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Court of Three Judges Overturns Disciplinary Tribunal Conviction of Dr Lim Lian Arn

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Introduction

1. In November last year, Dr Lim Lian Arn ("**Dr Lim**") was fined \$100,000 by the Singapore Medical Council's ("**SMC**") Disciplinary Tribunal for not advising his patient on the risks of a steroid injection.
2. Following the release of the decision, there was a major outcry from the medical community which triggered an online petition garnering more than 4,000 signatures.
3. Prompted by the Ministry of Health ("**MOH**"), SMC applied to the Court for a review of the Tribunal decision. This article summarises the key findings and observations of the High Court in its decision to overturn Dr Lim's conviction.

Background of the Appeal

4. Dr Lim was charged with professional misconduct under s 53(1)(d) of the Medical Registration Act ("**MRA**") for failing to obtain informed consent of his patient, in that he failed to advise her of the risks and possible complications of a steroid injection to her left wrist (the "**H&L Injection**"). The charge read that Dr Lim's conduct amounted to such serious negligence that it portrayed abuse of the privileges accompanying registration as a medical practitioner.
5. Before the SMC Disciplinary Tribunal, Dr Lim pleaded guilty. For the only remaining issue of sentencing, SMC submitted that Dr Lim should be suspended for 5 months. The Tribunal agreed with the sentence proposed by Dr Lim's counsel, being the maximum fine of \$100,000.
6. Following the decision of the Tribunal, MOH requested for SMC to review the appropriateness of sentence. SMC subsequently brought the present appeal to lower Dr Lim's sentence to a fine of not more than \$20,000. However, SMC maintained that Dr Lim's conviction was sound.

7. Dr Lim's counsel did not take a position on the soundness of the conviction.

Reiteration of the meaning of professional misconduct under the MRA

Disciplinary procedure

8. The Court first helpfully summarised the disciplinary procedure under the MRA: -
- a. The process is usually initiated by a written complaint to the SMC of misconduct or impropriety on the part of the doctor (s 39(1) MRA).
 - b. A Complaints Committee will then conduct an inquiry into the complaint. At this stage of the proceedings, the Committee can dismiss the complaint with reasons for the dismissal, issue a letter of advice to the medical practitioner, refer the matter for mediation, or direct an investigation of the complaint (s 42(4) MRA).
 - c. After investigation and upon due inquiry into the complaint, if the Committee determines that no formal inquiry is necessary, it can address the Complaint by issuing a letter of advice or warning to the medical practitioner, or refer the matter for mediation (s 49(1) MRA).
 - d. If, however the Committee determines that a formal inquiry is necessary, it must order that an inquiry be held by a Disciplinary Tribunal (s 49(2) MRA).
9. The Court highlighted that this encompassed a process of escalation for disciplinary action, and the presence of various alternative options for the SMC to address complaints under the MRA disciplinary procedure.

Three-stage inquiry before the Disciplinary Tribunal

10. At the stage of a Disciplinary Tribunal Inquiry, disciplinary action may be imposed against a medical practitioner, *inter alia*, for professional misconduct. The Court recapitulated its decision in *Low Cze Hong v SMC* [2008] 3 SLR(R) 612, which set out at least two instances where professional misconduct can be made out: -
- a. Where there is intentional, deliberate departure from standards observed or approved by members of the profession of good repute and competency. This covers intentional breaches by the medical practitioner (the "**First Limb**");
 - b. Where there has been such serious negligence that it objectively portrays an abuse of the privileges which accompany registration as a medical practitioner. This covers negligent breaches by the medical practitioner (the "**Second Limb**").

