Guarding Against Defensive Medicine:
***Singapore Medical Council v Dr Soo Shuenn Chiang* [2019] SGHC 250**

I. EXECUTIVE SUMMARY

In *Singapore Medical Council v Dr Soo Shuenn Chiang* [2019] SGHC 250, psychiatrist Dr Soo Shuenn Chiang received a call regarding a patient ("**Complainant**") from someone he thought was the Complainant's husband ("**Husband**"). The caller informed Dr Soo that the patient was suicidal and needed to be brought to the Institute of Mental Health ("**IMH**") for an urgent assessment of her suicide risk. Dr Soo then wrote a memorandum ("**Memorandum**"), with pertinent information about the Complainant's medical history, to be used by the police and ambulance staff. (It was submitted by the Singapore Medical Council ("**SMC**") that providing a patient's family members with a memorandum to get help for the patient was a common practice in psychiatry.) Dr Soo left the Memorandum with his clinic staff, with instructions that it should be handed to the Husband. However, unknown to Dr Soo, it was the Complainant's brother ("**Brother**") who collected the Memorandum.

The Complainant, after discovering that Dr Soo had issued the Memorandum and that it was in the Brother's possession, lodged a complaint against Dr Soo with the SMC. After investigation, the appointed Complaints Committee ordered a disciplinary tribunal ("**DT**") to hold a formal inquiry into the complaint. Dr Soo did not contest the charge or the facts upon which it was based. The DT found Dr Soo guilty of professional misconduct under section 53(1)(*d*) of the Medical Registration Act (Cap 174, 2014 Rev Ed) ("**MRA**"), and ordered (among other things) that he pay a fine of $50,000. However, subsequent events resulted in the SMC seeking to set aside Dr Soo's conviction and sentence in the High Court ("**HC**"). The HC did set aside the conviction and sentence, but on different grounds from those submitted by the SMC.

First, the HC held that a doctor may disclose a patient's confidential medical information without the patient's consent when: (a) the doctor reasonably regards it as necessary to protect the patient from potentially serious self-harm; (b) disclosure is in the patient's best interests; and (c) the patient's consent cannot reasonably be obtained. The disclosure should be made to those closest to the patient, such as the next of kin. *Second*, the HC held that every doctor who handles patients' confidential information is under a duty to take *reasonable* care to ensure that such information is not mishandled or released negligently to unauthorised persons. The standard of reasonable care that is expected of a doctor, in making inquiries before he releases confidential information that is requested of him, will be heavily dependent on all the circumstances at the material time.

The HC held that Dr Soo acted reasonably in agreeing to provide the Memorandum, given, among other things, that: the caller provided specific details about the Complainant and her medical history; the threatened medical emergency was consistent with what Dr Soo understood of the Complainant's medical condition; and the emergency included the risk of the Complainant potentially harming herself seriously. The HC further held that the part of the charge, which alleged that Dr Soo had failed to take appropriate steps to ensure that the Complainant's confidential medical information in the Memorandum would not be accessible to unauthorised persons, was unacceptably broad. Dr Soo had no duty to personally deliver the Memorandum to the Husband, or personally verify the identity of the recipient. He could also not be held responsible for any administrative failings of his clinic staff in handing the Memorandum to the Brother, contrary to his instructions.

The HC also observed that the DT had failed to carefully consider all the relevant facts and circumstances before it pronounced Dr Soo guilty of the charge, and further that the SMC had sought to set aside Dr Soo's verdict in reaction to public outcry over the DT's decision. However, the HC stressed that Dr Soo also had a responsibility to look after his own interests, even if his personal inclination was to move on from the episode.

II. MATERIAL FACTS

Dr Soo was an associate consultant psychiatrist at National University Hospital ("**NUH**"). On 19 January 2015, the Complainant was admitted to NUH by the Husband, after she took an overdose of Tramadol. She was reviewed by Dr Soo, who diagnosed her with adjustment disorder with depressed mood and alcohol misuse. He noted that she bore a risk of self-harm and had a history of depression. She was discharged later that day with a memorandum, which also stated that the Husband had been informed of her proposed treatment plan and was supportive of it. The Complainant subsequently defaulted on her follow-up appointment.

On 20 March 2015, Dr Soo was in the midst of a clinic with a scheduled roster of 17 patients, when he received the call in question. Dr Soo accessed the Complainant's electronic records and made a contemporaneous record of the call ("**Call Note**"). The Call Note indicated that Dr Soo was under the impression that the caller was the Husband. The caller also knew key information about the Complainant, including: (a) that Dr Soo was the consultant who had previously attended to the Complainant in January 2015; (b) the Complainant's personal information and identification details, without which Dr Soo would not have been able to access her electronic records; and (c) the Complainant's medical state, which was consistent with her history of depression, and risk of self-harm and suicidal ideation. The Call Note also indicated that Dr Soo was given the impression that the situation was urgent, in that the police and an ambulance had been summoned to take the Complainant to IMH but to no avail because she refused to accede to their requests. Subsequently, Dr Soo wrote the Memorandum, which was collected by the Brother. The Brother later also used the Memorandum in support of an application for a Personal Protection Order against the Complainant.

