

**IN THE REPUBLIC OF SINGAPORE**

**SINGAPORE MEDICAL COUNCIL DISCIPLINARY TRIBUNAL**

**[2024] SMCDT 1**

Between

**Singapore Medical Council**

And

**Dr Yeo Khee Hong**

*... Respondent*

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**FOUNDATIONS OF DECISION**

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Administrative Law – Disciplinary Tribunals

Medical Profession and Practice – Professional Conduct – Suspension

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## **Singapore Medical Council**

**v**

**Dr Yeo Khee Hong**

**[2024] SMCDT 1**

Disciplinary Tribunal – DT Inquiry No. 1 of 2024

Prof Wang Yee Tang Sonny (Chairman), Dr Swah Teck Sin, Mr Chia Wee Kiat (Judicial Service Officer)

10 January 2024, 2 February 2024, 25 March 2024 and 19 April 2024

Administrative Law – Disciplinary Tribunals

Medical Profession and Practice – Professional Conduct – Suspension

7 May 2024

### **GROUNDS OF DECISION**

*(Note: Certain information may be redacted or anonymised to protect the identity of the parties.)*

### **INTRODUCTION**

1 The Respondent, a registered medical practitioner of about 42 years' standing,<sup>1</sup> pleaded guilty to a charge of professional misconduct under s 53(1)(d) of the Medical Registration Act 1997 (2020 Rev Ed) (version in force up to 30 June 2022) (“**MRA**”) for failing to provide competent and appropriate care and/or to exercise due care in the management of his patient (“**the Patient**”) (the “**1<sup>st</sup> Charge**”),<sup>2</sup> with the 2<sup>nd</sup> Charge under s 53(1)(d) of the MRA for failing to provide adequate information to the Patient (the “**2<sup>nd</sup> Charge**”) to be taken into consideration for the purposes of sentencing.<sup>3</sup>

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<sup>1</sup> Agreed Statement of Facts (ASOF) at [1].

<sup>2</sup> Agreed Statement of Facts (ASOF) at [18]; Respondent's Submissions for New Hearing dated 3 January 2024 (RNS) at [1].

<sup>3</sup> Respondent's Submissions for New Hearing dated 3 January 2024 (RNS) at [1].

2 Having carefully considered the sentencing submissions of the Singapore Medical Council (“SMC”) and the Respondent, we ordered that the Respondent be suspended for a period of 12 months to commence 30 days after the date of our order. In addition, we also ordered that the Respondent be censured, provide an undertaking not to repeat the misconduct, and pay the costs of the SMC.

3 We now set out the grounds of our decision.

### **BRIEF BACKGROUND**

4 The Complainant is the father of the Patient.<sup>4</sup> On or around 30 July 2020, the SMC received a complaint from the Complainant alleging that the Respondent was negligent in failing to diagnose and eliminate the risk of testicular torsion in his care of the Patient, thereby resulting in the removal of the Patient’s left testicle. The relevant incident happened between 22 March 2019 and 1 April 2019 when the Patient consulted the Respondent at his clinic.<sup>5</sup>

5 On 8 October 2020, the SMC sent a Notice of Complaint to the Respondent, inviting him to submit a written explanation to address the allegations put forth in the complaint.<sup>6</sup>

6 On 29 October 2020, the Respondent provided a written response explaining his treatment and management of the Patient.<sup>7</sup>

7 On 10 December 2020, the Respondent sent a letter of apology to the Patient and his family.<sup>8</sup>

8 On 2 August 2021, the SMC invited the Respondent to submit a further written explanation to address two issues raised in the letter, i.e. whether he had relied only on the clinical assessment to exclude the diagnosis of testicular torsion of the Patient, and

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<sup>4</sup> Agreed Statement of Facts (ASOF) at [2].

<sup>5</sup> Agreed Bundle of Documents (AB) at pp 2 – 3.

<sup>6</sup> Agreed Bundle of Documents (AB) at pp 34 – 35.

<sup>7</sup> Agreed Bundle of Documents (AB) at pp 37 – 85.

<sup>8</sup> Agreed Bundle of Documents (AB) at p 86.

whether the possibility of testicular torsion was discussed with the Patient and/or his family.<sup>9</sup>

- 9 On 13 August 2021, the Respondent provided his response.<sup>10</sup>
- 10 On 4 April 2022, the SMC informed the Respondent that the Complaints Committee (“CC”) had reviewed all the circumstances of the complaint and information provided. The Respondent was also informed that an investigation was conducted to ascertain the facts of the case and an independent expert opinion was obtained to assist the CC in its deliberation. The CC reviewed the matter in its totality and decided to refer the Respondent to a Disciplinary Tribunal (“DT”) for a formal inquiry.<sup>11</sup>
- 11 On 27 March 2023, pursuant to Regulation 27 of the Medical Registration Regulations 2020 (as of 30 June 2020), the SMC served a Notice of Inquiry (“NOI”) on the Respondent. The NOI sets out two charges preferred against the Respondent. Enclosed with the NOI was the Expert Report of Dr PE dated 15 March 2023.<sup>12</sup>

## **PLEA OF GUILT**

- 12 As noted above, the Respondent pleaded guilty to one charge of professional misconduct for failing to provide competent and appropriate care and/or to exercise due care in the management of the Patient and consented to have one charge for failing to provide adequate information to the Patient to be taken into consideration for the purposes of sentencing.
- 13 The Agreed Statement of Facts (“ASOF”) tendered by the SMC set out the following materials facts.
- 14 On 22 March 2019, the Patient consulted the Respondent at his clinic. The Patient was then 15 to 16 years of age.