CLIENT NOTE



11. The Court clarified that regardless of the limb under which the charge of misconduct was brought, the court or tribunal in question would have to engage in a three-stage inquiry, which entails: -
 - a. establishing what the relevant benchmark or standard is;
 - b. considering whether the medical professional had departed from the applicable standard; and
 - c. determining whether the departure was sufficiently egregious to amount to professional misconduct under the limb in question.
12. The Court commented that all the relevant parties in the present case stopped short of the third stage of the inquiry. It was noted that this required consideration of whether there was serious negligence on the part of the medical practitioner, and whether such negligence objectively constituted an abuse of the privileges of registration as a medical practitioner.
13. It was clarified that for a medical practitioner to be charged and found liable under the MRA, the misconduct must be more than a mere technical breach of the relevant standards.

The role of expert evidence

14. In determining the applicable benchmark or standard under the three-stage inquiry, expert evidence is of importance and relevance. The Court commented that there were inadequacies in the expert report tendered in support of the charge in the present case.
15. In the Court's view, the expert had made his conclusions without providing reasoning for the conclusions reached. Such explanation was necessary for a tribunal or court to assess whether the reasoning was sound, and accordingly the weight to put on the expert opinion.
16. In his report, the expert had listed the possible risks and complications that could arise from the H&L Injection and concluded that Dr Lim should have advised the patient of such risks and complications, but did not explain *why* the particular complications had to be disclosed, or *why* Dr Lim was under a positive duty to convey those risks to the patient. In the Court's view, these would depend on the likelihood of the risk or complication materialising, and the severity of the potential injury.

Determining the Second Limb

17. Under the Second Limb, the Court held that mere negligence or incompetence of the medical practitioner was insufficient. The critical inquiry is whether the conduct in question would be regarded as falling so far short of expectations as to warrant the imposition of sanctions.
18. The relevant factors for such an inquiry included: -

- a. the nature and extent of the misconduct;
 - b. the gravity of the foreseeable consequences of the medical practitioner's failure; and
 - c. the public interest in pursuing disciplinary action.
19. Further, these factors would depend on overlapping considerations such as the importance of the rule or standard that was breached, the persistence of the breach, and the relevance of the alleged misconduct to the welfare of the patient, or to harm caused to the doctor-patient relationship.
20. It was observed that generally, the Second Limb would be satisfied in cases where the medical practitioner was indifferent to the patient's welfare or to his own professional duties, or where the medical practitioner abused the trust and confidence of the patient. The Court referred to two precedents to demonstrate the threshold to be met: -
- a. In *Jen Shek Wei v SMC* [2018] 3 SLR 943, the errant doctor recommended surgery to his patient as an MRI scan revealed a pelvic mass, and upon finding lumps in the patient's ovaries during a transvaginal scan. After the surgery was performed, it was found that the pelvic mass removed was not malignant. It was correctly concluded that the doctor was guilty of professional misconduct under the Second Limb as he was indifferent to patient's welfare, having recommended surgery without further tests and evaluation.
 - b. In *Chia Foong Lin v SMC* [2017] 5 SLR 334, although it was recognised that that there was a fine line between gross negligence and a doctor's error of judgment, the disciplinary threshold was crossed. The case involved the doctor's failure to diagnose Incomplete Kawasaki Disease in her infant patient. The doctor was found to be guilty of misconduct as she had numerous opportunities to avoid the misdiagnosis, and the consequences of the lapse on were serious. The doctor's failure to resort to readily available and harmless exclusionary tests could be characterised as indifference.

Informed consent

21. The basis of the charge against Dr Lim was that he failed to obtain informed consent of his patient for the H&L Injection.
22. On this issue of informed consent, the Court reiterated its holding in the landmark case of *Hii Chii Kok v Ooi Peng Jin London Lucien* [2017] 2 SLR 492, that a doctor is not under a duty to convey to his patient every conceivable risk. The modified-Montgomery test espoused in that case laid down factors as a guide on what information is to be disclosed: -

- a. Under the first stage of the modified-Montgomery test, one is to consider whether the information is relevant and material to the patient (from the perspective of a reasonable patient situated in the particular patient's position).
 - b. The second stage of the modified-Montgomery test requires one to further consider whether such information is reasonably in the possession of the doctor.
 - c. Additionally, under the third stage of the modified-Montgomery test, one is to examine reasons why the doctor chose to withhold the information from the patient, as there could be justifications for a doctor to do so in particular circumstances.
23. The Court commented that material information in this case, would be that required for the patient to make a choice between relatively uncomplicated clinical procedures, of whether bracing and oral medication was to be coupled with the H&L Injection. This would require consideration of the nature and likelihood of adverse side effects or complications, for which no expert evidence was produced in the inquiry.

