IN THE COURT OF THREE JUDGES OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 10

Originating Summons No 4 of 2016

In the matter of Section 55(1) of the Medical Registration Act (Cap 174)

And

In the matter of the Inquiry by the Disciplinary Tribunal of the Singapore Medical Council for Dr Yong Thiam Look Peter, a registered medical practitioner

Between

YONG THIAM LOOK PETER

… *Applicant*

And

SINGAPORE MEDICAL COUNCIL

… *Respondent*

EX TEMPORE JUDGMENT

[Professions] — [Medical profession and practice] — [Professional conduct]

Version No 2: 27 Oct 2020 (22:40 hrs)

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Yong Thiam Look Peter
v
Singapore Medical Council

[2017] SGHC 10

Court of Three Judges — Originating Summons No 4 of 2016
Sundaresh Menon CJ, Andrew Phang Boon Leong JA and Judith Prakash JA
16 January 2017

Sundaresh Menon CJ (delivering the judgment of the court *ex tempore*):

Background

1 In Originating Summons No 4 of 2016 ("C3J/OS 4/2016"), Dr Yong Thiam Look Peter ("Dr Yong"), a general practitioner, appeals against a six-month suspension imposed on him by a Disciplinary Tribunal ("DT") appointed by the Singapore Medical Council ("SMC") on the ground that it is manifestly excessive and on this basis, he contends that it should be set aside or reduced.

2 Dr Yong is a general practitioner who was practising at the AcuMed Medical Group of Clinics at Block 64 Yung Kuang Road ("the Clinic") at the material time. On or about 24 June 2011 and 24 October 2011, a gentleman ("the Patient") who experienced pain in his left middle finger attended at the Clinic. The Patient was administered hydrocortisone injections (steroid injections that gave temporary relief) on both visits.

3 On 16 August 2012, the Patient experienced pain in his left middle finger again, and consulted Dr Yong once more at the Clinic. Dr Yong examined the Patient and advised him to undergo a trigger finger release procedure ("the Surgery") in the Clinic. Relying on Dr Yong's advice, the Patient agreed to this. However, Dr Yong had failed to adequately explain to the Patient the nature of the Surgery, its benefits, risks and possible consequences, including but not limited to complications such as bleeding, infection and nerve damage. He also did not discuss any alternative treatments or options. Dr Yong proceeded to carry out the Surgery at the consultation table in his Clinic. Dr Yong then recorded in his medical notes his medical prescription to the Patient, the medical leave given, and that the Patient was to be reviewed on 21 August 2012. From then until 31 August 2012, the Patient visited Dr Yong for follow-up treatment and for Dr Yong to clean his wounds. Throughout this period, Dr Yong did not keep clear or complete medical records in respect of what, if anything, he conveyed to the Patient whether by way of advice or explanation, the Patient's response to any such communications and his physical findings and assessment of the Patient.

4 On 6 September 2012, the Patient sought a second medical opinion from two senior consultants at the Department of Hand Surgery at the Singapore General Hospital ("SGH"). It was recorded in the Patient's SGH medical notes that he was diagnosed with numbness over his radial aspect left middle finger and a poorly healing wound post trigger finger surgery. He was started on daily dressings, neurobion and oral antibiotics, and arrangements were made for a nerve conduction study. Between September 2012 and June 2013, the Patient had to undergo medical treatment and consultations at SGH approximately eight times.

Version No 2: 27 Oct 2020 (22:40 hrs)

5 On 25 June 2013, the Patient filed a complaint with the SMC, and the SMC subsequently appointed a Complaints Committee before which the Patient's complaint was laid. On 17 December 2015, SMC sent Dr Yong a Notice of Inquiry, which set out three charges that would be pressed against him by the SMC. In the hearing before the DT on 1 February 2016, Dr Yong pleaded guilty to the three charges as follows:

(a) two charges of professional misconduct under s 53(1)(*d*) of the Medical Registration Act (Cap 174, 2014 Rev Ed) ("the MRA") in respect of:

(i) His failure to obtain informed consent from the Patient for the Surgery, in breach of Guideline 4.2.2 of the SMC's Ethical Code and Ethical Guidelines ("ECEG"), on or about 16 August 2012 ("the informed consent charge"); and

(ii) His failure to keep clear and accurate medical records in respect of the performance of the Surgery on the Patient from 16 to 31 August 2012, in breach of 4.1.2 of the ECEG ("the inadequate records charge"); and

(b) One charge under s 53(1)(e) of the MRA of failing to provide professional services of a quality that may reasonably be expected, in respect of his performance of the Surgery at his consultation table on 16 August 2012 when it should properly have been undertaken in a procedure room or an operating theatre.