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<sup>9</sup> Agreed Bundle of Documents (AB) at pp 87.

<sup>10</sup> Agreed Bundle of Documents (AB) at pp 90 – 91.

<sup>11</sup> Agreed Bundle of Documents (AB) at p 92.

<sup>12</sup> Agreed Bundle of Documents (AB) at pp 93 – 164.

- 15 At the consultation, the Patient informed the Respondent that he felt pain in his left abdomen since that morning which had initially started from his left testis. The pain was associated with increased bowel movement, and the stool consistency was watery initially.
- 16 The Respondent performed a physical examination on the Patient and found, among other things, that the latter's abdomen was soft, with no mass detected, and there was no abnormal mass or torsion detected of the left testis.
- 17 The Respondent diagnosed the Patient to have abdominal colic and prescribed 10 tablets of Hyomide 10mg and 6 tablets of Diarrstope to the Patient.
- 18 On 27 March 2019, the Patient consulted the Respondent at the clinic again. At the consultation, the Patient informed the Respondent that he had swelling and pain in his left testis which was worse when sitting or walking.
- 19 The Respondent carried out a physical examination of the Patient. The Patient's left testis was enlarged and tender.
- 20 The Respondent's diagnoses were that the Patient had orchitis and epididymitis ("EO") of the left testis.
- 21 The Respondent prescribed 20 tablets of Koact 625mg to the Patient, and ordered a full blood count and urine test for the Patient to confirm his diagnosis of EO. Before arriving at his diagnosis of EO of the left testis:
- (a) The Respondent did not consider the possibility of intermittent testicular torsion;
  - (b) The Respondent decided to exclude testicular torsion as a differential diagnosis and considered that EO was more probable; and
  - (c) The Respondent did not refer the Patient to a specialist or to the Accident & Emergency department ("A&E") of a hospital before excluding testicular torsion as a differential diagnosis.

- 22 On 28 March 2019, the Respondent informed the Patient's mother of the result of the full blood count test, and that the likely cause of the swelling in the Patient's left testis was an infection. The Respondent asked the Patient's mother to inform the Patient to continue with the prescription of Koact 625mg.
- 23 On 1 April 2019, the Complainant called the Respondent as the Patient's condition did not improve and the Patient was suffering from severe pain. The Respondent informed the Complainant that the Patient's condition was serious and that the Patient should be conveyed to an A&E urgently.
- 24 The Complainant brought the Patient to Institution A ("**Institution A**"). At Institution A, the Patient was assessed at the A&E and was noted to have a tender and swollen left testis with edema and inflammation of scrotal skin. The Patient underwent a scrotal ultrasound which revealed left testicular torsion with surrounding inflammation of scrotal skin. He was admitted to a surgical ward, and an emergency exploration of the Patient's scrotum was carried out, which confirmed that the Patient had left testicular torsion with ischemic and non-viable left testis. The Patient underwent a left orchiectomy to remove his left testis.
- 25 According to the ASOF, based on the Patient's history of left testicular pain, the Patient's profile and age, and the Respondent's physical examination finding that the Patient's left testis was enlarged and tender, the Patient was at risk of testicular torsion on 27 March 2019. A reasonable and competent doctor in the Respondent's position would have considered the possibility of intermittent testicular torsion at the consultation on 27 March 2019, and would not have excluded testicular torsion as a differential diagnosis without first referring the Patient to the A&E of a hospital or a specialist such as a urologist or paediatric surgeon for urgent surgical assessment or exploration.
- 26 The ASOF further states that the applicable standard of care is (a) to consider all acute scrotal pain as testicular torsion until proven otherwise; and (b) regardless of the duration of the patient's symptoms or whether the patient had acute or intermittent testicular torsion, to refer the patient urgently to the A&E of a hospital or a specialist. The ASOF states that testicular torsion cannot be conclusively excluded or eliminated

on history-taking and physical examination alone. Tests such as a full blood count and urine microscopy, which were conducted by the Respondent on 27 March 2019, do not enable a doctor to reliably differentiate between EO and testicular torsion. In making an urgent referral to the A&E of a hospital or a specialist to exclude testicular torsion, a doctor would also have needed to explain the reason for an urgent referral and inform the patient of the possibility of testicular torsion.

- 27 The ASOF states that the Respondent failed to act as a reasonable and competent doctor would have done and was in breach of the applicable standard of care. Consequently, the Patient's diagnosis of and treatment for left testicular torsion was delayed. Testicular torsion is a time-sensitive surgical emergency with significant morbidity, especially where there is a missed or delayed diagnosis. The foreseeable consequences of such a delay were ischaemic injury to the left testis leading to a non-viable testis which required orchidectomy and the associated physical and potential psychological harm.
- 28 By reason of the Respondent's failure to consider the possibility of intermittent testicular torsion, and his exclusion of testicular torsion as a differential diagnosis without first referring the Patient to the A&E of a hospital or a specialist such as a urologist or paediatric surgeon for urgent surgical assessment or exploration at the consultation on 27 March 2019:
- (a) The Respondent breached Guideline A1 of the 2016 Edition of the Singapore Medical Council Ethical Code and Ethical Guidelines ("ECEG") which provides that in clinical practice, the care of the Patient is the Respondent's primary concern and, in particular:
    - (i) Guideline A1(1) which provides that to provide the best possible care, the Respondent must provide competent, compassionate, and appropriate care to the Patient; and
    - (ii) Guideline A1(4) which provides that to provide the best possible care, the Respondent must provide a standard of medical care that is based on accepted good clinical practice; and
  - (b) The Respondent breached Guideline A2 of the ECEG which provides that good clinical care requires adequate evaluation of the Patient so that he is able to make appropriate management plans and, in particular Guideline A2(1) which

provides that the Respondent must ensure that he has sufficient information about the Patient derived from, amongst others, relevant investigations or information sources before offering any opinion, making management plans, or offering treatment; and

