

The Court of Three Judges sets out a new sentencing framework for doctors found guilty of professional misconduct causing harm to their patients.

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Introduction

1. Doctors who are found guilty of misconduct causing harm to their patient can now expect heavier sentences in disciplinary proceedings, including the possibility of being struck off the register.
2. In *Wong Meng Hang v Singapore Medical Council and other matters* [2018] SGHC 253 ("**Wong Meng Hang**"), the Court of Three Judges ("**the Court**") laid out the appropriate sentencing approach in disciplinary cases involving professional misconduct by doctors that results in harm to patients. The Court also clarified the circumstances under which courts and tribunals should not hesitate to strike a doctor off the register.

Facts

3. Dr Wong Meng Hang ("**Dr Wong**") and Dr Zhu Xiu Chun @ Myint Myint Kyu ("**Dr Zhu**") were registered medical practitioners practising at an aesthetics clinic known as Reves Clinic.
4. On 30 December 2009, Dr Wong was scheduled to perform a liposuction procedure on a patient. Dr Zhu joined him to assist him and to monitor the patient.
5. There was no anaesthetist in attendance. Instead, Dr Wong managed the sedation of the patient himself, administering the drug Propofol, an anaesthetic and extremely potent sedative. It was not disputed that neither doctor had the necessary training or experience to administer Propofol safely. Furthermore, Dr Wong and Dr Zhu chose to administer Propofol using a complex technique of continuous intravenous infusion by titration which posed the potential danger of prolonging the effects of the drug. Both doctors accepted that the use of this technique to sedate a patient with Propofol was complex, and that they did not have the necessary training or qualifications to administer or employ it.
6. The dosage of Propofol administered by the doctors was excessive and caused the Patient to enter a state of deep sedation. Neither doctor was able to recognise the signs of this happening due to their lack of training. Furthermore, during the course of the liposuction procedure, Dr Wong inadvertently caused multiple puncture wounds to the patient's intestines. However, these went unnoticed because the patient was in a state of general anaesthesia and did not manifest any signs of pain.

7. After the procedure, Dr Zhu left the procedure room with Dr Wong's consent. Dr Wong proceeded to close the patient's surgical wounds and then left the room to use the toilet. The patient was therefore not in the care of any medical practitioner or nurse for at least five minutes. During this period, the patient developed an airway obstruction and suffered asphyxia which led to cardiac arrest. Shortly after, the patient was discovered to have collapsed and an ambulance was then called to take him to the hospital.
8. The patient arrived at the accident and emergency ("A&E") department of the hospital and was found to be without a pulse. Dr Wong told the A&E doctors that the patient had been given Pethidine, a pain medication, and local anaesthesia but no sedation. Despite resuscitation attempts by the A&E doctors, the patient passed away that day.

The Disciplinary Proceedings

9. Disciplinary proceedings were brought against Dr Wong and Dr Zhu. Both doctors pleaded guilty to charges under section 53(1) of the Medical Registration Act (Cap 174). In relation to both doctors' charges, the Singapore Medical Council ("SMC") proceeded under the second limb of professional misconduct laid down in *Low Cze Hong v Singapore Medical Council* [2008] 3 SLR(R) 612, namely that the doctors' misconduct amounted to serious negligence that objectively portrays an abuse of the privileges which accompany registration as a medical practitioner.
10. The Disciplinary Tribunal ("DT") found both doctors culpable for the serious consequences that had resulted from their actions and sentenced Dr Wong and Dr Zhu to 18 months' suspension and 6 months' suspension from practice respectively.
11. The SMC appealed against both Dr Wong's and Dr Zhu's sentences. Dr Wong also appealed against his sentence, but Dr Zhu did not appeal against her sentence.

The Decision of the Court of Three Judges

12. The Court took the opportunity to set out the relevant sentencing principles and a four-step systematic approach to determine the appropriate sentence in cases involving doctors' misconduct that results in harm to patients.

Objectives of Sentencing

13. The Court first set out the main objectives of sentencing in disciplinary proceedings. In such proceedings, broader public interest considerations are vital, including the need to:
 - (a) Uphold confidence in the medical profession.
 - (b) Protect the public who are dependent on doctors for medical care.
 - (c) Deter the errant doctor and others who might be similarly disposed from committing similar offences.
 - (d) Punish the errant doctor for his misconduct.