6 The six-month suspension from practice being appealed against by Dr Yong is part of the sentence imposed by the DT on 9 May 2016 which also imposed a $10,000 fine and a censure as well as the usual orders in relation to the imposition of an undertaking and payment of the SMC's fees and

Version No 2: 27 Oct 2020 (22:40 hrs)

expenses. The DT found that a suspension ought to be imposed, having considered precedent cases and the aggravating factors in this case such as Dr Yong's relevant antecedents and his reckless disregard and breach of an earlier undertaking to the SMC not to repeat conduct of a materially similar kind as transpired in this instance. The DT thus concluded that a six-month suspension, together with a fine of $10,000, was called for having regard to the interests of deterrence and also to ensure that the sanction imposed was a proportionate one in all the circumstances of the case.

Our decision

7 The sole question in this appeal is whether the six-month suspension ordered by the DT is manifestly excessive. The facts to which Dr Yong admitted in the proceedings below are not challenged.

8 We are satisfied on these facts that the sentence imposed by the DT was neither wrong in principle nor manifestly excessive. We begin by noting the *purpose* underlying each of the rules that was contravened in each of the charges before us, namely: first, the rule requiring that the patient's informed consent be obtained; second, the rule requiring that proper medical records be maintained; and third, the rule requiring that medical services must meet a *minimum* threshold of what may reasonably be expected of a medical practitioner.

9 Having regard to their underlying purpose, we are satisfied that the violations of each of these rules were serious. In relation to the informed consent charge, the rule in question is guided by the important concept of patient autonomy. It seeks to ensure that patients give their considered consent to any medical test or treatment and that in doing so, they have been given enough information to enable them to meaningfully participate in decisions

Version No 2: 27 Oct 2020 (22:40 hrs)

about the care that they may receive from medical practitioners. Guideline 4.2.2 of the ECEG is express as to this purpose and also as to the sort of things that should be covered, including the nature of the procedure or treatment that is contemplated, the associated benefits and risks, possible complications and alternative courses. On the facts before us (which are not disputed), Dr Yong made no attempt to cover *any* of this. Dr Yong in fact admitted that he failed to adequately explain to the Patient the nature of the Surgery, its benefits, risks and possible consequences. The DT found that "there was not the slightest indication that Dr Yong's conduct came even close to meet the minimum requirement of the [ECEG's] standards of informed consent". In these circumstances, we regard Dr Yong's complete failure to discharge this duty as a serious breach.

10 As for the inadequate records charge, we do not agree with any suggestion that this should be seen as a minor or technical breach. It is important that medical professionals properly document the management of patients under their care. Properly kept medical records form the basis of good management of the patient and of sound communications pertaining to the care of the patient. By documenting such matters as patients' symptoms, history of illnesses, findings of clinical examinations, relevant investigative data, diagnosis and treatment plans, doctors not only set out the basis upon which they have acted but also ensure that the care of patients can be safely taken over by another doctor should the need arise. In this case, the DT also noted that the need for detailed medical notes was "imperative" because Dr Yong practises in a group practice with several other doctors any of whom might be called upon to take over any given case. There is also a significant public health consideration in that detailed records enable effective reviews of cases where problems have ensued and this helps ensure that remedial or preventive measures can be developed. Dr Yong's scant notes were illegible

Version No 2: 27 Oct 2020 (22:40 hrs)

and there was inadequate documentation in respect of virtually every visit by the Patient. Hence, this too was a serious breach.

11 In relation to the third charge, the DT described this as a failure to observe "elementary" requirements. The principles affecting asepsis, sterile technique, and adequate lighting concern fundamental medical techniques that any doctor, especially one with Dr Yong's experience, should be familiar with. Conducting the Surgery on the consultation table was plainly not acceptable and increased the risk of both infection and surgical injury. In our judgment, the charge under s 53(1)(e) involves an objective assessment of standards of medical care which can be reasonably expected of medical practitioners. This calls for a consideration of what reasonable medical practitioners would expect of their peers in delivering medical care. These may be regarded as minimum standards of acceptable care derived from the expectations of reasonable medical practitioners. In the case before us, Dr Yong has accepted that he failed to meet these standards in relation to the third charge and this is unsurprising given that the DT found his conduct in this regard fell short of *elementary* clinical standards.

12 In response to this, counsel for Dr Yong, Mr Matthew Saw, cited the absence of harm to the Patient in this case as a mitigating factor as a reason for us to view Dr Yong's breaches as being less serious. We disagree. In our judgment, where physiological harm to the patient is not an element of the offence, the absence of such harm would generally be a neutral consideration without any mitigating value. On the other hand, if harm to the patient did ensue in such a case where harm was not an element of the charge, this would be a seriously aggravating factor. In the present case, actual harm to the patient was not an element of any of the charges and its absence here cannot be taken as a mitigating factor. The SMC also submits, and we agree, that it

Version No 2: 27 Oct 2020 (22:40 hrs)

would be "perverse to the entire physician paradigm [if] a doctor is given credit for doing what he [or] she is supposed to do in the first place."

13 Aside from the severity of Dr Yong's breaches in relation to the three charges, there was also the fact of his antecedents. His counsel, Mr Saw, attempted to argue that Dr Yong's past convictions were of a less serious nature than the present case. However, if this were so, it seemed to us to demonstrate a *greater* need for specific deterrence because on this basis, Dr Yong had not only failed to mend his ways but had gone on to commit *similar* and *more serious* breaches of his duty.

