This decision has been amended. Please see the end of the decision for a list of the amendments.

Medical Tribunal
New South Wales

Medium Neutral Citation	Health Care Complaints Commission v Dr Tat Kong Joseph Tiong [2012] NSWMT 6
Hearing Dates	13,14 February,4 April 2012
Decision Date	5/04/2012
Before	Kavanagh J; Dr C Berglund PhD, Dr J Sammut, Dr J Briedis
Decision	Orders:

1.The Tribunal marks its strong disapproval of Dr Tiong's conduct by reprimanding Dr Tiong pursuant to s 149A(1) of the *Health Practitioner Regulation National Law (NSW) No 86a*.

2.Dr Tiong is restricted from the practice of cosmetic surgery for a period of six months.

3.Dr Tiong's registration as a general practitioner is to be also subject to the following conditions:

Educational Courses

(i)To participate in and complete within 12 months of the date of this Decision and at his own expense, the course "Dealing with Difficult Doctor-Patient Relationships" conducted by the Cognitive Institute.

The doctor is required to supply to the Council a copy of the Institute's Certificate detailing satisfactory completion (or otherwise) within two weeks of its receipt.

(ii)Dr Tiong is to complete at his own expense prior to resuming his cosmetic surgery practice the course on Medical Ethics conducted in distance mode by the Department of General Practice, Monash University, Victoria. Within two weeks of completing the Ethics course, Dr Tiong is to provide documentary evidence to the Council that he has satisfactorily completed the course.

(iii)Dr Tiong is to complete at his own expense prior to resuming his cosmetic surgery practice the course on Mastering Shared Decision-Making conducted in distance mode by the Cognitive Institute.

Within two weeks of completing the Mastering Shared Decision-Making course, Dr Tiong is to provide documentary evidence to the Council that he has satisfactorily completed the course.

(iv)Dr Tiong is to participate and complete the Australian College of Cosmetic Surgeon's Continuing Medical Education Course requirement each year for the next three years.

The doctor is required to supply to the Council a copy of the satisfactory completion (or otherwise) within two weeks of its receipt.

Supervision

4.Dr Tiong is to nominate a supervisor within 28 days of the date of this Decision (to be approved by the Medical Council) to monitor and review his clinical practice and compliance with Conditions in accordance with Level 3 Supervision as contained in the Council's Guidelines for Supervision. The supervisor should have surgical qualifications acceptable to the Medical Council. The approved supervisor is to be provided with a copy of the Council's Guidelines and a copy of this Decision. The practitioner is to be responsible for all costs associated with the supervision arrangement. The supervisory arrangement remains in place over his general practice and when he resumes his surgical practice until such time as the Medical Council considers it is no longer necessary.

The practitioner is to ensure that:

(a)he and the supervisor meet on a monthly basis for at least one hour, the first meeting to occur within one month of being advised by the Council that his nominated supervisor has been approved;

(b)at each meeting they address clinical cases and selection, record keeping and surgical practices;

(c)at each meeting, the supervisor completes a record of matters discussed at the meeting in a format prescribed or approved by the Council;

(d)the supervisor forwards to the Council each month a

Supervision Report in a format prescribed or approved by the Council;

(e)the supervisor is authorised to inform the Council immediately if there is any concern in relation to the practitioner's compliance with the supervision requirements, compliance with other conditions of registration, clinical performance or if the supervisor relationship ceases;

(f)in the event that the approved supervisor is no longer willing or able to provide the supervision required, details of a replacement supervisor are to be forwarded for approval by the Council within 21 days of the cessation of the original supervisory relationship.

5.Following the period of suspension Dr Tiong on resuming his practice of cosmetic surgery must practice under the following special condition:

Dr Tiong is not to perform surgery that requires intravenous sedation or anaesthesia unless an anaesthetist is present.

6.**Medical Records Audit**

Dr Tiong is to submit to an audit, at the premises where he conducts his medical practice, of a random selection of his medical records by a person or persons nominated by the Council, to assess his compliance with Part 4 of the *Health Practitioner Regulation (NSW) Regulation* 2010 and the standards set out in the Standards for General Practice 3rd Edition, Royal Australian College of General Practitioners (RACGP) and to ensure that Dr Tiong is complying with practice conditions. An audit is to occur within two months following the doctor's return to surgical practice and at six monthly intervals until the Medical Council determines they are no longer required. Dr Tiong will meet all costs associated with any audit/s and report/s.

