

CLIENT NOTE



First time a provisionally-registered doctor is struck off: *Singapore Medical Council v Chua Shunjie* [2020] SGHC 239

Introduction

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1. For the first time, the Court of Three Judges was faced with disciplinary proceedings brought against a provisionally-registered medical practitioner *aka* houseman in *Singapore Medical Council v Chua Shunjie* [2020] SGHC 239.
2. This case commentary highlights the important aspects of the decision including questions relating to a Disciplinary Tribunal's ("DT") jurisdiction over provisionally-registered doctors after the expiration of their provisional registration, the availability of the sanction of striking off in such cases, and the analytical framework for sentencing in cases that concern professional misconduct involving dishonesty.
3. Dr Chua Shunjie ("Dr Chua") was represented by Mr Julian Tay and Ms Theodora Kee of Lee & Lee.

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Factual background

4. During the course of Dr Chua's housemanship, a complaint was made against him by a patient for breach of medical confidentiality. It was alleged that Dr Chua disclosed the patient's medical information without consent to his employer after Dr Chua was contacted by the employer to clarify the condition of the patient who had refused to resume work and had made a claim for loss of income.
5. As a result of the complaint, Dr Chua was suspended from clinical duties and resumed his housemanship training at the next posting. He eventually completed his housemanship but his application to the SMC for conditional registration was refused.
6. Prior to completion of his housemanship, the Ministry of Health Training and Assessment Standards Committee lodged a formal complaint against Dr Chua with the Singapore Medical Council ("SMC") alleging a number of instances of professional misconduct. A Complaints Committee was appointed to inquire into the complaint and eventually determined that a formal inquiry by a DT was warranted.

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Proceedings before the DT

7. The DT preferred six charges against Dr Chua: -
 - (a) **The confidentiality charge**, which stemmed from Dr Chua's disclosure of the patient's medical information without consent; and
 - (b) **The false information charges**, which arose from the following incidents:
 - (i) Dr Chua's submission of a research letter to the British Journal of Dermatology wherein he presented himself as "*BEng, MD, National Skin Centre, Singapore*", although he did not hold any official appointment/role in the National Skin Centre ("NSC");
 - (ii) A clinical letter Dr Chua sent to the Journal der Deutschen Dermatologischen Gesellschaft in which Dr Chua had stated that his co-authors included one "Mark Pitts" although "Mark Pitts" was not one of the co-authors;
 - (iii) A letter Dr Chua submitted to the Obstetrics & Gynecology Journal in which Dr Chua had stated that his co-authors included "Mark Pitts" and "Peter Lemark" although "Mark Pitts" and/or "Peter Lemark" were not the co-authors;
 - (iv) Dr Chua's two applications to the Centralised Institutional Review Board seeking approval to conduct two studies, wherein Dr Chua stated he was a member of the Singapore General Hospital's Dermatology Department although he was not involved with the Department.
8. At the inquiry before the DT, Dr Chua raised a preliminary objection against the DT's jurisdiction. The nub of Dr Chua's objection was that he had ceased to be a registered medical practitioner ("RMP") as defined under the Medical Registration Act ("MRA") upon the expiration of his provisional registration in December 2016, and that a DT's powers could only be exercised in respect of a RMP. Rejecting Dr Chua's objection, the DT held that it sufficed that the misconduct occurred whilst the doctor was a RMP and that the DT had jurisdiction to determine the matter.
9. Dr Chua pleaded guilty to the four proceeded charges (i.e. those charges referred to in paragraphs 7(a) and 7(b)(i) and (iv) above) with the remaining two charges taken into consideration for sentencing purposes (i.e. charges referred to in paragraphs 7(b)(ii) and (iii) above).
10. On sentence, the three-member DT arrived at a split decision. The majority imposed a suspension for a period of 18 months, whereas the minority considered that a striking off order was called for.
11. Dissatisfied with the sentence meted out to Dr Chua, the SMC appealed against the DT's decision.

