SINGAPORE MEDICAL COUNCIL DISCIPLINARY TRIBUNAL INQUIRY FOR DR WONG HIM CHOON ON 15, 22 TO 25 JUNE AND 15 SEPTEMBER 2015

Disciplinary Tribunal:
Prof Ho Lai Yun - Chairman
A/Prof Roy Joseph
Mr Ng Peng Hong - Legal Service Officer

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

Counsel for the Respondent:
Dr Myint Soe
Mr Edward Leong
(M/s MyintSoe & Selvaraj)

DECISION OF THE DISCIPLINARY TRIBUNAL

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

(A) INTRODUCTION

1. The Respondent, Dr Wong Him Choon ("Dr Wong"), was charged before the Disciplinary Tribunal ("DT") appointed by the Singapore Medical Council ("SMC") as follows:

> "*That you….on 4 September 2011, whilst practising as an Orthopaedic Surgeon…failed to exercise due care in the management of your patient, namely one Mr P, a construction worker, in that you had:-*
>
> *PARTICULARS*
>
> *i. inappropriately certified the patient to be unfit for work for 2 days namely from 3 September 2011 to 4 September 2011 (both dates inclusive) after the Patient was admitted to Raffles Hospital for 15 hours from 10 pm on 3 September 2011 to 1 pm on 4 September 2011 and after he underwent surgery on 4 September 2011 at 1 am, a duration of hospitalization leave which was insufficient for a patient who was at the material time recovering from a distal radius fracture for which surgery was necessary and a metacarpal fracture that was being treated conservatively; and*
>
> *ii. inappropriately certified the patient to be fit to perform light duties at work for a period of 1 month from 5 September 2011 to 5 October 2011 (both dates inclusive), which certification is inappropriate for a patient who was at the material time recovering from a distal radius fracture for which surgery*

was necessary and a metacarpal fracture that was being treated conservatively;

iii. That the patient had thereafter, in relation to the same complaint, received hospitalization leave from one Dr PW2 of the Accident & Emergency Department of Changi General Hospital on 11 September 2011 for a period of 14 days from 11 September 2011 to 24 September 2011 (both dates inclusive) and further hospitalization leave from one Dr PW3 of the Accident & Emergency Department of Changi General Hospital on 23 September 2011 for a period of 8 days from 23 September 2011 to 30 September 2011 (both dates inclusive).

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)."

2. The Respondent pleaded not guilty to the said charge.

3. Counsel for the Respondent questioned the need to state the portion relating to Dr PW2 and Dr PW3 in the charge. Counsel for SMC responded that these were particulars for the SMC to prove. The DT agreed with Counsel for SMC and therefore proceeded to hear the case against the Respondent as framed by the SMC.

(B) Agreed Statement of Facts

4. The following facts were agreed by both parties.

"AGREED STATEMENT OF FACTS

1. The Respondent, Dr Wong Him Choon, is a registered medical practitioner who was practising at Raffles Hospital ("RH"), 585 North Bridge Road, Singapore 188770, at the material time.

The Complaint

2. The complainant is one Mr PW1 (the "Complainant"). The Complainant is the [designation redacted] of the Humanitarian Organisation for Migration Economics ("HOME"). A copy of his complaint dated 3 October 2011 can be found at Tab 2 of 1 PIB. The Complaint relates to the Respondent's management of a patient, one Mr P ("the Patient").

3. Upon further investigation by a Complaints Committee (the "CC") and upon receipt of the Respondent's exculpatory statements dated 13 February 2012 and 25 February 2013, the CC referred the matter to a Disciplinary Tribunal for formal inquiry. The Respondent was notified of the CC's decision on 7 August 2013 and a copy of this letter is found at Tab 15A of 1 PIB.

Facts Not In Dispute

4. The Patient consulted the Respondent at RH at or around 10.35 pm on 3 September 2011. The Respondent performed surgery involving immediate closed

reduction and percutaneous "K-wire" fixation of the right distal radius on the Patient's right hand at around 1 am on 4 September 2011. Subsequently, the Patient was discharged from RH at around 1 pm on the same day i.e. 4 September 2011. The Respondent gave him a medical certificate to cover the period of hospitalization from 3 to 4 September 2011 (2 days). The Respondent also certified that the Patient was fit for light duties for one month from 5 September 2011.

5. *The Patient was given an appointment on 7 September 2011 for a post-operation review. On 7 September 2011, the Patient consulted the Respondent for a second time. The Respondent then scheduled another follow-up on 5 October 2011. The Patient returned earlier to RH on 21 September 2011, where he was seen by Dr FW1 because the Respondent was away. According to Dr FW1's report dated 25 February 2013 to the SMC (Tab 14 of 1 PIB), the Patient "presented stating discomfort over the K-wire sites".*

6. *Subsequently, during the 5 October 2011 appointment, the Respondent issued to the Patient a medical certificate that backdated the coverage of medical leave given to the Patient, covering his absence from work for the period from 6 September 2011 to 20 November 2011."*

(C) The Issue before the Tribunal

5. In the Opening Statement, Counsel for SMC has narrowed the issue of professional misconduct to the first limb laid down in the case of *Low Cze Hong v Singapore Medical Council [2008] 3 SLR(R) 612* at [37], namely, "*where there is an intentional, deliberate departure from standards observed or approved by members of the profession of good repute and competency.*"

6. The issue for the determination by this Tribunal is whether Dr Wong had failed to exercise due care in the management of the Patient by giving two days' medical leave to cover only the period when the Patient was in the hospital and underwent treatment for his comminuted fracture of the right distal radius and a metacarpal fracture and by certifying that the Patient was fit for light duties for a period of one month from the first post-operative day, 5 September 2011, to 5 October 2011 and that these actions amounted to an intentional and deliberate departure from standards observed or approved by members of the profession of good repute and competency. The propriety of the treatment is not in issue at this inquiry.