- (c) The Respondent failed to provide competent and appropriate care and/or to exercise due care in the management of the Patient, and this amounts to such serious negligence that it objectively portrayed an abuse of the privileges which accompany registration as a medical practitioner, and the Respondent is thereby guilty of professional misconduct under s 53(1)(d) of the MRA.

29 The Respondent admitted to the ASOF without qualification.

## SENTENCING FRAMEWORK

30 It is common ground between the parties that the DT should have regard to the sentencing framework laid down in *Wong Meng Hang v Singapore Medical Council* [2019] 3 SLR 526 (“*Wong Meng Hang*”) and the Sentencing Guidelines for Singapore Medical Disciplinary Tribunals dated 15 July 2020 (“Sentencing Guidelines”),<sup>13</sup> which explained, elucidated, and elaborated on *Wong Meng Hang* sentencing framework.<sup>14</sup>

31 As noted in the Sentencing Guidelines, the *Wong Meng Hang* sentencing framework is a four-step sentencing framework to systematically weigh all relevant considerations in medical disciplinary cases. This sentencing framework takes into account offence-specific factors of “harm” and “culpability”, as well as offender-specific aggravating and mitigating factors.<sup>15</sup> The Court in *Wong Meng Hang* set out the following sentencing matrix based on different levels of harm and culpability:<sup>16</sup>

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<sup>13</sup> Prosecution’s Sentencing Submissions dated 3 January 2024 at [10]; Respondent’s Sentencing & Mitigation Submissions dated 3 January 2024 at [19].

<sup>14</sup> Sentencing Guidelines for Singapore Disciplinary Tribunals dated 15 July 2020 at [7].

<sup>15</sup> Sentencing Guidelines for Singapore Disciplinary Tribunals dated 15 July 2020 at [42].

<sup>16</sup> Sentencing Guidelines for Singapore Disciplinary Tribunals dated 15 July 2020 at [55].

<b>Harm</b> <b>Culpability</b>	<b>Slight</b>	<b>Moderate</b>	<b>Severe</b>
<b>Low</b>	Fine or other punishment not amounting to suspension.	Suspension of up to 1 year.	Suspension of 1 to 2 years.
<b>Medium</b>	Suspension of up to 1 year.	Suspension of 1 to 2 years.	Suspension of 2 to 3 years.
<b>High</b>	Suspension of 1 to 2 years.	Suspension of 2 to 3 years.	Suspension of 3 years or striking off.

32 Applying the sentencing framework, the SMC submitted that a suspension of 14 months is a just, reasonable and appropriate sanction given that the mitigating factors would have balanced off against the aggravating factors.<sup>17</sup> In addition, the SMC submitted that the Respondent be censured, provide a written undertaking to the SMC that he will not engaged in the conduct complained of and any similar conduct in the future, and pay the costs and expenses of and incidental to the DT proceedings, including the costs of the SMC’s solicitors.<sup>18</sup>

33 The Respondent submitted that a suspension of 15 months would be an appropriate starting point within the indicative sentencing range based on the Harm-Culpability Matrix.<sup>19</sup> This sentence should be reduced from 15 to 12 months’ suspension based on the Respondent’s specific mitigating factors and thereafter, there ought to be a further one-third reduction in the sentence<sup>20</sup> based on the Respondent’s submission that there had been an inordinate delay in the prosecution of the proceedings not occasioned by the Respondent.<sup>21</sup> Accordingly, the Respondent contended that a suspension of 8 months would be appropriate.<sup>22</sup> The Respondent did not object to the usual orders of a censure and a written undertaking, as well as payment of the SMC’s reasonable costs.<sup>23</sup>

<sup>17</sup> Prosecution’s Sentencing Submissions dated 3 January 2024 at [76].

<sup>18</sup> Prosecution’s Sentencing Submissions dated 3 January 2024 at [78].

<sup>19</sup> Respondent’s Supplementary Sentencing & Mitigation Submissions dated 1 April 2024 at [56]-[57].

<sup>20</sup> Respondent’s Supplementary Sentencing & Mitigation Submissions dated 1 April 2024 at [94].

<sup>21</sup> Respondent’s Supplementary Sentencing & Mitigation Submissions dated 1 April 2024 at [84]-[85].

<sup>22</sup> Respondent’s Supplementary Sentencing & Mitigation Submissions dated 1 April 2024 at [95].

<sup>23</sup> Respondent’s Supplementary Sentencing & Mitigation Submissions dated 1 April 2024 at [5].

34 The main dispute in the sentencing submissions lies in the length of suspension. Having carefully considered the submissions of the parties, we were of the view that a sentence of 12 months' suspension would be appropriate. We explain below how we arrived at the sentence applying the four-step sentencing framework.

