

**SINGAPORE MEDICAL COUNCIL DISCIPLINARY TRIBUNAL INQUIRY FOR
DR TAY TZE-HSIN MARC HELD ON 3 FEBRUARY 2016**

Disciplinary Tribunal:

Dr Tham Tat Yean (Chairman)
Dr Joseph Sheares
Mr Siva Shanmugam (Legal Service Officer)

Counsel for SMC:

Mr Philip Fong
Ms Shazana Anuar
(M/s Harry Elias Partnership LLP)

Counsel for the Respondent:

Mr Lee Teck Leng
(M/s Lee Chambers LLC)

GROUND OFS OF 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 Tay Tze-Hsin Marc on 26 February 2014 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 18 August 2015 was duly served on him to attend a Pre-Inquiry Conference (“PIC”) on 22 October 2015. The Respondent informed the DT through his Counsel at the outset that he was not contesting the charges in the NOI and a date was duly fixed for the hearing. The Respondent pleaded guilty to three charges and admitted and consented to have the fourth charge taken into consideration for the purposes of sentencing:

“CHARGES

1. *That you, DR TAY TZE-HSIN MARC (NRIC No. SXXXXXXXXX), were on 26 February 2014 convicted in the Subordinate Courts of Singapore (as it was then known) vide DAC-45482-2011 of an offence under Section 403 of the Penal Code (Cap. 224) for dishonestly misappropriating the sum of S\$66,775.00 on or about 6 September 2006 at 290 Orchard Road, Paragon Medical Centre, Singapore, whilst practising as a registered medical practitioner at Tay Eye Surgery (formerly known as Pacific Healthcare Specialist Services Pte Ltd), which is an offence involving fraud or dishonesty;*
2. *That you, DR TAY TZE-HSIN MARC (NRIC No. SXXXXXXXXX), were on 26 February 2014 convicted in the Subordinate Courts of Singapore (as it*

was then known), vide DAC-45483-2011, of an offence under Section 403 of the Penal Code (Cap. 224) for dishonestly misappropriating the sum of S\$82,800.00 on or about 10 November 2006 at 290 Orchard Road, Paragon Medical Centre, Singapore, whilst practising as a registered medical practitioner at Tay Eye Surgery (formerly known as Pacific Healthcare Specialist Services Pte Ltd), which is an offence involving fraud or dishonesty;

3. That you, DR TAY TZE-HSIN MARC (NRIC No. SXXXXXXXXX), were on 26 February 2014 convicted in the Subordinate Courts of Singapore (as it was then known), vide DAC-45484-2011, of an offence under Section 403 of the Penal Code (Cap. 224) for dishonestly misappropriating the sum of S\$54,750.00 on or about 8 December 2006 at 290 Orchard Road, Paragon Medical Centre, Singapore, whilst practising as a registered medical practitioner at Tay Eye Surgery (formerly known as Pacific Healthcare Specialist Services Pte Ltd), which is an offence involving fraud or dishonesty;
4. That you, DR TAY TZE-HSIN MARC (NRIC No. SXXXXXXXXX), were on 26 February 2014 convicted in the Subordinate Courts of Singapore (as it was then known), vide CPI-000008-MS-2011, of an offence under Section 156(10) read with Section 156(1) of the Companies Act (Cap. 50), which is an offence involving fraud or dishonesty ...

... and that in relation to the above-mentioned Charges 1 to 4, you are thereby liable to be punished under Section 53(2) read with Section 53(1)(a) of the Medical Registration Act (Cap. 174).”

Agreed Statement of Facts

2. At the hearing on 3 February 2016, the Respondent admitted to the charges without qualification. Counsel for SMC and the Respondent agreed to the statement of facts. The Agreed Statement of Facts read as follows:

“AGREED STATEMENT OF FACTS

1. The Respondent Dr Tay Tze-Hsin Marc is a registered medical practitioner who was at the material time practising as an Ophthalmologist and eye surgeon at Pacific Healthcare Specialist Services Pte Ltd (formerly known as ‘Tay Eye Surgery’) situated at 290 Orchard Road, Paragon Medical Centre, Singapore.

The Criminal Convictions in the District Courts

2. On 26 February 2014, the Respondent was convicted in the Subordinate Courts (as it was then known) for 3 offences under Section 403 of the Penal Code for acts involving fraud or dishonesty and 1 offence of acting in contravention of Section 156(1) of the Companies Act (“the Act”), read with Section 156(10) of the Act.