Application to the facts

24. First, the Court held that there were serious doubts as to whether Dr Lim failed to advise the patient of the risks and possible complications of the H&L Injection. Given that Dr Lim had offered other more conservative treatment options, the Court opined that it was implausible that the patient would have proceeded with the additional injection without any discussion of its benefits and side effects.
25. The Court also took into account Dr Lim's written explanation, that it was his usual practice to inform his patients about the possible complications of steroid injections. It was noted that Dr Lim was unsure of whether he had *actually* failed to inform the patient of the risks and possible complications, but was faced with difficulties as he had no record of such discussion in his clinical notes. While recognising that the presence of supporting clinical notes were desirable, the Court accepted that they were not determinative. The lack of clinical documentation could be attributed to the fact that the H&L Injection was a routine procedure.
26. Additionally, the Court found that the following findings of the Disciplinary Tribunal did not lend to a conclusion of serious negligence, as this was a one-off failing in the course of a routine procedure, with no material harm to the patient fairly attributable to the doctor's conduct: -
- a. There was nothing suggesting that the patient would have taken a different course of action had the risks and possible complications been disclosed to her;
 - b. The patient's autonomy to make an informed decision on her treatment was not substantially undermined. The Court noted that patient autonomy undergirded the requirement to obtain a patient's informed consent;

- c. This was an isolated, one-off honest omission on Dr Lim's part;
- d. Dr Lim had offered an alternative conservative treatment option, and did not actively recommend the H&L Injection to the patient;
- e. The H&L Injection was an appropriate and reasonable treatment for the patient in the circumstances, and was a minimally invasive clinic procedure; and
- f. The side effects and complications suffered by the patient were not permanent or debilitating (harm that ensued was limited in nature and extent), and were simply a consequence of the treatment (degree of culpability of Dr Lim was on the low end).

27. Accordingly, the Court was of the view that the facts and evidence did not support the charge against Dr Lim, and set aside his conviction.
28. The Court also observed that even if misconduct had been made out, a maximum fine would not have been warranted given the Disciplinary Tribunal's findings that Dr Lim's culpability and harm caused were on the lower end of the spectra. In fairness to the SMC and Disciplinary Tribunal, the parties involved did not have the benefit of the sentencing matrix set out by the Court in *Wong Meng Hang v SMC* [2019] 3 SLR 526 as guidance when making submissions and the decision on the appropriate sentence.

Conclusion

29. The events culminating in the present review were described as the unfortunate result of an ill-judged prosecution, an unwise decision to plead guilty and an unfounded conviction. According to the Court, there was a "*miscarriage of justice, with dire consequences for [Dr Lim]*".
30. The Guidance provided by the Court is welcome in light of significant public outcry at recent SMC prosecutions and Disciplinary Tribunal decisions. Even so, the Court was careful to reiterate its fidelity to the rule of law as opposed the rule of the crowd; that its decision was made solely on the merits of the present case.
31. The decision of the Court reinforces its important supervisory role in ensuring that convictions are well-founded, and sentences imposed are appropriate to the factual matrix before the relevant tribunal or court.

CLIENT NOTE



32. In our view, the most important aspect of the Court's decision is the Court stating that not every negligent act, and not every breach of the Ethical Code, amounts to professional misconduct under the MRA. Further, there are measures such as mediation or issuance of a letter of advice that can be used to address a patient's complaint, as opposed to a formal disciplinary inquiry. It is hoped that the SMC will bear the above in mind before it decides to institute a disciplinary inquiry against a doctor.

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