## ANALYSIS

### *Step 1 – Evaluate the seriousness of the offence with reference to harm and culpability*

#### *Level of harm*

35 It was common ground between the SMC and the Respondent that the harm caused to the Patient by the Respondent's misconduct is a relevant sentencing factor. The parties, however, were unable to agree on the severity of the actual harm caused to the Patient. Pursuant to the suggestion of the parties, the DT held a Newton Hearing to determine the issue. Parties also requested that the DT provide its determination of the issue to facilitate the parties' submissions on sentence.

36 Having heard the evidence of the respective experts and considered the submissions, we found that the Patient's likely early testicular salvage rate ("TSR") would have been an estimated 90.4% to 97.2% had the Respondent referred the Patient to the A&E of a hospital or a specialist such as a urologist or paediatric surgeon for urgent surgical assessment or exploration during the consultation on 27 March 2019. In other words, the Patient would likely have had an estimated 90.4% to 97.2% chance of salvaging his testis and would not have had his left testis removed. The detailed reasons for our finding were set out in our written grounds rendered on 25 March 2024.

37 The SMC submitted that the harm caused falls around the mid-point of the "moderate" range.<sup>24</sup> The SMC cited the following factors:

- (a) The Respondent's misconduct caused a delay to the Patient's diagnosis and treatment for left testicular torsion, such that the Patient lost a significant chance of salvaging his left testis and avoiding orchidectomy on 1 April 2019;<sup>25</sup>

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<sup>24</sup> Prosecution's Sentencing Submissions dated 3 January 2024 at [13].

<sup>25</sup> Prosecution's Sentencing Submissions dated 3 January 2024 at [13(a)].

- (b) The Patient suffered physical pain during the consultation on 27 March 2019 and up to 1 April 2019;<sup>26</sup>
- (c) The Patient suffered emotional and psychological distress from losing his left testis.<sup>27</sup> The potential harm to the Patient includes fertility issues from losing a testis;<sup>28</sup> and
- (d) There is potential harm to public confidence in the medical profession.<sup>29</sup>

38 The Respondent submitted that the harm level ought to be between moderate to serious/severe.<sup>30</sup> The Respondent was deeply saddened by the Patient's plight and accepted that he ought to be penalised for not referring the Patient to an A&E during the 27 March consultation in order for him to receive further treatment.<sup>31</sup> The Respondent accepted that the Patient would have been emotionally and psychologically affected by the incident in question.<sup>32</sup> The Respondent contended that while the DT had found the estimated TSR to be 90.4% to 97.2%, an urgent referral to the A&E would not have guaranteed the salvage of the Patient's left testis and avoidance of its removal. Hence, the full viability and function of the Patient's left testis is unclear even if it had been salvaged.<sup>33</sup> In the same vein, the impact on the Patient's fertility is also unclear as there is no evidence as regards this particular aspect.<sup>34</sup> The Respondent submitted that there is no to low harm to public confidence in the medical profession as there were only two breaches arising from the same set of facts and involving a single patient.<sup>35</sup>

39 As noted in the Sentencing Guidelines, "harm" is the type and gravity of the harm or injury that was caused to the patient and society by the commission of the offence.<sup>36</sup> Harm to society includes harm to public confidence in the medical profession.<sup>37</sup> The DT is required to consider not only the actual harm caused, but also the potential harm

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<sup>26</sup> Prosecution's Sentencing Submissions dated 3 January 2024 at [13(b)].

<sup>27</sup> Prosecution's Sentencing Submissions dated 3 January 2024 at [13(c)].

<sup>28</sup> Prosecution's Sentencing Submissions dated 3 January 2024 at [13(d)].

<sup>29</sup> Prosecution's Sentencing Submissions dated 3 January 2024 at [13(e)].

<sup>30</sup> Respondent's Supplementary Sentencing & Mitigation Submissions dated 1 April 2024 at [36].

<sup>31</sup> Respondent's Supplementary Sentencing & Mitigation Submissions dated 1 April 2024 at [37].

<sup>32</sup> Respondent's Supplementary Sentencing & Mitigation Submissions dated 1 April 2024 at [42].

<sup>33</sup> Respondent's Supplementary Sentencing & Mitigation Submissions dated 1 April 2024 at [40].

<sup>34</sup> Respondent's Supplementary Sentencing & Mitigation Submissions dated 1 April 2024 at [41].

<sup>35</sup> Respondent's Supplementary Sentencing & Mitigation Submissions dated 1 April 2024 at [47].

<sup>36</sup> Sentencing Guidelines for Singapore Disciplinary Tribunals dated 15 July 2020 at [47].

<sup>37</sup> Sentencing Guidelines for Singapore Disciplinary Tribunals dated 15 July 2020 at [49].

that could have resulted from the breach, even if such harm did not actually materialise on the given facts.<sup>38</sup>