14. The Court also added that these public interest considerations would outweigh other considerations that might ordinarily be relevant to sentencing in criminal cases, such as the offender's personal mitigating circumstances and the principle of fairness to the offender.

Reiterating categories of medical misconduct

15. The Court also reiterated the distinction between cases involving intentional, deliberate acts and those involving serious negligence. Each case will turn on its own facts. Cases involving intentional wrongdoing are not invariably more serious or deserving of heavier punishment than those which concern negligent misconduct.

Four-step sentencing approach

16. The Court then set out a four-step systematic approach to sentencing a medical practitioner whose misconduct has caused harm to a patient.

Step 1: Identify the level of harm and the level of culpability

17. The first step involves evaluating the seriousness of the offence with regard to two parameters, harm and culpability.
18. *Harm* is the type and gravity of the injury caused to the patient and to society by the commission of the offence. The more direct the connection between the specific type of harm that has been occasioned and the misconduct in question, the more weight this consideration will be given. *Potential harm* that could have resulted from dangerous acts of misconduct, even if it did not actually materialise, can be taken into account if there was a *sufficient likelihood* of the harm arising.
19. *Culpability* is the degree of blameworthiness disclosed by the misconduct. This may be assessed by reference to the extent and manner of the offender's involvement in causing the harm, the extent to which the offender's conduct depart from standards reasonably to be expected of a medical practitioner, the offender's state of mind when committing the offence, and all of the circumstances surrounding the commission of the offence.
20. Together, these factors form the "harm-culpability matrix", according to which the seriousness of the offence can be assessed and a starting point for sentencing can be reached.

Step 2: Identify the applicable indicative sentencing range

21. The second step involves identifying the applicable indicative sentencing range based on the harm-culpability matrix in the first step of the analysis. The Court set out the following sentencing matrix as a guide to sentencing in cases where harm is caused to a patient by a doctor's misconduct in clinical care.

Harm \ Culpability	Slight	Moderate	Severe
Low	Fine or other punishment not amounting to suspension	Suspension of 3 months to 1 year	Suspension of 1 to 2 years
Medium	Suspension of 3 months to 1 year	Suspension of 1 to 2 years	Suspension of 2 to 3 years
High	Suspension of 1 to 2 years	Suspension of 2 to 3 years	Suspension of 3 years or striking off

22. The Court stressed that this matrix only sets out a guide to help sentencing tribunals weigh the relevant considerations in a systematic manner; it does not displace the duty upon each sentencing tribunal to consciously seek, determine and impose the sentence which is appropriate in all the circumstances and depart from this matrix where it is appropriate to do so.
23. The Court also reiterated that this matrix is only applicable to cases where deficiencies in a doctor's clinical care causes harm to a patient. It is not applicable to other forms of medical misconduct, such as overcharging, falsification of medical documents, inappropriate relations with a patient, or conduct which lies outside the ambit of a doctor's professional responsibilities to his patient but which leads to a conviction for a criminal offence implying a defect of character that renders the doctor unsuitable for registration as a medical practitioner.

Step 3: Identify the appropriate starting point within the indicative sentencing range

24. Once the tribunal or Court has identified the applicable sentencing range, the third step is to identify the appropriate starting point within that range. Regard is to be had to the level of harm caused by the misconduct and the errant doctor's level of culpability, as well as past cases involving broadly similar circumstances.

Step 4: Make adjustments to the starting point to take into account offender-specific factors

25. The fourth step is to consider offender-specific sentencing factors which do not relate directly to the commission of the particular offence, but may nonetheless be sufficiently aggravating or mitigating so as to warrant an adjustment in the sentence to be imposed on the offender in each case.