(D) Evidence for SMC

7. Counsel for SMC called 5 witnesses to give evidence on behalf of the SMC. The SMC tendered an Opening Statement and 4 bundles of documents marked as PIB1, PIB2, PIB3 and PIB4 respectively. The SMC's evidence is summarised as follows.

<u>Evidence of Mr PW1</u>

8. The first witness to give evidence for SMC was Mr PW1. He confirmed that the complaint dated 3 October 2011 (see tab 2 of PIB1) to the SMC was made by him on the authorisation of the Patient. He wondered why Changi General Hospital ("CGH") gave so many days of medical leave while the Respondent gave only 2 days. He concluded that there was collusion between the Respondent and the employer of the Patient based on the fact that only 2 days of medical leave was given by the Respondent when he first saw the Patient.

Evidence of Dr PW2

9. Dr PW2 was a locum medical officer attached to the Accident & Emergency Department of CGH when he attended to the Patient on 11 September 2011 for about 30 minutes. He confirmed that the documents exhibited at tab 58-65 of PIB3 were from CGH. These were the records of the Patient. At page 336 of PIB3 – the box under Triage – the main complaints were recorded by the nurse. The complaints were right hand swollen and pain. The nurse also recorded at the top of the form "Industrial Accident."

10. The Patient informed Dr PW2 that he was a construction worker and was experiencing pain. Dr PW2 noted that the Patient's hand was indeed swollen but the wound had healed. He arranged for an X-ray to be done. The X-ray report was shown at tab 60 at page 344 of PIB3. According to the radiology report, there was a "*k-wire fixation of an intra-articular, comminuted fracture of the distal radius*". There was also the "*disruption of the articular surface of the distal radius*".

11. Dr PW2 testified that the main reason why the Patient came to see him at CGH was that he was not given adequate medical leave. Dr PW2 was aware that the Patient was given two days' medical leave and a medical certificate (MC) for one month of light duty issued by the Patient's employer's hospital.

12. Dr PW2 referred the Patient to a specialist at CGH. As his appointment with the specialist was some time away (usually about two weeks' time) Dr PW2 issued him with a MC till he can see the specialist. It was also to allow him more rest for his recovery. Dr PW2, in response to a question from the Tribunal, clarified that the Patient wanted more MC as he still experienced pain and had problem with his work. Dr PW2 also added that as a construction worker, it was not easy for the Patient to work with an injured hand.

Evidence of Dr PW3

13. Dr PW3 also gave evidence for the SMC. He was a principal resident physician attached to the Accident & Emergency Department of CGH when the Patient came for consultation. He saw the Patient on 23 September 2011 for about eight minutes. His consultation notes were exhibited at pages 350-352 of PIB3. While the triage column was filled by the triage nurse, those at page 351 of PIB3 were written by Dr PW3 during the physical examination of the Patient. He confirmed that the Patient complained of pain. Dr PW3 issued the Patient with a MC for eight days from 23

September to 30 September 2011. Dr PW3 confirmed that the MC was to cover the Patient for a period till he saw the specialist.

Expert Evidence of A/Prof PE

14. A/Prof PE is an expert in Hand and Reconstructive Microsurgery. He was asked by the SMC to give his opinion on Dr Wong's medical management of the Patient (see letter dated 21 March 2013 at tab 14A, PIB1 at page 51A).

15. A/Prof PE is the [designation and department redacted], Hospital A. He is also actively involved in the teaching of medical students, both at the undergraduate and postgraduate level in respect of injuries of the hand and was updated on the latest developments in the treatment of distal radius fractures and metacarpal fractures. His full curriculum vitae are stated at tab 17, PIB1.

16. It was the view of A/Prof PE that the two days of hospitalisation leave was insufficient for a patient with a distal radius fracture that had been fixed and a metacarpal fracture that had been treated conservatively. In fact no resting day was given after the surgery. A/Prof PE was also of the opinion that the Patient should not go back to work on the second post operation day, even if light duties were available. He, however, did not submit any peer-reviewed medical evidence to justify this opinion. In coming to this view, he noted that there was no record of leave issues being discussed with the Patient upon discharge (see report dated 8 April 2013 Tab 15, PIB1). He also felt that there would be swelling and pain after the surgery. He concluded that a patient should not be expected to return to work until swelling and post-operative trauma had gone down. There must be reasonable time given for recovery.