40 The Sentencing Guidelines provide the following broad guideline to evaluate the level of harm:<sup>39</sup>

Level	Description
<b>Slight Harm</b>	<ul style="list-style-type: none"> <li>• Where no actual personal injury was caused and there was low potential for personal injury;</li> <li>• Where the offence did not cause actual psychological or emotional harm to the patient;</li> <li>• Where the offence did not undermine public confidence in the medical profession and the healthcare system; and/or</li> <li>• Where the offence did not actually undermine public health and safety or the public healthcare system, and had low potential for doing so.</li> </ul>
<b>Moderate Harm</b>	<ul style="list-style-type: none"> <li>• Where there was some actual personal injury or substantial potential for serious personal injury;</li> <li>• Where the offence caused psychological or emotional harm to the victim;</li> <li>• Where the offence undermined public confidence in the medical profession and the healthcare system; and/or</li> <li>• Where the offence actually undermined public health and safety or the public healthcare system, or had substantial potential for seriously doing so.</li> </ul>
<b>Serious Harm</b>	<ul style="list-style-type: none"> <li>• Where the offence caused serious personal injury, including injuries which are permanent in nature and which necessitate surgical attention;</li> <li>• Where the offence caused serious mental injury, in the sense of a recognisable psychiatric illness;</li> <li>• Where the offence seriously undermined public confidence in the medical profession and the healthcare system; and/or</li> <li>• Where the offence seriously undermined public health and safety or the public healthcare system.</li> </ul>

<sup>38</sup> Sentencing Guidelines for Singapore Disciplinary Tribunals dated 15 July 2020 at [50].

<sup>39</sup> Sentencing Guidelines for Singapore Disciplinary Tribunals dated 15 July 2020 at [52].

- 41 As noted earlier, we had found that the Patient’s likely early TSR would have been an estimated 90.4% to 97.2% had the Respondent referred the Patient to the A&E of a hospital or a specialist such as a urologist or paediatric surgeon for urgent surgical assessment or exploration during the consultation on 27 March 2019. Clearly, the Patient had lost a significant chance of salvaging his left testis and avoiding orchidectomy on 1 April 2019, as correctly pointed out by the SMC.
- 42 As noted in Dr PE’s Expert Report, the physical harm suffered by the Patient included unnecessary physical pain from the testicular torsion up to the Patient’s orchidectomy, the orchidectomy itself, and the post-operative recovery process and the permanent loss of his left testicle with possible future impact on the Patient’s fertility (all of which the Patient had to endure at a young age of 15).<sup>40</sup>
- 43 Dr PE also opined that potential psychological harm included self-esteem issues, feelings of loss / shame / physical damage / infertility and concerns about one’s sexuality and attractiveness.<sup>41</sup> In the present case, it is not disputed that the Patient did in fact suffer actual emotional and psychological distress.<sup>42</sup>
- 44 Turning now to the harm to society, the Sentencing Guidelines state that the greater the actual or potential harm caused to the patient, and the greater the number of patients harmed, the greater the harm would be to public confidence in the medical profession.<sup>43</sup> In the present case, while there was only one patient involved and the Respondent’s misconduct could fairly be described as one-off, the harm caused to the Patient was of such severity that it affected not only the Patient, but could also potentially affect public confidence in the trustworthiness and competence of doctors.
- 45 Taking all the above factors into account and bearing in mind the broad guideline set out in the Sentencing Guidelines, we accepted the SMC’s submission that the harm caused fell around the mid-point of the “moderate” range.

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<sup>40</sup> Agreed Bundle of Documents (AB) at p 135.

<sup>41</sup> Agreed Bundle of Documents (AB) at p 135.

<sup>42</sup> Prosecution’s Sentencing Submissions dated 3 January 2024 at p 34.

<sup>43</sup> Sentencing Guidelines for Singapore Disciplinary Tribunals dated 15 July 2020 at [51(f)].

## *Culpability*

- 46 Culpability measures the doctor’s degree of blameworthiness.<sup>44</sup> The Sentencing Guidelines set out a number of non-exhaustive factors when assessing the level of culpability.<sup>45</sup>
- 47 The SMC submitted that the Respondent had acted negligently and his breach of the applicable standard of care was severe and egregious.<sup>46</sup> Furthermore, the Respondent’s treatment of the Patient was not an appropriate management option. Despite the Patient being at risk of testicular torsion and his clinical presentation and age being suggestive of testicular torsion, the Respondent was content to treat the Patient with antibiotics, perform laboratory investigations, and to “make the decision to refer only if the pain and swelling persisted in a few days and depending on the full blood count test results”.<sup>47</sup> Based on the factors set out in the Sentencing Guidelines, the SMC submitted that the Respondent’s culpability falls within the lower end of the “medium” range.<sup>48</sup>
- 48 The Respondent submitted that he had considered the possibility of testicular torsion but in view of his physical examination of the Patient during the 27 March consultation, his preferred preliminary diagnosis was EO. It was not the case that he completely disregarded the Patient’s symptoms.<sup>49</sup> The Respondent contended that his failure to inform the Patient of the possibility of testicular torsion was a wrong judgment call, but one borne out of good intention as he did not want to cause undue alarm to the Patient.<sup>50</sup> While the Respondent accepted that there were lapses on his part, he submitted that he had the Patient’s well-being and best interests in mind and was trying his best to treat the Patient.<sup>51</sup> There was no suggestion that he was acting with any malicious intent, or that he was reckless, wilfully disregarded the Patient’s clinical presentation, symptoms

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<sup>44</sup> Sentencing Guidelines for Singapore Disciplinary Tribunals dated 15 July 2020 at [53].

<sup>45</sup> Sentencing Guidelines for Singapore Disciplinary Tribunals dated 15 July 2020 at [54].

<sup>46</sup> Prosecution’s Sentencing Submissions dated 3 January 2024 at [38].

<sup>47</sup> Prosecution’s Sentencing Submissions dated 3 January 2024 at [46].