Appeal before the Court of Three Judges (“Court”)

Preliminary Issue of Jurisdiction

12. Although neither Dr Chua nor SMC appealed against the DT’s decision on the issue of jurisdiction, the Court invited parties to address this preliminary issue before addressing SMC’s appeal on sentence. After hearing both sides, the Court clarified, for the first time, that a doctor subject to disciplinary proceedings must be a RMP at the time of the inquiry.
13. The Court disagreed with the DT’s conclusion in the proceedings below that it was irrelevant whether the doctor subject to disciplinary proceedings was a RMP *at the time of the inquiry* so long as he was such at *the time of the misconduct complained of* as it is clear that disciplinary proceedings under the MRA lie only against persons who are RMPs. This was Dr Chua’s argument before the DT below, that sections 53(1) and (2) of the MRA make explicit reference to findings of the DT made against a “*registered medical practitioner*”, which must refer to a person who remains registered under the MRA *at the time of the findings*, and which the Court likewise found. The Court also opined that this is further supported by the nature of the sanctions of a striking off and suspension order, which make no sense at all if a person is not registered under the MRA.
14. On the facts, the Court found that Dr Chua was (and remains) a RMP because his registration on the Register of Provisionally Registered Medical Practitioners (“P-reg Register”) did not terminate immediately upon the expiry of his provisional registration on 5 December 2016. In this regard, the Court held that the expiration of the period of time stipulated by the SMC in its grant of provisional registration does not result in the automatic deregistration of the doctor, whose name therefore remains on the P-reg Register until one of *only* a limited number of events takes place, *viz.* (1) successful registration on another register (*section 24(3) of the MRA*); (2) removal by the Registrar in certain circumstances (*section 31 of the MRA*); (3) removal by the SMC (*section 32(1) of the MRA*); (4) removal at the conclusion of disciplinary proceedings (*section 53(2)(a) of the MRA*); (5) removal by a Complaints Committee by consent following an inquiry into a complaint (*section 49(1)(g) of the MRA*); (6) removal by a Health Committee (*section 58(2) of the MRA*).
15. The Court further clarified that the effect of the lapsing or expiration of Dr Chua’s provisional registration is that from that date, upon the expiry of his practising certificate, Dr Chua would not be able to carry out or perform any regulated activities as a provisional RMP, but his name nonetheless remains on the register, and he is accordingly amenable to disciplinary proceedings.

Sentence – suspension or striking off?

16. Turning to the appropriate sentence, the Court found that the **confidentiality charge** did not, on its own, justify a striking off order being made against Dr Chua. The documentary evidence showed that Dr Chua was inexperienced at that time, and further, striking off orders were not imposed for a breach of patient confidentiality in similar circumstances.
17. However, in respect of the **false information charges**, the Court found that the only appropriate sanction given the multiple charges involving dishonesty, was a striking out order. In arriving at its decision, the Court applied the principles and factors relevant to the consideration of whether a striking off order should be made, applying the analytical framework set out in *Wong Meng Hang*. Although this was not a case where the presumptive



sanction of striking off would apply, the Court held that Dr Chua's conduct was so serious such as to render him unfit to remain a member of the medical profession as he had demonstrated a persistent pattern of dishonesty, which was clearly motivated by personal benefit and had caused clear potential harm.

18. Accordingly, the Court allowed the SMC's appeal and ordered that Dr Chua be struck off from the P-reg Register with immediate effect.

Conclusion

19. The Court's decision provides helpful guidance in the context of disciplinary proceedings against doctors. Firstly, the Court clarified the issue of a DT's jurisdiction over RMPs and made it clear that the expiration and/or lapsing of a doctor's provisional registration does not equate to a removal of his name from the register because of the framework and provisions in the MRA, inasmuch as this is not an intuitive perspective to the ordinary man. Secondly, the Court also provided helpful guidance on when striking off would nonetheless be appropriate even in a case where the presumptive sanction of striking off would not apply.
20. While the ruling that the expiration and/or lapsing of a doctor's provisional registration is not synonymous with the removal of his name from the P-reg Register based on the provisions in the MRA does raise some conceptual difficulties given the purpose of maintaining such a register in the first place, it nevertheless remains the most authoritative exposition on a DT's jurisdiction over provisionally-registered doctors whose registration may have expired/lapsed by the time of the inquiry by the DT.

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