Respondent to refer her timely to a specialist for management. Furthermore, the Tribunal noted that the precedent Case 5 cited by the Respondent was an old case decided in 2005. Given the vintage of this case and having regard to the other sentencing precedents that were closer to the present case, the Tribunal questioned the persuasiveness of this sentencing precedent.

46 Counsel for the Respondent further sought to distinguish the case of ***Dr Teh Tze Chen Kevin (2015)*** [exhibit R3, Tab 7], a medical practitioner who was suspended for four months for: (a) failing to refer the patient to a specialist in a timely manner; and (b) failing to ensure that sedation was safely and appropriately administered when he performed Vaser liposuction on the patient. The patient suffered burns following the liposuction. In this regard, Counsel submitted that the patient's burns were a complication resulting from Dr Teh's own treatment and that Dr Teh attempted to treat the patient himself instead of referring the patient for specialist treatment promptly. Therefore, his conduct was more culpable than the Respondent. Whereas in the Respondent's case, the Patient's condition was not the Respondent's making but resulted from an inadvertent error and a knowledge gap on his part pertaining to an eye condition seldom encountered in general practice.

47 With due respect to the learned Counsel, the Tribunal was not persuaded by the submission. The Respondent was responsible for his Patient's non-referral for specialist treatment because he had continued to treat her for conjunctivitis even though there was no significant improvement and it was not possible to conclude that his non-referral in a timely manner did not have a connection to the Patient's subsequent poor vision. The Tribunal was of the view that the fact that the Respondent had a knowledge gap pertaining to an uncommon eye condition was not an acceptable reason for not recognising that it was beyond his expertise to treat his Patient, especially since the Respondent has had 34 years of general practice. Moreover, Dr PF, another general practitioner, was able to recognise this even though he might not have had diagnosed bilateral AACG in the Patient.

48 In the final analysis, upon a careful perusal of the sentencing precedents, and having carefully considered all the facts and circumstances of the case, the Tribunal agreed with the submissions of the SMC that a period of suspension would be appropriate in this case. In arriving at this decision, the Tribunal was also mindful of the observations made by the High Court in the landmark of ***Low Cze Hong v Singapore Medical Council*** **[2008] 3 SLR(R) 612 at para. 88**:

> *"The medical profession is a historically venerated institution. Its hallowed status is founded upon a bedrock of unequivocal trust and a presumption of unremitting professional competence. The basic premise underpinning the doctor and patient relationship is that all medical practitioners will infallibly discharge their duties in the time-honoured and immaculate traditions of this singularly noble profession. Unfortunately, this is not always the reality…*
>
> *From time to time, professional lapses and incompetence surface. Needless to say, such errant conduct must be painstakingly policed and effectively deterred if the medical profession is to continue to rightfully occupy its unique position in society. All it needs is a few recalcitrant practitioners to diminish the stature and standing of a revered and respected institution."*

49 The Tribunal agreed with the above observations and was of the view that it would be in the public interest to uphold and maintain the trust and confidence in the medical profession; and to preserve the reputation of this revered and respected profession.

50 The Tribunal next deliberated on the period of suspension and decided that a period of suspension of three months would be a sufficient sanction to send an appropriate signal to maintain the highest professional standards expected of medical professionals.

Orders by this Disciplinary Tribunal

51 Having fully considered all the facts and circumstances, the respective submissions of the parties, and the sentencing precedents cited, the Tribunal ordered that the Respondent:

(a) be suspended for a period of **three (3) months**;
(b) be censured;
(c) give a written undertaking to the SMC that he will not engage in the conduct complained of or any similar conduct; and
(d) pay the costs and expenses of and incidental to these proceedings, including the costs of the solicitors to the SMC.

Publication of Grounds of Decision

52 We also order that the Grounds of Decision be published.

53 The hearing is hereby concluded.

Dated this 11th day of August 2016.