17. A/Prof PE also opined that it was necessary for Dr Wong to establish that there were adequate conditions for rest and rehabilitation before granting medical leave for two days after surgery followed by light duty. But there was no such evidence in the case sheets. For a long bone fracture, it was questionable to provide for light duty instead of the standard two weeks of medical leave "*as during the immediate postoperative period the patient would have required immobilization of his affected limb.*" (see report dated 5 March 2015 at Tab 16 of PIB1). A/Prof PE elaborated that as the Patient had a long bone fracture (in this case, a distal radius fracture), undergone surgery, hospitalisation and was a manual worker, medical leave would be issued for the Patient to rest at home. He also stated that to certify a patient for light duties, the doctor needed to consider, among other factors, the transportation to and from work, what work he had to do and the condition of the work place. In preparing his reports, A/Prof PE took into account the explanations given by Dr Wong at tabs 4 and 5 of PIB1.

18. It was the evidence of A/Prof PE that at Hospital A, the protocol for such cases after surgery would be to certify four to eight weeks of medical leave. It was also not the practice in Hospital A to certify patient fit for light duties immediately after surgery. He also commented that in 2011 at RH, the practice was otherwise and he disagreed with this practice. For a construction worker who had his distal radius fracture fixed

and metacarpal fracture managed conservatively, A/Prof PE would give medical leave for 2 weeks initially.

19. A/Prof PE confirmed that his report dated 5 March 2015 was in response to the expert report dated 12 January 2015 submitted on behalf of Dr Wong. A/Prof PE reiterated that it was not the practice in Hospital A to certify worker fit for light duties immediately after surgery for a distal radius fracture. A/Prof PE opined that in the circumstances of this case including the potential complications after surgery and rehabilitation and return to activity, did not entitle Dr Wong to prescribe light duties for the Patient immediately after surgery.

20. A/Prof PE was referred to the report of Dr DE dated 12 January 2015 and exhibited at tab 18 of PIB1. In particular, A/Prof PE was specifically referred to pages 212, 213 and 214 of PIB1. A/Prof PE disagreed with Dr DE that the medical leave and light duty given by Dr Wong were acceptable.

21. When asked to comment on the second report of Dr DE dated 24 April 2015 at tab 18A of PIB1, A/Prof PE commented that both the hospital and the doctor must ensure that there were adequate conditions for the Patient's rest and rehabilitation when considering light duties.

Evidence of Mr PW4

22. Mr PW4 is an investigator appointed by the SMC to carry out investigation under Part VII of the Medical Registration Act (MRA) in relation to this case. Part VII of the MRA included the disciplinary proceedings held under the said Act. In the course of his investigation into this case, Mr PW4 had prepared some statements (see tabs 7, 8 and 10 of PIB1). Tab 10 was an edited version of the conference call on 6th September 2012 between Mr PW4 and the Patient. This has been recorded in a CD-ROM and exhibited at tab 9 of PIB1. The full transcription of the audio recording can be found at tab 67 of PIB4.

23. Counsel for the Respondent objected to the contents of telephone conversation between Mr PW4 and the Patient to be used before the DT. The conversation was summarised by Mr PW4 and was exhibited at tab 10 of PIB1. Counsel for the Respondent had no objection to the written questionnaires prepared by Mr PW4 for the Patient to answer but Counsel strenuously objected to the conference call which sought to clarify the written answers given by the Patient. The objections raised were essentially that the transcripts of the conference call were an edited version and contained leading questions. Moreover, the Patient was not called to give evidence and the statements prepared by Mr PW4 should not be used to substitute the oral evidence of the Patient.

24. In response, Counsel for SMC referred to Section 51(4) of the MRA which provides that the DT is not bound by the Evidence Act or any law relating to evidence. Section 60A MRA was also referred.

25. Having considered the submissions of the parties, we respectfully overruled the objections raised by Counsel for the Respondent and held that this Tribunal was not precluded by Section 48(3) of the MRA from receiving the statements obtained during the course of investigation by Mr PW4. In our view, the investigation report or statements can be disclosed to the Tribunal by virtue of Section 48(3)(b) of the MRA. We highlight that in evaluating the evidential weight to be placed on the statements we are mindful that the Patient was not before the Tribunal to be questioned by counsel.

26. Mr PW4 testified that he had to send the questionnaires (tab7 of PIB1) to the Patient as the latter had left Singapore and returned to China. It was not disputed that the Patient came to Singapore on 17 October 2010 and returned to China on 17 November 2011. The questionnaires were sent to the Patient on 6 August 2012 with a covering letter exhibited at tab 6 of PIB1. The covering letter stated that the questionnaires were done pursuant to Section 60A(2) of the MRA. The answers were received by the SMC on 4 September 2012. Tab 8 of PIB1 was the translations of the questions and answers contained in tab 7 of PIB1.

27. As the questionnaires were not all answered or were not answered fully, Mr PW4 then arranged for the conference call that took place on 6 September 2012 and recorded the interview in the CD-ROM at tab 9 of PIB1. On Q12 of tab 8 of PIB1, the Patient clarified that on 3 September 2011, at RH, Dr Wong did not speak to him but only to the nurse and in English which he did not understand.

28. As to Q17 of PIB1, the Patient clarified that Dr Wong informed him that there was an agreement between Dr Wong and his employer that there was to be no MC for more than two days. This was told to him by Dr Wong on 5 October 2011.

