



The Bounds of Medical Confidentiality

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Introduction

1. Following the recent spate of decisions by the Singapore Medical Council's ("SMC") Disciplinary Tribunal ("DT") culminating in public outcry and SMC's subsequent appeal to the Court for review, the Court was once again faced with "a potential miscarriage of justice" in a case where a psychiatrist was ordered to, *inter alia*, pay a penalty of \$50,000 for his alleged misconduct.
2. This article highlights the key takeaways from the decision of the High Court in *Singapore Medical Council v Soo Shuenn Chiang* [2019] SGHC 250, in which the Court set aside a doctor's conviction for alleged breach of a patient's medical confidentiality and accompanying orders made by the SMC DT.

For any queries relating to this article, please contact:

Matthew Saw
matthewsaw@leenlee.com.sg

Authors:
Matthew Saw
Kelyn Lee

Lee & Lee
50 Raffles Place
#06-00 Singapore Land Tower
Singapore 048623
Tel: +65 6220 0666

Brief facts of the case

3. Dr Soo Shuenn Chiang ("**Dr Soo**"), a consultant psychiatrist (associate consultant psychiatrist at the material time) at the National University Hospital ("**NUH**"), had seen the Complainant after her admission to NUH for Tramadol overdose in January 2015.
4. Dr Soo diagnosed the Complainant with adjustment disorder with depressed mood and alcoholic misuse. The Complainant also had a history of depression. Dr Soo also noted that the Complainant was at risk of self-harm.
5. After her discharge, proposed treatment information and the Complainant's medication was handed over to her husband, and the Complainant was referred to a family service centre. The Complainant subsequently defaulted on her follow-up appointment at NUH.
6. 2 months later, Dr Soo received a telephone call from a caller claiming to be the husband of the Complainant, informing him that the Complainant was suicidal and required urgent referral to the Institute of Mental Health ("**IMH**") for assessment. Eventually, Dr Soo released a memorandum to the caller, addressed to the ambulance staff / police, recommending that the Complainant be assessed at IMH for suicide risk (the "**Memo**").
7. The Complainant thereafter discovered that Dr Soo's Memo had been

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issued to her brother, who subsequently submitted it as part of documents to support his Personal Protection Order application on behalf of the Complainant's son against the Complainant. The Complainant thus lodged a complaint against Dr Soo with the SMC.

Background of the Appeal

8. When the matter came before the DT, Dr Soo had been charged with failing to maintain the medical confidentiality of the patient, in that he: -
 - a. failed to verify the identity of the caller claiming to be the husband of his patient, the Complainant, before issuing the Memo containing confidential information of the Complainant; and
 - b. failed to take appropriate steps to ensure that the confidential information contained in the Memo was not accessible to unauthorised persons.
9. Before the DT, Dr Soo pleaded guilty to a charge of professional misconduct under s 53(1)(d) of the Medical Registration Act for failing to maintain confidentiality of the Complainant. The only question left to be decided was the sentence. The DT ordered Dr Soo to pay a penalty of \$50,000.
10. Subsequently, the SMC applied to the High Court for a review of the DT's decision, on the grounds that the penalty imposed on Dr Soo was manifestly excessive and/or seriously or unduly disproportionate.

Disclosure of the Complainant's medical information without her prior consent

11. The Court first observed that it was accepted that the circumstances were such that Dr Soo had good reason to fear that the Complainant was at risk of suicide.
12. In coming to its view that in these circumstances, it would have been permissible for Dr Soo to release the Complainant's medical information to her husband (Dr Soo's impression), the Court referred to: -
 - a. expert opinion by A/Professor Dr Daniel Fung Shuen Sheng, Chairman of the Medical Board and Senior Consultant at IMH's Department of Developmental Psychiatry (the "**Expert**");
 - b. Guideline 4.2.3.1 of the SMC Ethical Code and Ethical Guidelines (2002 Edition) ("**ECEG 2002**");
 - c. Guideline C7(5) of the SMC Ethical Code and Ethical Guidelines (2016 Edition) ("**ECEG 2016**") and the accompanying SMC Handbook on Medical Ethics (2016 Edition) ("**HME 2016**"); and

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- d. Guideline 2b of the Guidelines on the Practice of Psychiatry 1997 by the Ministry of Health National Medical Ethics Committee (“GPP 1997”).

The Expert’s opinion

13. According to the Expert, Dr Soo was justified in disclosing the Complainant’s medical information without her permission. Based on the Complainant’s past medical and psychiatric history, in particular, her past attempts at suicide and alcohol misuse, Dr Soo had reason to suspect significant risk of suicide at the material time.
14. Accordingly, the Expert was of the view that Dr Soo was trying to get expeditious help for the Complainant, in his response to the caller. The provision of memorandums to family members was common practice in psychiatry, to assist the family in procuring help from the police or ambulance staff.

Practice guidelines

15. Guideline 4.2.3.1 of the ECEG 2002 states that a doctor shall respect medical confidentiality of a patient. However, this confidentiality is not expressed to be absolute, and may be overridden by legislation, court orders, or public interest in disclosure. Under the guideline, where a doctor decides to disclose confidential information without the patient’s consent, he must be prepared to explain and justify his decision if asked to do so.
16. Additionally, the ECEG 2016, HME 2016, and GPP 1997 provide some examples of when a doctor may disclose a patient’s confidential medical information without his consent. Under Guideline 2b of the GPP 1997, a psychiatrist may do so to avert inevitable danger to others.
17. Under Guideline C7(5) of the ECEG 2016, such disclosure is defensible if, *inter alia*, it is necessary to protect patients or others from harm, or if it is in the patients’ best interest. The non-absolute nature of medical confidentiality is explained in the HME 2016, which states that medical confidentiality may be outweighed by considerations of patients’ best interests, in particular to prevent potentially serious harm to the patients (eg. situations of self-harm), where patients’ consent cannot be reasonably be obtained.
18. In particular, the HME 2016 states that except for statutory requirements and urgent situations, doctors “should be slow to decide to *breach* medical confidentiality”. Rightly so, the Court pointed out that the position set out in the HME 2016 is unfortunate. In situations where a doctor evokes a valid exemption from maintaining a patient’s medical confidentiality, he cannot be said to be deliberately *breaching* medical confidentiality. In this situation, the Court recognised that Dr Soo was invoking an exemption given that he reasonably apprehended a real risk that the Complainant would harm herself, and was acting to prevent it.

