

Singapore Medical Council v Mohd Syamsul Alam bin Ismail
[2019] SGHC 58

Case Number : Originating Summons No 10 of 2018
Decision Date : 06 March 2019
Tribunal/Court : Court of Three Judges
Coram : Sundaresh Menon CJ; Judith Prakash JA; Tay Yong Kwang JA
Counsel Name(s) : Anand Nalachandran and Neo Zhi Wei, Eugene (TSMP Law Corporation) for the appellant; The respondent in person (absent).
Parties : Singapore Medical Council — Dr Mohd Syamsul Alam bin Ismail

Professions – Medical profession and practice – Professional misconduct

6 March 2019

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

1 The respondent, Dr Mohd Syamsul Alam Bin Ismail (“Dr Syamsul”), was found liable by a Disciplinary Tribunal of the Singapore Medical Council (“the SMC”) on two charges of professional misconduct in respect of the management of his patient (“the Patient”). The first charge essentially alleged that Dr Syamsul had failed to undertake an adequate clinical evaluation of the Patient, and had failed to provide competent, compassionate and appropriate care to the patient. The second charge essentially alleged that Dr Syamsul had failed to keep clear and accurate records with sufficient detail as would enable another doctor reading the records to take over the management of the Patient.

2 We will briefly outline the facts of this case. The Patient worked at a marine and shipping company in Singapore. Dr Syamsul was one of the doctors on duty at the medical centre of that company at the material time.

3 On 14 May 2013, the Patient presented himself to Dr Syamsul complaining of a lump at his right buttock and a fever that he had had for five consecutive days. He also informed Dr Syamsul that he was a diabetic but had ceased taking his medication for some time. He alleged that Dr Syamsul failed to conduct a physical examination of the lump. The Patient’s evidence was that Dr Syamsul did not ask him to remove his clothes, or to lie down on the clinic bed to perform a physical examination of the area of swelling and pain. Instead, Dr Syamsul merely prescribed him some antibiotics and other medication and ordered a period of medical leave. The Patient’s condition worsened, and he found himself in great pain the next day. He was admitted to the Accident & Emergency Department of Alexandra Hospital later that evening. He was diagnosed with Fournier’s Gangrene, which required surgical intervention including the partial removal of his scrotum. The Patient also had to undergo two further surgeries as part of his treatment, and was warded in hospital for approximately a month. Following his discharge from hospital, he made a complaint to the SMC, which then initiated disciplinary proceedings against Dr Syamsul.

4 Dr Syamsul did not participate in the disciplinary proceedings. The Patient’s evidence thus went essentially un rebutted. The Disciplinary Tribunal accepted the Patient’s evidence, and also heard the expert opinions of two doctors called by the SMC. The Tribunal convicted Dr Syamsul on both charges, and sentenced him to a suspension of three months and a fine of \$40,000 amongst other

orders.

5 By this Originating Summons, the SMC appeals against the term of suspension and seeks an uplift to a term of two years' suspension instead.

Our decision

Conviction

6 Having carefully reviewed the record and the appellant's submissions, we agree with the decision of the Disciplinary Tribunal to convict Dr Syamsul on both charges.

7 With respect to the second charge, it was apparent to us from Dr Syamsul's handwritten consultation note that there was a patent failure to keep adequate records. The consultation note was extremely brief, and was bereft of important details. It failed to record with sufficient detail the symptoms presented by the Patient, the physical findings relating to the lump and the fact that the Patient was likely suffering from uncontrolled diabetes, amongst other details and information that had been conveyed to Dr Syamsul by the Patient as reflected in the charge. These details would all have been *essential* to allowing another doctor reading the records to take over the management of the case. It was unsurprising that the experts considered the note to be "very inadequate" and "very scanty". We consider that this was a grievous breach of Dr Syamsul's obligation to keep adequate medical records.

8 We turn then to the first charge. In our judgment, the conviction on this charge, too, is safe. The starting point in the analysis is that the Patient's evidence that a physical examination had not been done went *unchallenged* because of Dr Syamsul's failure to participate in the proceedings before the Disciplinary Tribunal. Although Dr Syamsul did initially respond to the SMC's investigators with a written explanation dated 29 January 2015, in which he maintained that he had performed a physical examination of the Patient, we found it remarkable that he was able to offer such a vivid recollection of the material events given the complete absence of any of these points in his contemporaneous consultation notes. It bears recalling that although the material events occurred in May 2013, and despite the fact that there is some evidence to suggest that Dr Syamsul was aware of the Patient's unhappiness by August 2013, the Patient only made his complaint to the SMC in November 2014, and Dr Syamsul then responded with his written explanation in January 2015. This explanation came *twenty* months after the Patient had attended before Dr Syamsul. It was incredible that Dr Syamsul was able to recall exactly how he had positioned the Patient to examine his perianal region, the lump being located on the right side of the Patient's buttocks, and the lump being an estimated 3cm in size, all without the benefit of detailed consultation notes. Moreover, there is nothing on the record to suggest that Dr Syamsul had somehow kept detailed records of his diagnosis elsewhere that might have informed his preparation of his written explanation. We therefore consider it appropriate to infer from the scanty consultation note, as the experts and the Disciplinary Tribunal did, that no adequate physical examination had taken place. This was serious negligence.

9 It was also serious negligence that Dr Syamsul had failed to order a random capillary blood glucose test, and failed to immediately refer the Patient to a hospital, upon learning that the Patient was a diabetic who had ceased taking his medication for some time. We have no reason to doubt the findings of the Disciplinary Tribunal that such a test is necessary, and that a diabetic who presents with the symptoms this Patient displayed ought to be managed in a hospital setting.