29. On Q21, the Patient said that he went to work on 6 September 2011 for two hours and noticed his hand became swollen. Hence, he stopped working. We also noted that at page 336, tab 58 of PIB3, the medical note of CGH shows that on 11 September 2011, Dr PW2 noted there was indeed swelling.

30. Mr PW4 testified that the notes at tab 10 of PIB1 were the interview notes of the conference call of 6 September 2012 prepared by him. He also recorded statements from Mr FW2 (a safety co-ordinator), Mr FW3 (a safety supervisor with Company X and Mr FW4 (a safety officer). These statements were recorded pursuant to Section 60A of the MRA. These were exhibited at tabs 11, 12 and 13 of PIB1. These statements disclosed that RH was the appointed hospital of Company Y. Workers injured at the worksite of Y would be sent to RH for treatment and they would not have to make payments personally. These 3 safety personnel stated that they (individually or collectively) accompanied the Patient to RH at the material times.

31. Mr FW2 recalled that on 3 September 2011, the Patient was brought to RH by a site supervisor from X. Mr FW2 also revealed that the Patient had his right wrist dislocated while doing the re-bar work on 3 September 2011. We noted that during the conference call the Patient mentioned that his duties included the checking of safety equipment and constructing structures. The Patient also described his scope of

job to include steel bending (see page 358 at tab 67 of PIB4. See also [3] at page 38 PIB1).

32. Mr FW2 was also with the Patient on his subsequent medical reviews at RH on 21 September 2011 and 5 October 2011. Mr FW2 remembered distinctly the review on 5 October 2011 when the Patient knelt before Dr Wong and pleaded with him (presumably for his intervention) as he was not paid his salary during the period he was certified fit for light duties. Dr Wong then spoke to the Patient's boss and backdated the medical leave of the Patient. This kneeling incident was also witnessed by Mr FW4.

33. At tab 10A of PIB1, an email dated 21 June 2012 from MOM to Mr PW4 disclosed that there was a report made on 10 October 2011 regarding the work accident that took place on 3 September 2011 involving the Patient by his employer. This was well after the complaint made by Mr PW1 on 3 October 2011. During the conference call it was also transpired that the Patient, after obtaining the 14 days of medical leave issued by CGH on 11 September 2011, had gone to MOM to lodge a report (see page 380, tab 67 of PIB4 and tab 58 at page 335 of PIB3).

34. Based on the Q and A, it was clear that on 3 September 2011 there was no communication between the Patient and Dr Wong. He confirmed during the conference call on 6 August 2012 that Dr Wong did not speak to him on 3 September 2011 (see page 362-363, tab 67 of PIB4).

(E) Evidence of the Respondent

35. Dr Wong was, on 3 September 2011, a Consultant Orthopaedic Surgeon and continues to be practising as one in RH. He has been an Orthopaedic specialist since 1998. His CV could be found at tab1 of R4. His evidence was summarised below.

36. Dr Wong had written 2 statements dated 13 February 2012 (tab 4 of PIB1) and 25 February 2013 (tab 5 of PIB1) to the SMC in response to the SMC's letters dated 27 January 2012 (tab 3 of PIB1) and 28 January 2013 (tab 4A of PIB1) respectively.

37. On 3 September 2011, Dr Wong treated the Patient at RH. The Patient was a citizen of People's Republic of China. Dr Wong conceded that the Patient knew only Mandarin.

38. The X-ray of the Patient indicated that he had sustained a closed un-displaced fracture of the 4th metacarpal and a closed displaced fracture of the right distal radius. He advised those who accompanied the Patient about the treatment options to fix the fractures. He also claimed that he had spoken to the Patient on the 3 September 2011 as well as his supervisor. He assessed that no surgical treatment was required for the 4th metacarpal. As for the fracture of the right distal radius, a closed reduction and percutaneous "K-wire" fixation were done. He described the surgical operation as a minimally invasion surgery that enabled the Patient to return to work as soon as possible. The pain score taken soon after the operation showed 0 on 4 different

readings taken from 0155 hours to 0210 hours – a period of less than 20 minutes. He claimed that there were no contraindications for light duty. With all these in mind, Dr Wong assessed that the Patient could return to work but on light duties.

39. Dr Wong claimed that the word "ORIF" (Open Reduction Internal Fixation) appearing on the case sheets was not written by him.

40. Tab 39 of PIB1 shows the MC issued by Dr Wong. He was of the view that medical leave should be dependent on the nature of treatment. He also gave instruction for the Patient to see him again on 7 September 2011. He only gave a 2-day MC as he did not see any contraindications for the Patient not to go back to do light duties.

41. Dr Wong denied there was any collusion with the Patient's employer regarding MC. He was not aware that there was a legal requirement that the case has to be reported if the MC was for more than 3 days.

42. Dr Wong testified that the 1-month light duty was to alert the employer that the employee was not fit for normal duties and to assign only light duties. If no light duties, he expected the Patient to come back to him to inform him otherwise he would not know that there were no light duties. He alleged that he was given the understanding that there would be light duties. This was a bare assertion. He claimed that Company Y had in the past provided light duties. However, Company Y was not asked to testify on his behalf. The employer of the Patient, Company X was also not called by the defence.