14 Dr Yong's antecedents, both local and overseas, show that the current breaches are not isolated incidents and that he has had issues regarding professional standards in his practice despite having been previously disciplined for similar wrongdoing. In 2004, Dr Yong was found guilty of nine counts of professional misconduct and had been cautioned for not maintaining proper medical records. On that occasion, he had failed to record or document sufficient details of his patients' diagnosis, symptoms or condition such as to enable the proper assessment and treatment of nine patients. Before that, in disciplinary proceedings in New South Wales in 2001, the Medical Tribunal found that his asepsis and infection control was unsatisfactory. It also noted that Dr Yong's notes were "very difficult to read", and "contained only scant information" with "little or no indication of what happened to the patient".

15 These antecedents concern conduct of a nature that is evidently similar to that complained of in the case before us and the recurrence of such conduct suggests a pattern of persistence in improper medical conduct. This calls for special attention to the need for specific deterrence and this is emphasised by Dr Yong's attempt to downplay the relevance and seriousness of his

Version No 2: 27 Oct 2020 (22:40 hrs)

antecedents. Such a position is not only misguided but reflects a continued disregard for basic and elementary clinical standards. We found it disturbing that he contended that that the New South Wales Tribunal's finding in 2001 that he had risked interfering with the sterility of the operating theatre was "not very serious".

16 Hence, having regard to the gravity of the violations and the need for both general and specific deterrence, we are amply satisfied that the sentence imposed by the DT was entirely defensible.

17 As against all this, in what he put forward as the core point of the appeal, Mr Saw placed reliance on some precedents which he submitted showed that the present sentence was excessive. We have three observations on this. First, any reference to sentencing precedents must be undertaken only on the basis that the facts and circumstances as a whole are truly comparable. We are not satisfied that this was so in the present context. Mechanistic or discrete comparisons that fail to consider adequately the totality of the relevant facts and circumstances would not be fruitful. Second, in any event, we have in a number of decisions of this court already said that we think that the sentencing regime for cases of medical discipline in the past has tended to be somewhat lax, and that we will recalibrate this as cases come before us (see [19] below). What follows from this is that comparisons with sentences imposed in past cases can only afford, at best, a starting point in the analysis and cannot be the basis for any conclusion as to the propriety of the sentence before the court, without a separate analysis being undertaken as to whether and why that sentence is in and of itself wrong. In any case, we are not persuaded that the six-month suspension imposed on the applicant is out of line with the precedent cases (even without any recalibration of the sentencing norms). This leads us to our third observation which is that considering the

Version No 2: 27 Oct 2020 (22:40 hrs)

need to recalibrate the sentencing regime, the present sentence may be said, if anything, to have been lenient.

18 For these reasons, we do not agree that the six-month suspension imposed by the DT was manifestly excessive. We dismiss the appeal in C3J/OS 4/2016 with costs fixed at $20,000 inclusive of reasonable disbursements. We also order that Dr Yong's suspension is to take effect from 1 February 2017, to allow him to make the necessary arrangements with his present employer.

19 We take this opportunity to reiterate the point that we have expressed in previous decisions that the sentences in previous precedents may not be adequate to reflect the seriousness of the public interests that are at stake in these cases. The principal concern in medical disciplinary cases is to ensure that professional standards are maintained so as to safeguard those who avail themselves of health services. Because of this, we noted in *Lee Kim Kwong v Singapore Medical Council* [2014] 4 SLR 113 (at [45]), that although a measure of consistency with sentencing precedents is a consideration, "fidelity to precedent ought not to lead to ossification of the law". We have previously recalibrated sentences in *Singapore Medical Council v Kwan Kah Yee* [2015] 5 SLR 201 ("*Kwan Kah Yee*") and also in *Singapore Medical Council v Wong Him Choon* [2016] 4 SLR 1086 ("*Wong Him Choon*"), departing from precedents, which in our view did not reflect the demands of the presently prevailing circumstances and state of medical practice. In *Kwan Kah Yee*, we reviewed the sentencing precedents in relation to the improper certification of death and found these to be "inexplicably lenient"; and in *Wong Him Choon*, we observed (at [117]) that the sentences reflected in some of the relevant precedents ought in fact to have been heavier. The medical profession is held in high regard and the trust that is vested in doctors makes it incumbent on the

Version No 2: 27 Oct 2020 (22:40 hrs)

profession to maintain the highest standards of professional practice and conduct. Failures must then be visited with sanctions of sufficient gravity.

Sundaresh Menon	Andrew Phang Boon Leong	Judith Prakash
Chief Justice	Judge of Appeal	Judge of Appeal

Matthew Saw and Amelia Ang (Lee & Lee) for the applicant; and
Kevin Ho, Grace Loke and Gregory Chew (Braddell Brothers LLP)
for the respondent.

Version No 2: 27 Oct 2020 (22:40 hrs)