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19. From the above, the Court concluded that a doctor may disclose a patient's confidential medical information without his consent to his next-of-kin when: -
 - a. he reasonably regards it as necessary to protect the patient from potential self-harm;
 - b. disclosure is in the patient's best interests; and
 - c. the patient's consent cannot reasonably be obtained.

Verification of the identity of the caller

20. Having concluded that it was permissible for Dr Soo to have released the Complainant's medical information to her husband, the Court then turned to decide whether Dr Soo failed to verify the identity of the caller (that he was the Complainant's husband).
21. The Court reiterated the context-specific nature of the inquiry into the standard of care expected of a doctor. In this case, the important facts were as follows: -
 - a. Dr Soo was presented with a threatened medical emergency;
 - b. The caller had represented that he was the Complainant's husband, someone whom Dr Soo had previously interacted with in similar emergency situations;
 - c. The caller also represented that the Complainant had symptoms similar to what she presented with when Dr Soo saw her previously at NUH;
 - d. He also had significant personal information about the Complainant, including her past medical and psychiatric condition. This was consistent with Dr Soo's knowledge and the available information;
 - e. Given that Dr Soo reasonably believed that there was a danger of serious self-harm by the Complainant, it was not practical for Dr Soo to have attempted to contact the Complainant to verify the identity of the caller. Requiring Dr Soo to do so would have been the very epitome of defensive medicine – such course of action being driven by the concern over legal risks rather than the patient's best interests;
 - f. Dr Soo reasonably thought that it was necessary for him to act without delay.
22. The standard of care would therefore be for Dr Soo to take *reasonable* steps to verify that the caller was the Complainant's next-of-kin – which he did satisfy by: -
 - a. ensuring that the caller was able to provide sufficient information about the Complainant (eg. her name, NRIC, and medical history);
 - b. verifying this information against the Complainant's electronic medical records.

23. The Court found that this was in addition to common clinical practice suggested by the Expert in his report, for the doctor to obtain the name and NRIC of the caller, and verify the caller's information against the patient's medical records, or even calling the patient directly. However, according to the specific facts of this case, doing so was not practicable. The Complainant's husband's name and contact number were not specifically documented by NUH, and were buried within the consultation notes of another doctor in the Complainant's electronic medical records. It would have been unduly onerous to expect Dr Soo to trawl through such records in view of the urgency of the situation.
24. In the Court's view, given the threatened medical emergency involving potential self-harm by the Complainant and the above facts, Dr Soo was justified in agreeing to issue the Memo to the caller.

The accessibility of the Memo to unauthorised persons

25. The Court also addressed the second part of the SMC's case that Dr Soo failed to take steps to ensure that the Complainant's confidential medical information in the Memo was not accessible to unauthorised persons.
26. It was held that this part of the SMC's charge was unacceptably broad. This purported to hold Dr Soo responsible for the administrative failings of his clinic staff. Dr Soo had left the Memo with his clinic staff, with instructions that it should be handed over to the Complainant's husband. Any responsibility to verify the identity of the recipient of the Memo lay with the clinic staff and not Dr Soo.
27. The Expert had also offered the perspective that most hospitals would have their own protocols on the means by which doctors could hand over confidential information to the intended recipient through their clinic staff. The Expert agreed that Dr Soo had discharged his duty to maintain the Complainant's medical confidentiality by taking the above steps.
28. The Court also criticised the SMC's charge, in purporting to hold Dr Soo responsible for any subsequent misuse of the Memo by persons coming to possess it. This was particularly so as Dr Soo was not at fault for agreeing to make the Memo available in the first place.
29. In these premises, the Court found that Dr Soo did not fail to maintain the Complainant's medical confidentiality. Accordingly, it was not necessary for the Court to ascertain if any breach of medical confidentiality by Dr Soo amounted to such serious negligence to constitute professional misconduct.

Conclusion

30. Within a short span of time, the Court once again expressed its strong disapproval towards proceedings before the SMC leading to the need for the Court's review. As with the case of Dr Lim Lian Arn, in fairness to the SMC, it was constrained in that the doctor in question had pleaded guilty. The Court thus took the opportunity to remind parties that the doctor against

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whom a charge is brought against also has a responsibility to look after his own interests. It is hoped that this line of cases provides firm guidance for medical and legal practitioners alike when faced with SMC disciplinary proceedings.

31. More importantly, the Court's decision clearly explains how medical confidentiality is not a rigid rule. In situations of emergency as in this case, a doctor can be reasonably exempted from the said rules while acting in the patient's best interests.

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kwakimli@leenlee.com.sg

Quek Mong Hua
Litigation & Dispute Resolution
quekmonghua@leenlee.com.sg

Owyong Thian Soo
Real Estate
owyongthiansoo@leenlee.com.sg

Tan Tee Jim, S.C.
Intellectual Property
tanteejim@leenlee.com.sg

Adrian Chan
Corporate
adrianchan@leenlee.com.sg

Louise Tan
Banking
louisetan@leenlee.com.sg