Reference to the Disciplinary Tribunal

3. *In view of the criminal convictions and by virtue of Section 39(4) of the Medical Registration Act (“MRA”), the Singapore Medical Council (“SMC”) referred the Respondent directly to the Disciplinary Tribunal (“DT”) for a formal inquiry pursuant to Section 50 of the MRA.*

The Charges

4. *Pursuant to the matters stated above, a Notice of Inquiry was served on the Respondent on 18 August 2015 setting out the charges against the Respondent.*
5. *The substratum of the present charges against the Respondent is that his criminal convictions imply a defect in character which makes him unfit for the medical profession.*
6. *Details of the criminal convictions are set out as follow:*

DAC 45482/2011	The Respondent was charged that he had, on or about 6 September 2006, at 290 Orchard Road, Paragon Medical Centre, Singapore, dishonestly misappropriated certain property, to wit, the sum of \$66,775.00 (Singapore Dollars Sixty-six Thousand Seven Hundred and Seventy-five), and he had thereby committed an offence punishable under Section 403 of the Penal Code, Chapter 224 (1985 Revised Edition).
DAC 45483/2011	The Respondent was charged that he had, on or about 10 November 2006, at 290 Orchard Road, Paragon Medical Centre, Singapore, dishonestly misappropriated certain property, to wit, the sum of \$82,800.00 (Singapore Dollars Eighty-two Thousand Eight Hundred), and he had thereby committed an offence punishable under Section 403 of the Penal Code, Chapter 224 (1985 Revised Edition).
DAC 45484/2011	The Respondent was charged that he had, on or about 8 December 2006, at 290 Orchard Road, Paragon Medical Centre, Singapore, dishonestly misappropriated certain property, to wit, the sum of \$54,750.00 (Singapore Dollars Fifty-four Thousand Seven Hundred and Fifty), and he had thereby committed an offence punishable under Section 403 of the Penal Code, Chapter 224 (1985 Revised Edition).
CPI-000008- MSC-2011	The Respondent was charged that between 19 December 2005 and 18 October 2006, being the director of Pacific Healthcare Specialist Services Pte Ltd (“PHSS”), he was directly interested in the transaction between PHSS and M/s Lasik Surgery Clinic (“LSC”) to wit, an agreement dated 3

	<p>November 2005 (“the 3 November 2005 agreement”) under which LSC agreed to pay a monthly fee to the PHSS for his services as a medical doctor, by reason of the fact that he had, in his personal capacity and without the knowledge of PHSS, entered into an agreement dated 19 December 2005 with LSC where he agreed to accept payment from LSC in his personal capacity of the provision of his services as a medical director to LSC in breach of his terms of employment with PHSS, did fail to declare the nature of his interest at a meeting of the directors of PHSS as soon as practicable after the relevant facts had come to his knowledge, which conduct was in contravention of Section 156(1) of the Companies Act (Chapter 50) (1994 Revised Edition) (“the Act”), and he had thereby committed an offence punishable under Section 156(10) of the Act.</p>
--	---

7. *The Respondent is pleading guilty to the first 3 charges in the Notice of Inquiry dated 18 August 2015 (“NOI”) with the fourth charge to be taken into consideration.*

Facts Relating to the Offences

8. *At the material time, the Respondent operated a clinic known as Tay Eye Surgery which was acquired by Pacific Healthcare Holdings Pte Ltd (“PHH”) in February 2001. The clinic was subsequently renamed as Pacific Healthcare Specialist Services Pte Ltd (i.e., PHSS). The Respondent was appointed as a director of PHSS. The other director of PHSS was one Dr W who had at the material time led PHH to acquire the clinic. Sometime in April 2001, the Respondent was employed by PHSS as a consultant pursuant to a consultancy agreement. When the consultancy agreement expired, the Respondent entered into a new consultancy agreement dated 14 April 2004.*
9. *In brief the terms of the 14 April 2004 consultancy agreement provided that the Respondent shall:*
- (a) render his services as a medical doctor to PHSS on a full time basis and exclusively for and on behalf of PHSS during the term of the agreement;*
 - (b) use his best efforts, judgement and energy to improve and advance the business and interests of PHSS in a manner consistent with his duties; and*
 - (c) pay all income he generated to PHSS.*
10. *The consultancy agreement also specified that the Respondent shall be paid by PHSS an annual gross remuneration of \$396,000 coupled with a*

performance related annual bonus and a further variable payment plan tied to the total income he could generate for PHSS.