<sup>48</sup> Prosecution’s Sentencing Submissions dated 3 January 2024 at [37].

<sup>49</sup> Respondent’s Supplementary Sentencing & Mitigation Submissions dated 1 April 2024 at [50].

<sup>50</sup> Respondent’s Supplementary Sentencing & Mitigation Submissions dated 1 April 2024 at [51].

<sup>51</sup> Respondent’s Supplementary Sentencing & Mitigation Submissions dated 1 April 2024 at [53].

and/or well-being, or intentionally and deliberately departed from accepted standards/guidelines.<sup>52</sup> Hence, his culpability ought to be between low to medium.<sup>53</sup>

49 In our view, the most significant factor in the present case in determining culpability is the Respondent's state of mind. The Sentencing Guidelines set out the following general guide from least culpable to the most culpable state of mind:

- (a) Honest omission / Inadvertence
- (b) Negligence
- (c) Recklessness / Wilful disregard
- (d) Intentional and deliberate departure from standards/guidelines

50 As it is not disputed that the Respondent was negligent, we agreed with the SMC that the Respondent's culpability fell within the lower of the "medium" range based on above general guide.

***Step 2 – Identify the applicable indicative sentencing range***

51 Based on the sentencing matrix set out in *Wong Meng Hang*, the indicative sentencing range for "moderate" harm with "medium" culpability is a suspension period of one to two years.

***Step 3 – Identify the appropriate starting point within the indicative sentencing range***

52 The SMC submitted that a suspension of 14 months is a reasonable starting point.<sup>54</sup> On the other hand, the Respondent took reference from the case of *Singapore Medical Council v Teo Sze Yang* [2022] SMCDDT 2 ("*Teo Sze Yan*") and submitted that a suspension of 15 months is an appropriate starting point.<sup>55</sup>

53 To be fair to the Respondent, we did not think that *Teo Sze Yang* is a useful precedent. This is because the 15 months' suspension was the final sentence ordered whereas at

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<sup>52</sup> Respondent's Supplementary Sentencing & Mitigation Submissions dated 1 April 2024 at [54].

<sup>53</sup> Respondent's Supplementary Sentencing & Mitigation Submissions dated 1 April 2024 at [55].

<sup>54</sup> Prosecution's Sentencing Submissions dated 3 January 2024 at [56].

<sup>55</sup> Respondent's Supplementary Sentencing & Mitigation Submissions dated 1 April 2024 at [57]-[58].

this stage of our analysis, we were mainly concerned with identifying the starting point. As set out in the Sentencing Guidelines, after identifying the indicative sentencing range, DTs should identify precisely where within the range the present offence falls to derive the starting point. This is to be done with regard to the level of harm caused by the offence and the level of the doctor's culpability.<sup>56</sup>

- 54 In the absence of any relevant case precedent<sup>57</sup>, we found the 14 months' suspension proposed by the SMC to be a reasonable starting point within the indicative sentencing range of one to two years, having regard to the level of harm caused by the offence and the level of the Respondent's culpability.

***Step 4 – Adjust the starting point by taking into account offender-specific aggravating and mitigating factors***

- 55 As noted in the Sentencing Guidelines, the fourth step of the sentencing framework requires a DT to take into account offender-specific aggravating and mitigating factors which do not relate directly to commission of the particular offence, but may nonetheless warrant an adjustment in the sentence.<sup>58</sup>

- 56 The Respondent urged the DT to consider the following mitigating factors. Firstly, he has been candid and cooperative at every stage of the SMC's investigation into the complaint.<sup>59</sup> Secondly, after he received the NOI, he indicated his intention to plead guilty at the first Pre-Inquiry Conference, thereby saving time and costs for the SMC.<sup>60</sup> Thirdly, he is extremely remorseful.<sup>61</sup> He recognised his error in the management of the Patient's condition by settling the Patient's civil claim early, and not contesting or protracting the legal proceedings. At every opportunity, he had sought to apologise to the Patient and his family.<sup>62</sup> Fourthly, he had an unblemished record as a doctor for more than 30 years.<sup>63</sup> The case happened in the later part of his long and dignified career

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<sup>56</sup> Sentencing Guidelines for Singapore Disciplinary Tribunals dated 15 July 2020 at [58].

<sup>57</sup> Sentencing Guidelines for Singapore Disciplinary Tribunals dated 15 July 2020 at [62].

<sup>58</sup> Sentencing Guidelines for Singapore Disciplinary Tribunals dated 15 July 2020 at [66].

<sup>59</sup> Respondent's Supplementary Sentencing & Mitigation Submissions dated 1 April 2024 at [71].

<sup>60</sup> Respondent's Supplementary Sentencing & Mitigation Submissions dated 1 April 2024 at [72].

<sup>61</sup> Respondent's Supplementary Sentencing & Mitigation Submissions dated 1 April 2024 at [74]-[76].

<sup>62</sup> Respondent's Supplementary Sentencing & Mitigation Submissions dated 1 April 2024 at [75]-[76].