10 We therefore agree with the Disciplinary Tribunal that the first charge was also made out, as Dr Syamsul's conduct evidenced "such serious negligence that objectively portrayed an abuse of the

privileges which accompanied registration as a medical practitioner”.

Sentence

11 Since both convictions are safe, we turn to the question of sentencing.

Second charge: failure to keep adequate medical records

12 In our judgment, a term of three months’ suspension would have been the appropriate sentence for the second charge *alone*. In *Yong Thiam Look Peter v Singapore Medical Council* [2017] 4 SLR 66, we held that the failure to keep adequate records ought not to be seen as a minor or technical breach. Properly kept medical records form the basis of good management of the patient and of sound communications pertaining to the care of the patient, and help ensure that the care of patients can be safely taken over by another doctor should the need arise.

13 Dr Syamsul’s failure to keep proper records was a grievous breach of this obligation for the reasons we have already stated. But we would add that the breach was aggravated by the fact that Dr Syamsul operated as part of a rota of doctors assigned to the company’s medical centre. He was thus effectively part of a group practice, which made it all the more crucial that detailed medical notes be kept by Dr Syamsul, as the next doctor to see the Patient might well have been some other doctor who would then have had to depend on Dr Syamsul’s notes to take over the care of the Patient. A term of three months’ suspension is therefore appropriate for the second charge in and of itself.

First charge: failure to provide adequate clinical evaluation and competent care

14 As for the first charge, sentencing involves the application of the sentencing framework we set out in our decision in *Wong Meng Hang v Singapore Medical Council* [2018] SGHC 253 (“*Wong Meng Hang*”) for cases involving harm to the patient.

15 The first step under this framework is to identify the level of harm and the level of culpability. We consider that the level of harm in this case is “moderate”. The Patient’s underlying diabetic condition, which was likely uncontrolled because the Patient had ceased taking his medication, had worsened into Fournier’s Gangrene. We note the Disciplinary Tribunal’s findings that the harm caused is permanent. But we also note that Dr Syamsul did not directly cause the Patient to suffer Fournier’s Gangrene. His failure to conduct a physical examination, however, was a serious omission that resulted in a loss of a chance to arrest the onset and spread of gangrene. Thus, we consider the level of harm he caused to be “moderate”.

16 In addition, we are satisfied that Dr Syamsul’s level of culpability was “high”. Dr Syamsul had failed to perform basic and elementary things that any competent doctor ought to have done. There was a basic failure to conduct a physical examination at all. And there was the abject mismanagement of a patient who appeared to be suffering from uncontrolled diabetes. If he had made a physical examination of the Patient and properly assessed the Patient’s diabetic condition, as any competent doctor ought to have done, that would have resulted in the Patient being sent to hospital immediately and in all likelihood would have prevented the onset or the further spread of gangrene.

17 In light of the “moderate” level of harm, and the “high” level of culpability, the appropriate sentencing range is a suspension in the region of between two and three years: *Wong Meng Hang* at [33]. In our judgment, the appropriate starting point within this range is a sentence of two years and three months’ suspension, given the actual harm caused and Dr Syamsul’s high level of culpability.

18 We further consider that there is at least one offender-specific factor that applies here.

19 Dr Syamsul has displayed absolutely no remorse. He refused to participate in the Inquiry below, and has not participated in the proceedings before us either. So far as we can tell, he is no longer practising in Singapore. He has only been contactable by email, but he has replied only intermittently to the SMC and SMC's counsel whenever they attempted to contact him for the purposes of informing him of the disciplinary proceedings. Even when he deigned to reply, it was evident that he was fixated more on when he would be able to return to Singapore to work rather than to express remorse or in any way to attempt to justify his conduct. This blatant lack of remorse is seriously aggravating.

20 In view of these aggravating factors, we would have been prepared to enhance Dr Syamsul's sentence to a term of two years and nine months' suspension on the first charge. We have decided not to do so, however, because we have decided to affirm the fine of \$40,000 ordered by the Disciplinary Tribunal. There are two reasons for maintaining the fine. First, no appeal was made against the fine.

21 Second, the record indicates that Dr Syamsul is registered to practise in Malaysia. Indeed, his principal place of practice is reflected as a clinic in Johor, and his Annual Practising Certificate appears to be valid up till 2019. In these circumstances, we consider that a longer term of suspension might lose some of its bite, as our ruling only suspends Dr Syamsul from practising in Singapore.

22 Instead, we consider that the appropriate punitive effect will be achieved by maintaining the fine of \$40,000 that had earlier been imposed by the Disciplinary Tribunal. In our judgment, the fine also sends a signal to errant doctors who are able to practise overseas that they cannot simply avoid the punishment for their misconduct by practising elsewhere and waiting out the period of suspension. We wish to be clear that such an offender has not "traded off" a higher period of suspension for a fine. Rather, it is only because the punitive effect of suspension is liable to be curtailed or diluted where an errant doctor is able to practise elsewhere that the additional sentencing measure of a fine is relied upon to achieve the appropriate punitive effect.

Conclusion

23 In summary, the terms of suspension for the two charges are three months' suspension for the second charge, and two years and three months' suspension for the first charge. In our judgment, the sentences should run consecutively for an aggregate term of two years and six months' suspension. This is to commence from today.

24 We therefore order that the term of suspension be increased from three months' suspension to two years and six months' suspension. We also affirm the fine of \$40,000 and the other orders that were made below. In addition, we direct the SMC to draw the attention of their Malaysian counterparts to the orders we have made in this decision.

25 Finally, we also order that the Respondent is to bear the costs of the SMC, which we fix in the aggregate sum of \$25,000 inclusive of disbursements.