11. *In June 2005, with the knowledge of Dr W and PHSS, one F invited the Respondent to be a visiting consultant at his establishment, the Lasik Clinic ("LSC") to carry out Lasik surgery. The Respondent thereafter entered into an agreement with LSC dated 20 June 2005 concerning his provision of medical services to LSC ("the 20 June 2005 agreement"). Although PHSS, through Dr W, was aware that LSC had approached the Respondent, PHSS was not aware of the existence and terms of the 20 June 2005 agreement.*
12. *On 3 November 2005, the Respondent on behalf of PHSS and LSC entered into an agreement in which PHSS would be paid a flat fee of \$2,500 for work done by the Respondent for LSC with the promise of a quarterly review of this fee ("the 3 November 2005 Agreement"). The Respondent informed Dr W and PHSS of the existence of the 3 November 2005 Agreement in early 2006.*
13. *On 15 January 2006, the Respondent on behalf of PHSS and LSC entered into a further agreement whereby LSC agreed to pay to PHSS a revised set of fees for the Respondent to carry out services for LSC in respect of the period of November 2005 to October 2008 ("the 15 January 2006 Agreement") commencing at the rate of \$2,500 per month for the period November 2005 to January 2006 and up to the rate of \$8,000 per month for the period August 2008 to October 2008. Dr W and PHSS were informed of the 15 January 2006 agreement.*
14. *PHSS was paid fees by LSC in respect of services rendered by the Respondent pursuant to the 15 January 2006 agreement. However, between December 2005 to December 2006, unknown to PHSS, the Respondent was also being paid by LSC separate fees pursuant to an agreement dated 19 December 2005 between F and the Respondent in respect of the services rendered by the Respondent to LSC ("the 19 December 2005 agreement").*
15. *The Respondent concealed from PHSS that he was receiving secret payments some of which was in cash from LSC under the 19 December 2005 agreement. Instead of accounting for the payments which he received from LSC to PHSS, the Respondent retained and dishonestly misappropriated the cash which he received from LSC. These transactions form the subject matter of the 11 charges preferred against the Respondent in criminal proceedings in the Subordinate Courts (as it was then known) under section 403 of the Penal Code. 3 of the 11 charges were proceeded on.*
16. *The total payments which LSC paid to the Respondent and which he concealed from PHSS amounted to the aggregate sum of \$445,873.75. The total sum of \$477,000 was seized by the Corrupt Practices Investigation Bureau ("CPIB") from the Respondent who had kept the cash in his clinic.*

17. *The Respondent made full restitution by way of a private settlement to PHSS of the sum of \$376,214.31 in February 2009. The Respondent ceased his employment with PHSS on 18 October 2006.*

Conclusion

18. *In the circumstances, the Respondent is pleading guilty to the first 3 charges in the NOI with the fourth charge to be taken into consideration."*

Mitigation

- 3 In the Respondent's written and oral mitigation, Counsel for the Respondent submitted that notwithstanding the presence of the element of dishonesty, the facts of the case were highly unique and extenuating, and that the Respondent's culpability was on the lower end of the scale in view of the following factors:
- (a) This is primarily because all the monies which formed the subject of the criminal misappropriation charges against the Respondent were actually professional fees for Lasik surgeries that the Respondent had personally performed at LSC and earned from LSC;
 - (b) In a way, the matter was essentially a civil case involving a breach of the Respondent's employment contract with PHSS;
 - (c) Unfortunately for the Respondent, it turned into a criminal case because the monies were deemed to belong to PHSS as a matter of law arising from a legal interpretation of his employment contract with PHSS; and
 - (d) The Respondent had put in all the hard work, only to see the fruits of his labour being taken away by virtue of certain clauses in his employment contract.
- 4 The DT was urged to impose the following sentence:
- (a) Issue a censure and impose a fine;
 - (b) In the event that the DT opines that a suspension is warranted, to issue a censure and impose the minimum suspension of 3 months.

Submissions on Sentencing

- 5 In their oral and written submissions, Counsel for SMC submitted that an appropriate sanction in the Respondent's case having regard to the degree of severity of the offences and the Respondent's dishonesty is a period of suspension of 3 to 5 months, a censure from the DT, a written undertaking from the Respondent that he will not repeat such conduct and the Respondent is to pay the costs and expenses of this DT Inquiry including the legal costs incurred by the SMC.

