Eu Kong Weng *v* Singapore Medical Council
[2011] SGHC 68

Case Number : Originating Summons No 829 of 2010

Decision Date : 17 March 2011

Tribunal/Court : High Court

Coram : Chan Sek Keong CJ; Andrew Phang Boon Leong JA; V K Rajah JA

Counsel Name(s) : Edwin Tong, Tham Hsu Hsien, Jacqueline Chua and Magdelene Sim (Allen & Gledhill LLP) for the appellant; Tan Chee Meng SC, Chang Man Phing, Kwek Lijun Kylee and Ung Ewe Hong Maxine (WongPartnership LLP) for the respondent.

Parties : Eu Kong Weng — Singapore Medical Council

Professions – Medical Profession and Practice

17 March 2011 Judgment reserved.

Chan Sek Keong CJ (delivering the judgment of the court):

1 We provide herewith our grounds of judgment. Our findings are as follows. This is an appeal by Dr Eu Kong Weng ("Dr Eu") against the Disciplinary Committee's ("DC") decision on conviction and sentence. The DC found Dr Eu guilty of professional misconduct under section 45(1)(*d*) of the Medical Registration Act (Cap 174, 2004 Rev Ed) ("the Act") on one charge of failure to obtain informed consent from one Ang Gee Kwang ("Ang") for a staple haemorrhoidectomy ("SH"). The DC imposed a three-month suspension on Dr Eu, ordered that Dr Eu be censured, that he give a written undertaking to the Singapore Medical Council ("the SMC") to refrain from similar conduct, and that he pay 70% of the costs.

2 The facts are as follows. On 10 July 2006, Ang consulted Dr Eu and was diagnosed with fourth degree piles. Ang alleged that the only treatment options Dr Eu discussed were a colonoscopy and SH. He further alleged that Dr Eu was very dismissive, and did not mention the risks and complications of SH. Dr Eu disputed these allegations and stated that he discussed the option of conventional haemorrhoidectomy, and the risks and common complications of SH with Ang. On 13 July 2006, Ang underwent SH. It was not disputed that Ang signed an informed consent form prior to the surgery.

3 The dispute is essentially a factual one. The DC believed substantially the testimony of the complainant, and found that the evidence contemporaneous with the material events did not support Dr Eu's defence that informed consent was obtained. The case-notes do not record any discussion of treatment options, apart from Dr Eu's recommendation of a colonoscopy (Ang's refusal to the treatment was recorded) and SH. There was also no evidence to support Dr Eu's claim that there was a discussion of the risks and complications involved in SH. There was no record in the Patient and Family Education Record dated 10 July 2006 of such a discussion being conducted based on pamphlets. The DC also took into account the inconsistencies in Dr Eu's evidence with respect to the signing of the informed consent form in the Day Surgery Centre. Dr Eu initially claimed that this was a standard operating procedure in SGH, and when pressed to adduce evidence in support of this claim, re-characterised it as mere guidelines or common practice. On the contrary, the DC found that the evidence was consistent with Ang's initial complaint to the SMC where he stated that the only treatment options he was informed of were a colonoscopy and SH.

4 We have considered the submissions of counsel for Dr Eu on the findings of the DC. We are unable to agree that the DC's findings of fact were wrong as the relevant records we have referred to earlier support the DC's findings of fact. For these reasons, we dismiss the appeal against conviction.

5 On the issue of sentencing, the DC was of the opinion that a fine was an inadequate sentence on the facts of this case and thus imposed a sentence of suspension. Where a sentence of suspension is called for, s 45(2)(*b*) of the Act provides for a mandatory minimum period of 3 months. Section 45(2)(*d*) provides for an alternative penalty of up to $10,000 which the DC considered would not do justice in this case. The DC considered a failure to obtain informed consent to invasive surgery to be a serious form of professional misconduct. The DC was of the view that it should send a signal to medical practitioners that the interest and welfare of the patient should be their overriding concern, and that a doctor must explain to the patient all the options (of which he has knowledge) and risks involved before treating the patient.

6 Counsel for Dr Eu has argued that the sentence is manifestly excessive in view of precedents where doctors have only been fined for such offences. Counsel for the SMC contended that the DC was correct in imposing the sentence of suspension on the facts of the present case as a deterrent.

7 In our view, the question we have to consider is whether, having regard to the importance of obtaining informed consent from a patient before performing invasive surgery on him, and the mission of the SMC to raise the standard of medical treatment of patients in Singapore, a suspension is warranted in the present case. In this respect, we accept the approach of the SMC in determining the nature of the punishment. We agree that a suspension is called for, and if we had the discretion, we would have imposed a shorter period of suspension. However, the law does not allow us to do that as the 3-month suspension is the minimum mandated by s 45(2)(*b*) of the Act.

8 In the circumstances, we will uphold the sentence imposed by the DC and dismiss the appeal with costs, and the usual consequential orders. The DC's order of costs is affirmed. The suspension order shall take effect on such date as may be determined by the SMC, after considering representations from Dr Eu to be made by 5.00pm on 18 March 2011.