43. Dr Wong acknowledged that if he knew that the Patient would not be given light duties, he would have given him a full MC. He asserted that if there were no light duties, the Patient could come back or inform him so during the 7 September 2011 review. And as his treating doctor, he would be able to issue a backdated MC to cover the Patient which he did on 5 October 2011 post operation review.

44. On 7 September 2011, the Patient only complained about the itchiness. He did not tell Dr Wong that there were no light duties. The back slab was changed to a wrist brace which was more stable than the back slab. He assessed that after 7 September 2011, the Patient should not have any problem with lifting a bottle as there were two fixations - external wrist brace and internal pins.

45. Dr Wong claimed that the Patient's job involved rebar work which he alleged was the kind of work shown at tab 10 of R4 – putting of safety caps on top of the rebar. This was disputed by Counsel for SMC. We do not find any evidence that at the time when he treated the Patient Dr Wong knew that the Patient's work entailed the fixing of safety caps.

46. It was not disputed that on 7 September 2011 the Patient was not doing light duties. But it was alleged that the Patient also did not tell Dr Wong that he did not go to work.

47. Dr Wong was of the view that the Patient could go back to work after eight weeks as the injury took about six weeks to heal and two weeks for pins to be taken out. But the

Patient could insist that he was still unable to work. Dr Wong also stated that the Patient's Work Permit expired on 14 November 2011 and he went back to China on 17 November 2011.

48. On 5 October 2011, the Patient was again and on schedule seen by Dr Wong. Dr Wong was shocked when the Patient told him that he had not been paid because an MC had not been given and was now begging for the MC. After speaking to the Patient's boss (who told him that the Patient did not report for work), Dr Wong then issued a backdated MC to cover the period when the Patient did not report to work from 6 September to 20 November 2011. The case note of 5 October 2011 was at page 235, tab 19 of PIB2.

49. The Patient returned to see Dr Wong on 11 October 2011 for the removal of the pins. The case note for this day was at tab 49 of PIB2. The pins were removed and he was told to come back again on 25 October 2011 for the removal of sutures. This took place and was the last time the Patient was seen by Dr Wong. The Patient left Singapore on 17 November 2011.

50. During cross-examination, Dr Wong explained why "ORIF" was written on the case notes when no open reduction was in fact done. He said it was written by the nurses and the anaesthetist and admitted that he should have corrected it. It was noted that Dr Wong had also written "ORIF" at tab 27 of PIB2 on a letter of certification written by him. This shows that, once again, the document had been incorrectly certified. The inaccuracy was also reflected at tab 23 of PIB2, an estimated bill dated 4 September 2011. When questioned that because of the false representation by Dr Wong an inflated bill was rendered to the Patient, the reply, after a long pause, was that it might be on a high side.

51. On being shown the entry dated 1 February 2012 in the case note at page 236 of tab 19 of PIB2, Dr Wong explained that this was written after he had received the letter from SMC. The entry was written after he had refreshed his memory with his clinical notes but yet he did not amend ORIF to CRIF (Closed Reduction Internal Fixation).

52. It was not disputed that the Patient had spent about fifteen hours in the hospital. And when questioned as to why no rest was given after the first operative day, Dr Wong was evasive and answered that rest can include resting in bed or talking in the office. He claimed that there was no necessity to keep him in hospital as the Patient did not experience any swelling or was in pain or had an open wound. Dr Wong also expressed the view that by going back to work the Patient could have supervised rest and light duties would include supervised rest. Dr Wong commented that to rest at home, the patient might, instead of resting, go to Geylang. He was also evasive when asked why the concept of supervised rest was not raised in his letters to SMC. He insisted that light duty included supervised rest. He agreed that if there were no light duties available then he could not issue a certificate for light duties.

53. It was not disputed that Dr Wong knew that the Patient was a construction worker. This was reflected on the work permit which also stated that it would expire on 14

November 2011. According to Dr Wong, the expiry of the work permit was one of the considerations in choosing the appropriate form of surgery.

54. Dr Wong disagreed with Counsel for SMC that his practice of issuing MC to the Patient was not based on medical grounds.

55. It was conceded by Dr Wong that in his letter to the SMC dated 13 February 2012, at tab 4, page 18-19 of PIB1, he did not say that he had checked with the Patient's supervisor that light duties were available. Similarly, in his second letter dated 25 February 2013 to the SMC, he also did not state that he had established that light duties were available. He explained that he would have put in these details if he had the benefit of a legal counsel. But during cross-examination, he asserted that he was told by the Patient's employer that light duties were available. In fact, he said that Mr FW2 had told him that light duties were available. But this was not stated in his statements to the SMC. Neither did he call Mr FW2 to corroborate him. This was also not supported by Mr FW2 in his statement at tab 11 of PIB1. In his clinical notes, there was no note to state that he asked the Patient regarding the availability of light duties. Having reviewed the evidence, we found that Dr Wong had not established the availability of light duties. It was subsequently after much questioning on this issue that Dr Wong admitted that he assumed that there were light duties and maintained that it was the Patient's responsibility to tell him if no light duties are available. But he agreed that by virtue of the SMC Ethical Code and Ethical Guidelines clause 4.1.1.1, it was his responsibility to check whether light duties are available. He conceded that if no light duties were available he would have issued a full MC. In fact, on 5 October 2011, this was what he did by issuing a full MC and backdated it for the Patient to be paid as he was informed by the Patient that there were no light duties. We are of the view that the backdating was an attempt to cover the mistake made initially for not issuing a full MC.