Sentencing Considerations

- 6 In assessing the appropriate sentence to be imposed, the DT was guided by the observations of the Court of Three Judges in *SMC v Kwan Kah Yee* [2015] SGHC 227. In outlining the role of the DT in disciplinary proceedings the Court of Three Judges in *Singapore Medical Council v Kwan Kah Yee* had observed as follow at [50] to [55]:

“50 In Cheatle v General Medical Council [2009] EWHC 645 (Admin) at [33], which followed Bolton v Law Society [1994] 1 WLR 512, it was held that sanctions in medical disciplinary proceedings serve two functions: first, to ensure that the offender does not repeat the offence; and second, to uphold the standing of the medical profession. With respect to the former, we considered that the ultimate aim is to ensure that the public is protected from the potentially severe outcomes arising from the actions of errant doctors (see Council for the Regulation of Health Care Professionals v General Medical Council and Ruscillo [2005] 1 WLR 717 at [60]). We take this opportunity to lay down some principles as to the basis on which we imposed the sentence on the Respondent, and trust that they will guide future DTs in sentencing.

51 We begin with the observation that the concept of public interest which guides sentencing of medical misconduct extends further than just the danger which the doctor may pose to his patients. In Dr Samuel Nwogbo v General Medical Council [2012] EWHC 2666 (Admin) (“Nwogbo”), Davies J when considering the FPP’s observations said at [76]:

It is clear from the determination of the panel that they had proper regard to the guidance contained in the indicative guidance sanctions promulgated by the GMC in 2009. They recorded, correctly, that the purpose of sanction is protection, not punishment, and that there has to be a proportionate balancing of the interests of the public with those of the doctor. They accepted, correctly, that this was not a case where the appellant posed a risk to patients, but they also observed, rightly, that the public interest is wider than the protection of patients and extends to other matters as well. [emphasis added].

...

55 Second, we also had regard to the considerations of general and specific deterrence. These were elaborated upon by V K Rajah J (as he then was) in Tan Kay Beng v PP [2006] 4 SLR(R) 10 at [31]–[32] and [34]:

... Deterrence, as a concept, has a multi-faceted dimension and it is inappropriate to invoke it without a proper appreciation of how and when it should be applied. It is premised upon the upholding of certain statutory or public policy concerns or alternatively, upon judicial concern or disquiet about the prevalence of particular offences and the attendant need to prevent such offences from becoming contagious. Deterrence, as a general sentencing principle, is also intended to create an awareness in the public and more particularly among potential offenders that punishment will be certain and unrelenting for certain offences and offenders.

32 Deterrence however also has a more specific application. Specific deterrence is directed at persuading a particular offender from contemplating

further mischief. This assumes that a potential offender can balance and weigh consequences before committing an offence. ...

...

34 In sentencing a particular offender, both general and specific deterrence must be scrupulously assessed and measured in the context of that particular factual matrix before deciding exactly how and to what extent each should figure in the equation. ...

[emphasis added]”

- 7 The DT also agreed with the observations of the Tribunal in the Inquiry for Dr Woffles Wu [2014] at [7(d)] where it was held that “*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*”.
- 8 The DT agreed with Counsel for SMC that the offences were serious and could not be characterised as a mere breach of an employment contract. The offences were committed in the course of the Respondent’s practice as a medical practitioner. The Respondent’s concealment of the cash payments of LSC was at the expense of PHSS. The total amount involved was substantial.
- 9 In arriving at the appropriate sentence, the DT also gave full credit to the Respondent’s early plea of guilt both before the Subordinate Courts and the DT, which the DT accepted as an indication of his remorse over this matter. The DT noted that he was a first time offender and accepted that he did not benefit from his conduct in not using the amounts which were the subject matter of the charges. The DT also considered his numerous contributions and testimonials submitted on his behalf in the comprehensive mitigation plea submitted by his Counsel.
- 10 Having regard to the nature of the charges, the mitigating and aggravating circumstances as well as the submissions and precedents cited, the DT was of the view that any sentence short of a suspension would not adequately reflect the gravity of the Respondent’s offending conduct involving dishonesty. In assessing the length of suspension to be imposed, the DT was mindful of the unusual set of circumstances which gave rise to the criminal offences in the first place. All considered the DT was satisfied that the minimum mandated suspension term of 3 months would suffice as an appropriate punishment in this case.

Orders by this DT

- 11 Accordingly, the DT determines that the Respondent:-
 - (a) be suspended for a period of 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 this and incidental to these proceedings, including the legal costs of the solicitors to the SMC.

Publication of Grounds of Decision

12 The DT also ordered that the Grounds of Decision be published.

13 The hearing is hereby concluded.

Dated this 23rd day of March 2016.