26. Mitigating factors may include a timely plea of guilt in circumstances that indicate remorse, having a long unblemished track record and good professional standing, and in certain circumstances, an undue delay in the prosecution of the proceedings. Aggravating factors might include prior instances of professional misconduct, especially where such antecedents bear similarities to the conduct underlying the charge in the case at hand.
27. The Court also indicated that sentences would be harsher under this new sentencing approach. They raised two examples of past cases in which the sentences were, in the Court's view, too lenient.
28. The first example was *In the Matter of Dr Amaldass Narayana Dass* [2014] SMCDC 2. In that case, the doctor had failed to adequately explain the risks of an open rhinoplasty procedure to his patient, failed to effectively sedate him or stop the procedure even though the patient indicated that he was in pain, left a gauze dressing in his nasal cavity without informing the patient, left remnants of a knotted thread in the patient's body after the procedure and failed to remove an implant despite overwhelming evidence of infection. He was sentenced to 6 months' suspension and a \$5,000/- fine.
29. The Court held that under the new sentencing framework, they would have assessed the extent of harm in that case as "moderate" and the level of culpability as "high". Accordingly, the applicable sentencing range could have been between 2 to 3 years' suspension from practice.
30. The second example was *In the Matter of Dr Fong Wai Yin* [2016] SMCDD 7. The patient had presented with red eyes and high ocular pressure with blurred vision, severe headaches and vomiting on three visits over five days without improvement. Yet the doctor had failed to provide a timely referral of the patient to an ophthalmologist or a hospital for an urgent assessment. He misdiagnosed the patient as having acute viral conjunctivitis, a diagnosis he would not have made had he conducted a visual acuity test. He also failed to adequately document the patient's history. The patient later decided to seek a second opinion and was found to be suffering from bilateral acute angle closure glaucoma. However, due to the delay in treatment, she developed tunnel vision and became unable to see more than a few feet in front of her. The doctor was sentenced to 3 months' suspension.
31. The Court held that under the new sentencing framework, they would have assessed the level of harm as "moderate" and the level of culpability as "medium". Accordingly, the applicable sentencing range could have been 1 to 2 years' suspension from practice.
32. These examples indicate that the sentences meted out in disciplinary proceedings are likely to be harsher under the new sentencing framework.

Threshold for striking off the register

33. The Court then addressed the specific issue of when a sentence of striking off is warranted. The ultimate question is whether the misconduct was so serious that it renders the doctor unfit to remain as a member of the medical profession.

34. Having regard to local and overseas jurisprudence, the Court held that the following circumstances / consideration may warrant a striking off:
- (a) Where the misconduct in question involves a flagrant abuse of the privileges accompanying registration as a medical practitioner.
 - (b) Where the practitioner's misconduct has caused grave harm.
 - (c) Where the practitioner's misconduct evinces a high degree of culpability.
 - (d) Where the misconduct evinces a serious defect of character. This may arise from conduct underlying a predicate criminal conviction which is harmful to the repute of the profession or incompatible with the offender remaining a member of it.
 - (e) Where the facts of the case disclose an element of dishonesty. Where the dishonesty is integral to the commission of a criminal offence of which the doctor has been convicted, or where it violates the relationship of trust and confidence between doctor and patient, striking off will be the presumptive penalty, absent exceptional circumstances. In other cases of dishonesty, all relevant facts and circumstances should be carefully considered in order to determine whether striking off is warranted.
 - (f) Where any of the above factors exist and where the errant doctor has shown a persistent lack of insight into the seriousness and consequences of his misconduct.
35. With regard to the instant case, the Court considered that this was one of the most egregious cases of medical misconduct that has come before the Court for the following reasons:
- (a) The harm caused was of the gravest form: death. Furthermore, the level of culpability was high considering that it was solely the doctors' actions that were the direct cause of the patient's death, which was a serious aggravating factor.
 - (b) The doctors administered Propofol using continuous intravenous infusion by titration, both of which they were not qualified to administer.
 - (c) The liposuction procedure was performed unsatisfactorily.
 - (d) The patient was left unattended for at least five minutes, when his respiration should have been monitored continuously. Failure to render post-procedure treatment was directly causative of the patient's death, and Dr Wong himself accepted that "medical attention could have been provided in time to prevent the patient from asphyxiating to death" if he had adequately monitored the patient following the liposuction.
 - (e) At the hospital, Dr Wong informed the A&E doctors that he had not sedated the patient and had only administered local anaesthesia and pain medication. This was patently false. Dr Wong had preferred his own interest and lied in a misguided attempt to protect himself, rather than attempt



to equip the A&E doctors with the most complete information to enable them to try to save the patient.

36. The Court allowed the SMC's appeals and ordered that Dr Wong be struck off. The Court also increased Dr Zhu's sentence to 18 months' suspension from practice.

Conclusion

37. The Court of Three Judges' decision in *Wong Meng Hang* has clarified the relevant sentencing framework for doctors convicted of misconduct causing harm to patients, and clarified when a doctor should be struck off. Doctors who cause harm to patients and are convicted should expect to receive heavier sentences compared to past cases.

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