56. The SMC Ethical Code and Ethical Guidelines clause 4.1.8 requires a doctor to ensure that the patient deserves a MC based on proper medical grounds. It also prescribes the conditions for backdating a MC. However, contrary to the said Ethical Code, Dr Wong gave a backdated MC because the Patient did not report for work and was not paid. He denied that by backdating the MC he acknowledged that the initial 2-day MC was inadequate.

57. During his re-examination, Dr Wong alleged that he did ask the Patient on 7 September 2011 whether he had any problem. By this, Dr Wong claimed it would cover everything including light duty. But the Patient did not tell him that there was no light duty.

58. When questioned by the Tribunal, Dr Wong admitted that the Patient's work entailed climbing up and down monkey stairs. But he insisted that by certifying fit for light duty it was not meant for the Patient to return to worksite but to the office. We think this was an afterthought as Dr Wong had admitted that he did not know where the Patient worked. He was evasive in answering the question as to whether the Patient can climb up and down. He did not even establish how the Patient was going to work or

where his dormitory was. It did not even cross his mind that the Patient might have to take a lorry to work.

Evidence of Dr DW1

59. Dr DW1 was the [designation redacted] of RH Group at the material time (in 2011). He confirmed that RH had no policy on the issuance of medical leave or dictated how medical certificates were to be issued. It was left to the discretion of the doctor. In RH, most of the doctors review the patient more quickly. Their system was for a short stay in the hospital followed by a faster outpatient review. He also said that Dr Wong was not involved in the management of the hospital and that most of the doctors at RH would not know whether a patient is from a corporate client or that the payment would be made by the insurer. He testified that Company Y was RH's corporate client. When shown tab 25 of PIB2, he admitted that doctors who accessed this information would know that the case was from Company Y.

60. Dr DW1 confirmed that tab 23 of PIB2 was a financial counselling form which would be completed before any procedure was done. However, he agreed that in this case, the said financial counselling form was prepared on 4 September 2011 i.e. the day when the procedure was being carried out. He also agreed that the fees for CRIF would be lower than that for ORIF.

Expert Evidence of Dr DE

61. Dr DE was called to give expert evidence on behalf of Dr Wong. In this respect, he had prepared two reports (see tabs 18 and 18A of PIB1 dated 12 January 2015 and 24 April 2015 respectively).

62. Dr DE was asked to give his opinion on the management of the case treated by Dr Wong, in particular, with respect to the appropriate duration of medical leave and the type of medical leave to be given. His curriculum vitae were enclosed to his report at tab 18 of PIB1.

63. Dr DE treats injuries to all bone and joints. But he is not exactly a hand specialist. He did not have any publication on hand surgery. But he had treated distal radius fractures in the past.

64. In his report, Dr DE concluded that the medical leave and light duty which was then changed to medical leave by Dr Wong was logical and acceptable.

65. Dr DE testified that medical leave is given when a patient is totally disabled or cannot go back to work. He did not entirely agree that medical leave was for the recovery from the injury. The type of treatment, type of fracture, nature of work and how helpful the employer is will have to be taken into account in considering medical leave. How the patient goes to work is also relevant. The treating doctor should also be aware of the patient's company policy. He opined that the issuance of medical leave is, to a large extent, subjective.

66. Dr DE disagreed that it was not normal practice to send manual worker to work immediately without sufficient time given for recovery from an operation for distal radius fracture or to give only light duty. He also said it was not the practice to give medical leave to patient who had gone for a surgery for a distal radius fracture.

67. During cross-examination, Dr DE said that medical grounds were not confined to fracture only when asked about the issuance of MC and light duty**.**

68. Dr DE partly agreed that by backdating to 6 September 2011 would mean that Dr Wong would have thought that the Patient was not fit to work from 6 September to 5 October 2011. He agreed that before the issuance of medical leave, there must be proper history taking and clinical examination. He also agreed that there must be medical justification for the issuance of medical leave from 5 October to 20 November 2011.

69. Having referred to [5.8] and [5.9] of tab 18 of PIB1, Dr DE agreed that Dr Wong gave medical leave because there was no light duty and not because the Patient's conditions had worsen. Dr DE also agreed that the onus was on the doctor to discuss with the patient whether light duty or medical leave is suitable.

(F) Our Decision

70. In the recent case of *Ang Pek San Lawrence v SMC [2015] 1 SLR 436* at [39], the 3 Judge High Court held that:

> *"(a) If the DC was proceeding under the first limb of Low Cze Hong, it had to determine:*
>
> *(i) what the applicable standard of conduct was among members of the medical profession of good standing and repute in relation to the question of whether arrangements should have been made for a neonatologist to be present or standing by at the time of the delivery of the complainant's baby;*
> *(ii) If the applicable standard of conduct did indeed require the appellant to make the aforesaid arrangements, at what point in time such duty crystallised; and*
> *(iii) that the appellant's conduct constituted an intentional and deliberate departure from the applicable standard of conduct."*

71. Accordingly, we first proceeded to determine the applicable standard of conduct observed or approved by members of the profession when discharging the Patient post-surgery on 4 September 2011.