<sup>63</sup> Respondent's Supplementary Sentencing & Mitigation Submissions dated 1 April 2024 at [77].

and has weighed and will continue to weigh heavily on his mind.<sup>64</sup> Fifthly, he has been seeing patients at his clinic since 1985, and has provided medical care to the heartland community, including families and the elderly. The various awards, testimonials and character references evidencing his good character and contributions to the community, from some of his colleagues and patients, show that he is a good and caring doctor.<sup>65</sup> Sixthly, he has learnt from the incident and corrected his medical practice.<sup>66</sup> Finally, there was an inordinate delay in the prosecution of the proceedings.<sup>67</sup> The time taken between the service of the Notice of Complaint and the NOI was a period of almost three years.<sup>68</sup> The Respondent contended that there is nothing in the present case to suggest that it was so complex that the period of nearly three years was justified and necessary. This is especially since the Respondent had very early on admitted to not having considered the possibility of intermittent testicular torsion, not advising the Patient and/or his family on the possibility of testicular torsion, and also not referring the Patient to the A&E on 27 March 2019.<sup>69</sup>

57 The SMC submitted the following aggravating factors. First, the 2<sup>nd</sup> Charge that is taken into consideration<sup>70</sup> relates to the Respondent's failure to provide adequate information to the Patient and/or his parents about the important possibility of testicular torsion or its implications, which amounted to separate breaches of the SMC ECEG relating to patient autonomy.<sup>71</sup> Secondly, the seniority of the Respondent as a medical practitioner of around 38 years' standing at the time of his misconduct.<sup>72</sup> The seniority of a doctor attracts a heightened sense of trust and confidence in the practitioner and the profession, and the negative impact on public confidence in the integrity of the medical profession is amplified when an offender is convicted of professional misconduct.<sup>73</sup>

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<sup>64</sup> Respondent's Supplementary Sentencing & Mitigation Submissions dated 1 April 2024 at [78].

<sup>65</sup> Respondent's Supplementary Sentencing & Mitigation Submissions dated 1 April 2024 at [80].

<sup>66</sup> Respondent's Supplementary Sentencing & Mitigation Submissions dated 1 April 2024 at [82].

<sup>67</sup> Respondent's Supplementary Sentencing & Mitigation Submissions dated 1 April 2024 at [84] to [93].

<sup>68</sup> Respondent's Supplementary Sentencing & Mitigation Submissions dated 1 April 2024 at [91].

<sup>69</sup> Respondent's Supplementary Sentencing & Mitigation Submissions dated 1 April 2024 at [92].

<sup>70</sup> Prosecution's Sentencing Submissions dated 3 January 2024 at [67].

<sup>71</sup> Prosecution's Sentencing Submissions dated 3 January 2024 at [69].

<sup>72</sup> Prosecution's Sentencing Submissions dated 3 January 2024 at [70].

<sup>73</sup> Prosecution's Sentencing Submissions dated 3 January 2024 at [70].

- 58 The SMC submitted that the Respondent’s apology to the Patient’s family and guilty plea reflect limited genuine remorse and insight regarding his misconduct.<sup>74</sup> The SMC pointed out that the Respondent only issued an apology to the Patient’s family after legal proceedings had commenced against him. Prior to this, he had stood by his action. Even in his apology, he would only concede that “with the benefit of hindsight, things could have been done differently”.<sup>75</sup> Furthermore, the Respondent only provided the SMC with a copy of his expert report on 20 November 2023, a week before the first hearing date for the Inquiry had been scheduled to be held.<sup>76</sup> The SMC contended that the Respondent has not displayed any interest in facilitating the expedient administration of justice.<sup>77</sup>
- 59 The SMC disputed the Respondent’s assertion that there had been an inordinate delay in the prosecution of proceedings.<sup>78</sup> Firstly, the Notice of Complaint was served on the Respondent on 8 October 2020 and the NOI was served on him on 27 March 2023. This is a period of under two years and six months, not “nearly three years”.<sup>79</sup> Secondly, there was no delay, let alone inordinate delay, to speak of. Time is needed for quasi-criminal processes to run their course.<sup>80</sup> The issues canvassed during the DT proceedings are not exhaustive of the issues that arose out of the complaint. As the complaint alleged negligence on the Respondent’s part from 22 March 2019 onwards, it was necessary for expert evidence to be obtained to properly investigate the full scope of the charge.<sup>81</sup> Furthermore, the Respondent raised material matters and events in his written explanations that were not documented in the 22 March Records and 27 March Records, which introduced evidential uncertainties which had to be taken into account in the prosecution of these proceedings.<sup>82</sup>
- 60 The SMC highlighted that the Respondent himself required almost eight months to file an expert report and, even 1.5 months later, continued to tender further expert evidence. While the Respondent’s expert evidence was confined to the limited issue of the

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<sup>74</sup> Prosecution’s Sentencing Submissions dated 3 January 2024 at [72].

<sup>75</sup> Prosecution’s Sentencing Submissions dated 3 January 2024 at [73].

<sup>76</sup> Prosecution’s Sentencing Submissions dated 3 January 2024 at [75].

<sup>77</sup> Prosecution’s Sentencing Submissions dated 3 January 2024 at [75].

<sup>78</sup> Prosecution’s Supplementary Sentencing Submissions dated 1 April 2024 at [20].

<sup>79</sup> Prosecution’s Supplementary Sentencing Submissions dated 1 April 2024 at [23].

<sup>80</sup> Prosecution’s Supplementary Sentencing Submissions dated 1 April 2024 at [24].

<sup>81</sup> Prosecution’s Supplementary Sentencing Submissions dated 1 April 2024 at [24(a)].

<sup>82</sup> Prosecution’s Supplementary Sentencing Submissions dated 1 April 2024 at [24(d)].