The Complainant then lodged a complaint against Dr Soo with the SMC, alleging that he had accepted the caller's account without arranging an appointment with her or otherwise communicating with her to verify the details. The appointed Complaints Committee directed investigation into the complaint, including asking Dr Soo for answers to certain queries. Dr Soo admitted that he had not verified the caller's identity, and the Complaints Committee did not subsequently take any statements from the Brother or the Husband. After investigation, the Complaints Committee ordered a DT to hold a formal inquiry into the complaint. The SMC then obtained an expert opinion from a consultant in psychiatry ("**Expert Opinion**") as to the complaint; the opinion concluded that Dr Soo breached medical confidentiality.

Dr Soo pleaded guilty to the charge of professional misconduct under section 53(1)(*d*) of the MRA for failing to maintain the medical confidentiality of a patient. He also admitted to an agreed statement of facts ("**Agreed Facts**"), which stated that:

(a) he did not verify the identity of the person who made the call, by first obtaining the caller's personal details and then checking the Complainant's medical records for the Husband's personal details, or by contacting the Complainant directly before issuing the Memorandum;

(b) he left the Memorandum with his clinic staff, with instructions that it should be handed to the Husband, who had called earlier that day; and

(c) he did not take steps to ensure that the means by which the Memorandum was communicated was secure, or that it was accessible only to authorised persons, by giving instructions to his clinic staff to release it only upon verification of the identity of the person collecting it.

The DT found Dr Soo guilty of professional misconduct for: (a) failing to verify the identity of the caller who claimed to be the Husband, before issuing the Memorandum in reliance on information provided by the caller; and (b) failing to take appropriate steps to ensure that the Complainant's confidential medical information in the Memorandum was not accessible to unauthorised persons. Because Dr Soo had chosen not to contest the charge or the facts upon which it was based, there was no hearing on, or inquiry into, the underlying facts. The DT then ordered, among other things, that Dr Soo pay a fine of $50,000, and be censured. Neither Dr Soo nor the SMC initially appealed against the DT's decision, even though both parties had asked for a fine of a much smaller sum.

Following publication of the DT's decision, members of the medical profession and the public expressed concern that the DT's decision could lead to defensive practices among the medical profession, and cause reluctance in the profession to assist caregivers who might approach doctors with genuine requests. The SMC then applied to the HC for a review of the DT's decision, because the penalty of $50,000 was manifestly excessive and/or unduly disproportionate. Around that time, the Brother also published a Facebook post, essentially stating that he had never impersonated the Husband and that Dr Soo "did the necessary" when communicating with the Husband over the phone. The SMC then contacted the Brother and the Husband to obtain their respective accounts. The SMC subsequently amended its application to the HC, seeking to set aside Dr Soo's conviction and sentence. The SMC also requested leave to introduce the statutory declarations by the Brother and the Husband, based on which the SMC argued Dr Soo's charge could not be said to have been established beyond a reasonable doubt. The SMC also argued that in any event, Dr Soo was not guilty of professional misconduct.

III. ISSUES ON APPEAL

The HC had to determine the following issues: (a) whether Dr Soo failed to maintain the Complainant's medical confidentiality, and if so, (b) whether his conduct amounted to such serious negligence that it objectively portrayed an abuse of the privileges of being registered as a medical practitioner, such that he was guilty of professional misconduct.

In considering these matters, the HC allowed the SMC to admit into evidence the Brother's and the Husband's statutory declarations, but chose to disregard their accounts because it was not satisfied that these accounts were reliable, not least because they were not tested under cross-examination. Furthermore, these accounts did not afford the HC a reasonably sufficient and stable set of facts on which to proceed. In these circumstances, the appropriate course of action would have been for the HC to remit the matter to the DT for a rehearing, to assess the veracity of the Brother's and the Husband's accounts if necessary.

However, based on the record of proceedings before the DT, the HC was troubled as to whether Dr Soo could have been found guilty in any case. The HC had, at the hearing of the appeal, asked for a clarification of the Expert Opinion from the expert ("**Revised Opinion**"), in the light of information not then available to him, which included the Agreed Facts. Based on this other information, the Revised Opinion stated that Dr Soo had taken sufficient care to ensure that the Memorandum would not be accessible to unauthorised persons, and had acted in

keeping with what most psychiatrists would have done amidst a busy practice. Thus, there was no breach of medical confidentiality by Dr Soo.

A) Whether Dr Soo failed to maintain the Complainant's medical confidentiality

The question was whether Dr Soo had failed to maintain the Complainant's medical confidentiality by: (i) failing to verify the identity of the person who made the call before issuing the Memorandum, in reliance on information provided by the caller, and (ii) failing to take appropriate steps to ensure that the Complainant's confidential medical information in the Memorandum was not accessible to unauthorised persons.

It was undisputed that it would have been permissible for Dr Soo to disclose the Complainant's confidential medical information to the Husband without first obtaining her permission. The HC held that a doctor may disclose a patient's confidential medical information without the patient's consent when: he reasonably regards it as necessary to protect the patient from potentially serious self-harm; disclosure is in the patient's best interests; and the patient's consent cannot reasonably be obtained. In such circumstances, the disclosure should be made to those closest to the patient, such as the next of kin.