72. We find that there are no specific guidelines on the giving of medical leave. There is also no dispute that the number of medical leave given is a question of discretion to be exercised by the doctor. Both parties agreed that some of the primary factors that a doctor should take into consideration before deciding on the type or duration of medical leave include:

(a) The nature (i.e. type and degree of severity) of the illness, injury or disability;
(b) The method of treatment (whether surgical or non-surgical) used by the attending doctor;
(c) The amount of recovery time needed post-treatment;
(d) Whether the patient needed hospitalisation and if so, how many days;
(e) The nature of the patient's occupation (i.e. whether sedentary / office based or requiring mobilisation be it outdoors or indoors and involving physical labour);
(f) The patient's medical needs and personal circumstances (i.e. age, health condition, temperament and other personal factors).

73. We are of the view that these would constitute the applicable standards of conduct observed or approved by members of the medical profession. Bearing these in mind, we proceeded to examine whether there was a breach thereof on the part of Dr Wong. We are also mindful that the burden was on Counsel for SMC to satisfy this Tribunal that the charge against the Respondent was proved beyond a reasonable doubt.

74. In addition to the factors stated at [72], we accept the opinion of A/Prof PE that it was necessary for Dr Wong to establish that there were adequate conditions for rest and rehabilitation if medical leave for two days after surgery followed by light duty was to be done. Dr DE also agreed that the onus was on the doctor to discuss with the patient whether light duty or medical leave is suitable. We find that there was no such evidence to show that it was done by Dr Wong (see also our findings at [55]). At the risk of repeating it, we find that he did not follow the very basic principle of obtaining a detailed history from the Patient, especially in relation to the nature of his work, before issuing a medical certificate for light duty. He made the wrong assumption that there would be light duties available to the Patient. He did review the Patient and again made the assumption that things were fine with the Patient when the Patient did not make any complaint at the time of follow-up. Again, he did not go into more details in asking specific questions in relation to the Patient's well-being especially at work. These are the basics of medical care which we found wanting in this case.

75. In these circumstances, we find that Dr Wong, in breach of the applicable standards of conduct, has failed to discharge the onus on him to discuss with the Patient and to establish whether there were adequate conditions for rest and rehabilitation post operation or the availability of light duty before issuing the medical leave or certifying the Patient fit for light duties. Dr Wong acknowledged that if he had known that the Patient would not be given light duties, he would have given him a full medical leave. In our view, this reinforced our finding that there was no prior discussion with the Patient as to the availability of light duty.

76. In light of the fact that the Patient was a construction worker which required him to climb up and down, with respect, we reject Dr Wong's claim that because it was a minimally invasive surgery and that the pain score was 0 entitled him to conclude that the Patient could return to work to do light duty. We also think that the pain score reading could be attributed to the Patient being under the effects of analgesics administered post-operation and thus he could not feel the pain. In any event, the

onus was on him to discuss with the Patient before concluding that light duty was appropriate. This, he had failed to do so.

77. It was contended that if the Patient needed full medical leave as there was no light duty available he should have informed Dr Wong on 7 September 2011. This was against his own expert's evidence that the onus was on the doctor to discuss with the Patient. Admittedly, Dr DE also did say that it was for the patient to tell the doctor and not for the doctor to check if there was light duty. Nevertheless, with due respect, we think a reasonable doctor, knowing that the Patient was a Chinese National working as a construction worker, should take a proactive step to make inquiry from the Patient so as to enable the doctor to assess the suitability of light duties instead of full medical leave.

78. Perhaps we should add that we are of the view that the Patient, when he visited the doctor at CGH on 11 September 2011, had indicated that he was still experiencing pain. Dr PW2 noted that there was swelling too. When Dr FW1 saw the Patient on 21 September 2011 at RH, he confirmed there was tenderness over the K-wires sites and that the Patient was experiencing discomfort. It was therefore, not surprising that Counsel for SMC submitted that "*by subsequently giving the Patient medical leave backdated to 6 September and extended up to 20 November 2011, Dr Wong had in fact belatedly acknowledged that it was wrong to have only given 2 days of administration medical leave initially and that this amount of leave had been plainly inadequate.*" With this backdrop, we also accept the view of A/Prof PE that the 2 days of hospitalisation leave was insufficient for a patient with a distal radius fracture that had been fixed and a metacarpal fracture that had been treated conservatively. A/Prof PE was also of the opinion that the Patient should not go back to work on the second post operation day, even if light duties were available (see report dated 8 April 2013 Tab 15, PIB1). In these circumstances, Dr Wong had departed from what was the standard of care. We do note Dr Wong's testimony that it was not uncommon for him to allow many of his patients to resume light duties even after the spine surgery. But each case must be judged on its own facts and circumstances including the occupation of the patient and the working environment.