Patient's early testicular salvage rates, the scope of the SMC's expert evidence was much wider, as it had to consider the relevant standard of care, any breaches of this standard, the extent of such breaches, and the harm caused by the breaches.<sup>83</sup>

61 The Sentencing Guidelines recognise that an inordinate delay in the prosecution of the proceedings not occasioned by the offender that caused prejudice to the offender (including the anxiety and distress suffered by the offender in having the charge hang over the offender's head) is a relevant mitigating factor.<sup>84</sup> As noted in *Ang Peng Tiam v Singapore Medical Council* [2017] SGHC 143 (at [113]):

Whether or not there has been inordinate delay is not measured in terms of the absolute length of time that has transpired, but must always be assessed in the context of the nature of investigations.

62 In *Singapore Medical Council v Wee Teong Boo* [2023] SGHC 180 (at [72]), the Court took the opportunity to stress that:

... a discount in sentence for any delay in prosecution is not automatic or routine. In every case in which there has been a delay, all the circumstances have to be scrutinised to determine whether the application of a discount is appropriate and will not trivialise or undermine the sanction being meted out.

63 In our view, the present case involves fairly complex questions of fact which necessarily engender meticulous and laborious inquiry over an extended period. The fact that the Respondent had sought to amend aspects of the ASOF and the charges<sup>85</sup>, and the fact that a Newton Hearing had to be convened, underscore the complexity of the factual disputes. Given these considerations, we do not think it could be said that there was an inordinate delay in the prosecution of proceedings.

64 In fact, as pointed out by the SMC, the Respondent himself took about 8 months to produce an expert report. This is not to mention the fact that the Respondent's request to submit the expert report came at the eleventh hour, which necessitated the first hearing date for the taking of the plea of guilty to be vacated. While we did not think

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<sup>83</sup> Prosecution's Supplementary Sentencing Submissions dated 1 April 2024 at [24(c)].

<sup>84</sup> Sentencing Guidelines for Singapore Disciplinary Tribunals dated 15 July 2020 at [70(c)].

<sup>85</sup> Prosecution's Sentencing Submissions dated 3 January 2024 at [74].

that the late submission of the Respondent's expert evidence was satisfactory, we gave him the benefit of the doubt that this was not intentional.

65 For the above reasons, we did not find the alleged delay in prosecution to be a valid mitigating factor. In any event, a discount is inappropriate given the seriousness of the harm suffered by the Patient.

66 We accepted that the seniority of the Respondent is an aggravating factor. As noted in the Sentencing Guidelines, there is an overarching need in medical disciplinary cases to uphold the standing of the profession and prevent an erosion of public confidence in the trustworthiness and competence of its members.<sup>86</sup> Against this consideration, we took into account the fact that the Respondent has a long unblemished track record and good professional standing. The present offence was one-off and out of character. In our view, he is unlikely to re-offend.

67 We accepted that the 2<sup>nd</sup> Charge to be taken into consideration is an aggravating factor.<sup>87</sup> In deciding on the weight to be given to this factor, we took into account the fact that this is a related charge that arose from the same incident involving the same patient.

68 We accepted that the plea of guilt and co-operation with investigations, and remorse of the Respondent are valid mitigating factors.<sup>88</sup> While we took note of the matters highlighted in the SMC's submissions, we also noted that the Respondent had consistently maintained his position to plead guilty and had settled the Patient's civil claim without protracting the legal proceedings. He had acknowledged the seriousness of the harm caused to the Patient, apologised to the Patient and his family, and taken steps to improve his medical practice to prevent the recurrence of the offence. These considerations, taken together with the fact that this was an isolated incident in a long unblemished record of more than 30 years, gave us reasons to believe that he was genuinely remorseful. Additionally, the plea of guilt not only saved time and resources, it also obviated the need to involve the Patient and/or his family in the proceedings.

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<sup>86</sup> Sentencing Guidelines for Singapore Disciplinary Tribunals dated 15 July 2020 at [69(b)].

<sup>87</sup> Sentencing Guidelines for Singapore Disciplinary Tribunals dated 15 July 2020 at [69(c)].

<sup>88</sup> Sentencing Guidelines for Singapore Disciplinary Tribunals dated 15 July 2020 at [70(a)] & [70(d)].

69 Balancing the aggravating and mitigating factors, we calibrated the sentence to 12 months' suspension. In our view, this was a fair and appropriate sentence given all the circumstances of the case.

70 In the circumstances, we made the following orders:

- (a) The Respondent's registration be suspended for a period of **12 months**;
- (b) The Respondent be censured;
- (c) The Respondent to submit a written undertaking to the SMC that he will not engage in the conduct complained of or any similar conduct; and
- (d) The Respondent shall pay the costs and expenses of and incidental to these proceedings, including the costs of the solicitors to the SMC.

71 We ordered the suspension order to commence 30 days after the date of the DT's order and that the Grounds of Decision on Sentencing and the earlier Grounds of Decision on Newton Hearing be published.

72 The hearing is hereby concluded.

Prof Wang Yee Tang Sonny  
Chairman

Dr Swah Teck Sin

Mr Chia Wee Kiat  
Judicial Service Officer

Mr Chia Voon Jiet, Ms Lee I-Lin and Ms Chin Dan Ting  
(M/s Drew & Napier LLC)  
for Singapore Medical Council; and

Mr Christopher Chong and Ms Sharon Liu  
(M/s Dentons Rodyk & Davidson LLP)  
for Dr Yeo Khee Hong