The HC accepted the Revised Opinion that upon receiving the Call, Dr Soo had good reason to assess that there was a real risk of suicide on the Complainant's part, in light of her past medical and psychiatric history. In addition, Dr Soo's response in providing the Complainant's family members with the Memorandum was appropriate, given the objective of attempting to obtain expeditious help from the police or ambulance staff to convey her to IMH for a suicide risk assessment. In the circumstances, it would have been permissible for Dr Soo to disclose the Complainant's confidential medical information to the Husband without first obtaining the Complainant's permission.

The question then was whether Dr Soo took reasonable steps to verify the identity of the person who made the call, so as to ascertain whether the Complainant's confidential medical information could be disclosed to that person.

(i) Failure to verify the identity of the caller

The HC observed that every doctor who handles patients' confidential information is under a duty to take reasonable care to ensure that such information is not mishandled or released negligently to unauthorised persons. However, the standard of reasonable care that is expected will be heavily dependent on all the circumstances at the material time. The question is what a reasonably competent doctor would have done, in the circumstances of the particular emergency concerned.

The HC stated that holding Dr Soo to a *reasonable* standard for verifying that the caller was the Husband, taking into account the context-specific circumstances, appropriately drew the line between what might be considered defensive medicine on the one hand, and appropriate medicine on the other. The HC noted that the SMC's original position in the DT on the efforts a physician should take (including verifying the caller's identity by checking the Complainant's medical records for the Husband's name and contact number, or contacting the Complainant directly), before acting in what he considered was the best interests of the patient, would have been the very epitome of defensive medicine. This was because such a course of action would have been driven by concern over the avoidance of perceived legal risks, rather than by the patient's best interests. Here, it was reasonably thought to be necessary to act without delay. Indeed, had Dr Soo tarried in his response and had the Complainant actually harmed herself,

Dr Soo would have been facing an altogether different situation, with accompanying tragic circumstances.

Thus, Dr Soo acted reasonably in agreeing to provide the Memorandum at the request of someone whom he reasonably believed was the Husband, in circumstances where he reasonably believed the Complainant was in danger of seriously injuring herself. This was based on: (a) the lack of specific information on the Complainant's next of kin in her electronic records; (b) the caller's ability to provide specific details about the Complainant and her medical history that matched the information in her electronic records; and (c) the fact that the reported medical emergency was consistent with what Dr Soo understood of the Complainant's medical condition. With regard to the Complainant's assertion that Dr Soo should have communicated with her to verify the caller's identity, it was not practical for Dr Soo to do so: it would be contrary to common sense to require the doctor to call the patient directly to verify the caller's identity, when the caller was conveying information suggesting that the patient was at imminent risk of mortally injuring herself.

(ii) Failure to ensure that the Memorandum was not accessible to unauthorised persons

The HC noted that the part of the charge, which alleged that Dr Soo had failed to take appropriate steps to ensure that the Complainant's confidential medical information in the Memorandum would not be accessible to unauthorised persons, was unacceptably broad, in that it purported to hold Dr Soo responsible for the administrative failings of the staff at his clinic. Dr Soo had specifically instructed his clinic staff to hand the Memorandum to the Husband. Dr Soo's instructions were clear and adequate. There was no duty on his part to personally deliver the Memorandum to the Husband or to personally verify the identity of the recipient. That would have been a clerical or administrative role, rather than a medical or professional duty. The clinic staff's administrative failings fell outside the scope of Dr Soo's duty to maintain the Complainant's medical confidentiality.

Moreover, Dr Soo had no duty to *ensure* that no unauthorised person could access the Memorandum. If the Memorandum had indeed been delivered to the Husband as instructed, Dr Soo could not be held responsible for how the Husband might choose to use or misuse the Memorandum, or for any subsequent misuse of the Memorandum by a person who came into possession of it, at least in circumstances where Dr Soo was not at fault in agreeing to make it available. Thus, the HC found that in all the circumstances, Dr Soo did not fail to maintain the Complainant's medical confidentiality.

B) Whether Dr Soo's actions amounted to professional misconduct

Since the HC found that Dr Soo did not fail to maintain the Complainant's medical confidentiality, this second issue did not arise.

IV. FURTHER OBSERVATIONS

The HC noted that the SMC applied to the HC for a review of the DT's decision only after members of the medical profession and the public had expressed concern that the DT's decision could lead to defensive practices among the medical profession. The HC stated that it seemed unsatisfactory that reliance had been placed on the medical profession's propensity to protest loudly over the decisions of disciplinary tribunals and/or courts, with dire warnings of the spectre of defensive medicine, in order to secure, in individual cases, the result that is desired and/or perceived to be just.

V. LEGAL IMPLICATIONS

This case highlighted the need for doctors to look after their own interests when charges are brought against them, even though they may otherwise concede liability as one way of moving on with their lives. It is also likely that the SMC will proceed more cautiously in future cases, including obtaining sufficient evidence from all relevant parties, and refrain from taking the position that a doctor is guilty merely because he has given a guilty plea.

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