79. We accept the evidence of A/Prof PE that for a long bone fracture including fracture near the wrist, it was not appropriate to provide for light duty instead of the standard two weeks of medical leave "*as during the immediate postoperative period the patient would have required immobilization of his affected limb.*" This view was supported by the authors of the article Outcomes of CRPP of Distal Fractures published in JHS Vol 33A, December 2008 (see report dated 5 March 2015 at Tab 16 of PIB1). A/Prof PE went on to state that at Hospital A, after surgery, four to eight weeks of medical leave would be given for resting in cases like the Patient's case. This is the protocol at Hospital A for such cases. A/Prof PE elaborated that it was not the practice in Hospital A to certify worker fit for light duties immediately after surgery for a distal radius fracture. A/Prof PE opined that the circumstances of this case, including the potential complications after surgery and rehabilitation and return to activity, did not entitle Dr Wong to prescribe light duties for the Patient. In our view, A/Prof PE had clearly stated that it was not the practice in Hospital A to certify a worker fit for light duties immediately after the surgery for a distal radius fracture. We have no doubt

that the practice among doctors in Hospital A, including A/Prof PE, is the applicable standard of conduct among members of the medical profession of good standing and repute. In fact there was no dispute by Counsel for Dr Wong that A/Prof PE was qualified to give evidence as a member of the medical profession of good standing and repute.

80. We respectfully reject the opinion of Dr DE that it was appropriate to certify the Patient fit for light duties soon after surgery as his opinion was not backed by appropriate medical literature. "*Unlike Prof PE, he did not publish anything related to hand surgery, nor did his post-graduate students write dissertations on any area of hand surgery. He also no longer performs surgery at his clinic.*" (see paragraph 25 of SMC's closing submissions). We agree that A/Prof PE's evidence was more persuasive in that he has far more current and up-to-date practical and academic experience on the treatment of distal radius fractures.

81. Accordingly, we find that Dr Wong had failed to comply with the applicable standards of conduct in the management of the Patient by giving only two days' medical leave to cover the period when the Patient was in the hospital and certifying that the Patient was fit for light duties from the first post-operation day from 5 September 2011 to 5 October 2011.

82. At this juncture, we should highlight that the defence wanted to call Dr DW2 and Dr DW3 (who are or were former colleagues of Dr Wong from RH) to testify as to the management of their own cases and the practice of orthopaedic surgeons. We agreed with Counsel for SMC that their evidence would not be necessary. In our view, the evidence given by both Dr DE and A/Prof PE would be sufficient to determine what the applicable standard of conduct was among members of the medical profession of good standing and repute. We do not think it is necessary to hear evidence from a number of orthopaedic surgeons to determine the applicable standards of conduct in the medical profession.

(G) Intentional and deliberate departure from the applicable standard of conduct

83. Having found that there was a breach of the applicable standards of conduct by Dr Wong, we next examined the issue as to whether such departure was intentional and deliberate.

84. Counsel for the Respondent submitted that there was no evidence led by Counsel for SMC of any intentional and deliberate departure by Dr Wong from the acceptable standards of conduct. It was submitted that an inappropriate conduct or negligence was insufficient.

85. Having considered all the evidence and the submissions of the parties, we find that there was insufficient evidence for us to hold that Counsel for SMC has proven beyond a reasonable doubt that there was an intentional deliberate departure on the part of Dr Wong to satisfy all the elements of the first limb of Low Cze Hong's case.

86. We find that there was no conclusive evidence to show that Dr Wong proceeded to certify the Patient fit for light duty with full personal knowledge or after having been told that there was no light duty available or provided by the employer for the Patient. We however do not condone his assumption of the availability of light duties (see page 21 of the written submissions of the Respondent).

87. We noted that there was an assertion by the Patient that Dr Wong informed him that there was an agreement between him and the Patient's employer not to issue medical leave for more than two days. In our view, this was a bare statement without any corroboration and the Patient was not before the DT for cross-examination. Hence, we are doubtful that this was indeed the case. For the avoidance of doubt, we also find that there was no conclusive evidence to show that Dr Wong issued the light duty certification in accordance with any agreement between the hospital and Company Y.

88. We also do not think that the fact of inappropriate number of days of medical leave was by itself sufficient, particularly when Dr Wong did a post operation review of the Patient on 7 September 2011 and assessed no contraindications for light duty, to find Dr Wong guilty of intentional deliberate departure from the applicable standards of conduct. We do agree that by belatedly amending the Patient's medical leave status, Dr Wong was acknowledging that his original act of not issuing any medical leave for the post-operative period was wrong. However, we do not see how this by itself could constitute an intentional and deliberate departure from the applicable standard of conduct. Moreover, Dr Wong did so after the Patient had told him that he had not been paid during the period when he was certified fit for light duties. But we have to highlight that in all cases a doctor is to ensure that a patient deserves a MC based on proper medical grounds. This is provided for in the SMC Ethical Code and Ethical Guidelines and we do not condone what Dr Wong had done. In any event, we are not satisfied that Counsel for SMC has proved its case beyond a reasonable doubt. We therefore find Dr Wong not guilty of the charge and dismiss the complaint against him.

89. As a reminder to the profession, we order that this Grounds of Decision be published, with appropriate redaction, to highlight the importance of the basics of medical history taking.

90. Finally, we would like to express our gratitude to both counsel for their assistance rendered to this Tribunal.

91. The hearing is hereby concluded.

Dated this 15th day of September 2015.