

Medical Law

## Of Evidence and Experts – High Court Dismisses Claim for Medical Negligence

### Introduction

In claims against healthcare professionals or institutions for medical negligence or other grounds of medical malpractice, the points of contention are often heavily dependent on questions of fact and issues of expert opinion. Factual evidence and expert opinion thus play a central role, as was aptly demonstrated in the Singapore High Court case of *Chia Soo Kiang v Tan Tock Seng Hospital Pte Ltd* [2022] SGHC 259.

The plaintiff in this case had brought a claim against Tan Tock Seng Hospital ("**TTSH**") and several doctors for the death of his mother, Mdm Tan, alleging that TTSH's doctors and staff had been negligent in – *inter alia* – mis-diagnosing her and failing to resuscitate her promptly, and in not admitting her to the Intensive Care Unit ("**ICU**") or High Dependency Unit ("**HDU**"). The plaintiff also alleged that they had failed to obtain Mdm Tan's consent before stopping certain medications.

The case rested largely on the evidence of parties' factual and expert witnesses, with the Court having to navigate the opposing opinions of the expert witnesses. The Court ultimately determined that the evidence of the defendants' expert witnesses was more reliable, and thus dismissed the claims for negligence and failure to obtain consent.

This Update provides a summary of the key points of the decision.

### Brief Facts

Mdm Tan was 74 years old and had a history of multiple chronic ailments. She was admitted to TTSH with a persistent fever, where she was diagnosed to have sepsis complicated by a type 2 myocardial infarction. The TTSH doctors prescribed the relevant treatment and stopped certain other medications that Mdm Tan was on as they could adversely affect her condition.

While Mdm Tan was still in TTSH, she collapsed in the shower while being assisted by a nursing intern. Other TTSH staff came to assist, but Mdm Tan did not regain consciousness, and passed away about three weeks later.

Mdm Tan's son, the plaintiff, sued TTSH and several doctors as Mdm Tan's personal representative:

- (a) The plaintiff claimed that TTSH and its doctors had been negligent in failing to diagnose Mdm Tan as having a type 1 myocardial infarction (an acute heart attack) when initially admitted, for



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taking Mdm Tan for a shower, for not resuscitating her promptly, and for not admitting her to the ICU/HDU.

- (b) The plaintiff also claimed that TTSH and its doctors failed to obtain consent from Mdm Tan when the doctors stopped certain medications.

## Holding of the High Court

The Court found in favour of the defendants, dismissing the plaintiff's claim.

### Negligence

On the issue of negligence, the Court had to assess the two different expert opinions – the plaintiff's expert witnesses, Dr Chong and Dr Lim, and the defendants' expert witness, Dr Yeo. Ultimately, the Court chose to accept Dr Yeo's evidence over the evidence of the plaintiff's witnesses:

- (a) Dr Chong and Dr Lim submitted that Mdm Tan had a type 1 myocardial infarction when admitted to TTSH, while Dr Yeo submitted that Mdm Tan had been correctly diagnosed as having sepsis complicated by a type 2 myocardial infarction. On an assessment of the facts, the Court accepted Dr Yeo's position that Mdm Tan's condition on admission was consistent with a type 2 myocardial infarction. The Court also rejected Dr Chong's view that the treating doctors should have ordered a whole range of tests, scans and investigations for Mdm Tan on admission, agreeing with the treating doctors and the defendants' experts that these were unnecessary in the circumstances.
- (b) The Court rejected the submission that the doctors had been negligent in not sending Mdm Tan to ICU or HDU.
- (c) The plaintiff submitted that the defendants were negligent in changing the medication that Mdm Tan was on. However, the Court found that changing the medication had no bearing on the diagnosis or Mdm Tan's subsequent collapse.
- (d) Finally, the Court rejected the submission that TTSH was negligent in permitting the intern to take Mdm Tan for a shower or failing to resuscitate her promptly. Mdm Tan's condition at the time did not suggest that she should not have been taken for a shower and the TTSH employees were capable of assisting Mdm Tan with her shower, and had responded immediately to Mdm Tan's collapse.

The Court concluded that the allegations against the defendants were woefully short of evidence, and had been methodically refuted by not just the treating doctors and nurses, but also the defendants' expert witnesses.

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The Court also highlighted that it found Dr Chong's evidence unreliable and perplexing in light of the factual evidence. The Court took note of the fact that Dr Chong had stated categorically in his first affidavit that Mdm Tan had a type 2 myocardial infarction when she was admitted. This first affidavit was lifted almost verbatim from the affidavit of another medical expert whom the plaintiff initially intended to call, but eventually did not. Dr Chong subsequently changed his mind and filed a supplementary affidavit stating that Mdm Tan had a type 1 myocardial infarction instead. The Plaintiff's counsel sought the Court's leave to withdraw Dr Chong's first affidavit. This was rightly rejected by the Court who agreed with defendants' counsel that his first affidavit should be subject to scrutiny.

Dr Chong claimed that he had seen fresh evidence to explain the change in his position. However, the Court found that none of the pieces of evidence would have led to a complete turnaround in his evidence. This put Dr Chong's neutrality and independence as an expert into considerable doubt.

### Consent

The Court rejected the plaintiff's submission that TTSH and its doctors had failed to obtain Mdm Tan's consent before withdrawing Mdm Tan's medication.

The Court held that wrongful cessation of medication is a matter of negligence, and not one of consent. The cessation of medication is a strictly clinical decision. A wrongful cessation of medication is a matter of negligence simpliciter; save in certain limited circumstances, it is not negligence merely because of a failure to obtain the patient's consent to do so.

In any event, the defendants did not merely stop the medication for Mdm Tan, but had changed the medication to one with a wider coverage. The Court thus found that the defendants had not been negligent in stopping the medications.

### Concluding Words

Medical negligence cases, being matters of professional practice, require the assistance of expert witnesses to shed light on technical/expert issues. The Court will assess the expert evidence, such as the basis for the expert's conclusions, as well as the reliability of the experts and their opinions.

This decision demonstrates how the Court will look at competing expert opinions in order to determine which opinion (or part thereof) to rely on. It also shows the pitfalls of an expert opinion that is not sufficiently supported by adequate factual evidence. Parties should thus ensure that they obtain sufficient guidance on the necessary expert opinions required to support positions they may take.

Finally, it is noteworthy that the Court devoted some ink to provide its views on the allegation made by the Plaintiff that Mdm Tan ought to have been admitted to the ICU/HDU. This is not an uncommon allegation made by patients and their families. The Court noted that it is not the case that every patient with the underlying conditions that Mdm Tan had, ought to be placed in an ICU or HDU. The Court

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further observed that public hospitals are required to maintain a balance between a patient's needs and the proper allocation of beds. It is not a good reason to admit a patient to ICU/HDU just in case they suffer a collapse. The objective evidence suggested that Mdm Tan was haemodynamically stable from her admission until her collapse. There was therefore no reason to fault the doctors for not admitting her to ICU or HDU.

For further guidance, please feel free to contact our team below.

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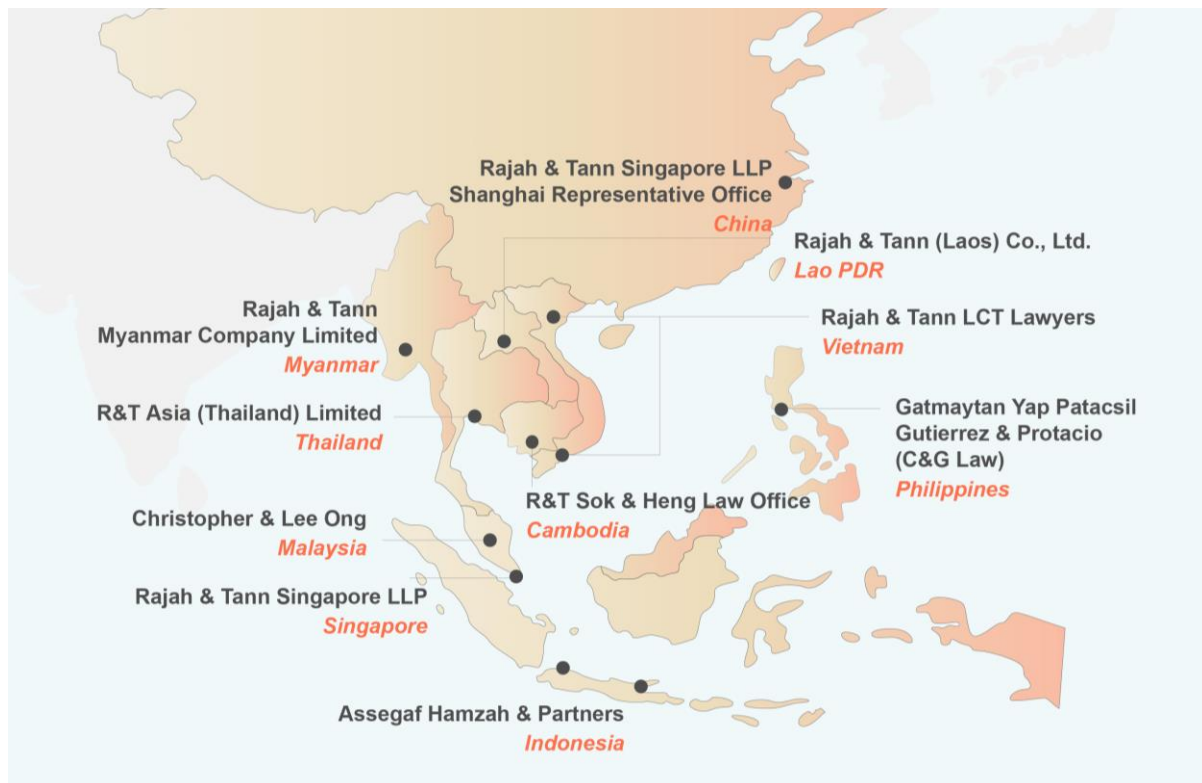
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