7.**Infection Control**

That the Medical Council of NSW arrange an inspection of Dr Tiong's medical premises within three months of the date the restriction is lifted and thereafter at six monthly intervals until no longer required by the Council, in order to assess and ensure his compliance with the Infection Control Standards as set out in Part 3 of the *Health Practitioner Regulation (NSW) Regulation* 2010. The doctor is to meet the cost of the inspection.

8.The Medical Council of NSW is the appropriate review body for the purpose of a review under Part 8 Div 8 of the *Health*

Practitioner Regulation National Law (NSW).

9.The respondent to pay the complainant's costs.

Catchwords	UNSATISFACTORY PROFESSIONAL CONDUCT AND PROFESSIONAL MISCONDUCT - Doctor charged with failure to obtain informed consent for unique cosmetic surgery - failure to keep proper medical records - failure to ensure proper post-operative care - failure to ensure safe aseptic practices in day surgery - doctor's treatment one patient considered - doctor's conduct both unsatisfactory professional conduct and professional misconduct - limitation placed on doctor's practice of medicine - appointment of an independent supervisor - retraining recommended in many aspects of practitioner's medical practice - orders accordingly - costs
Legislation Cited	Health Practitioner Regulation National Law (NSW) No 86a Medical Practice Act 1992
Cases Cited	Buttsworth v Walton, NSW Court of Appeal, Unreported, 19 December 1991 Childs v Walton, NSW Court of Appeal, Unreported, 13 November 1990 Council of Law Society of New South Wales v Foreman (1994) 34 NSWLR 408 Health Care Complaints Commission v Litchfield (1997) 41 NSWLR 630 Law Society of New South Wales v Bannister (1993) 4 LPDR 24 Law Society of New South Wales v Walsh (NSW Court of Appeal, Unreported, 15 December 1997)
Category	Principal judgment
Parties	Health Care Complaints Commission (Complainant) Dr Tat Kong Joseph Tiong (Respondent)
Representation	Health Care Complaints Commission (Complainant) Dibbs Barker (Respondent) R Mathur (Complainant) G M Gregg (Respondent)

File Number(s) MT40026 of 2011

DECISION

1 The Health Care Complaints Commission ("the complainant") referred a complaint against Dr Tat Kong Joseph Tiong to a Professional Standards Committee constituted under the *Medical Practice Act* 1992 (now repealed) ("the MP Act"). On 30 August 2011, the Professional Standards Committee terminated its inquiry pursuant to s 179 of the MP Act and referred two complaints to the Medical Tribunal. It is alleged that the practitioner:

COMPLAINT ONE

is guilty of unsatisfactory professional conduct under section 139B of the National Law in that the practitioner has:

(i) engaged in conduct that demonstrates that the knowledge, skill or judgement possessed, or care exercised, by the practitioner in the practice of medicine is significantly below the standard reasonably expected of a practitioner of an equivalent level of training or experience, and/or

(ii) contravened the *Medical Practice Regulation 2003* (repealed); and/or

(iii) engaged in improper or unethical conduct relating to the practice or purported practice of medicine.

PARTICULARS OF COMPLAINT ONE

On the 6 August 2007 the practitioner first saw the patient in relation to a facial cosmetic procedure. On 3 September 2007 the patient underwent breast uplift surgery using Promoltalia thread system. An overseas visiting surgeon Dr Accardo performed this surgery with the practitioner assisting with the surgery under the guidance and supervision of the visiting surgeon.

The patient developed post surgical complications, including an MRSA infection, ongoing pain and weakness in her right breast and rib region, and scarring of the breast. The patient consulted the practitioner between October 2007 and April 2008 in relation to the

treatment of her postoperative condition.

1.The practitioner inappropriately and / or improperly suggested breast uplift surgery in circumstances where;

(i) no inquiry or request had ever been made by the patient for such a procedure;

(ii) the procedure was not indicated;

(iii) the patient's breasts had not been examined by the practitioner prior to the suggestion being made;

(iv) the practitioner telephoned the patient at home on the 21 August 2007 (outside the consulting rooms and environment) suggesting and recommending the procedure; and

(v) the patient was informed that the procedure would be at no additional expense to the patient.

2.The practitioner failed to obtain informed consent for the breast uplift surgery in that;

(i) the patient was never informed that non absorbable threads were to be used;

(ii) those matters particularised on page 5 of the *Information and Consent Breast Lift and Threads Procedure* form were never explained to the patient, in particular;

a) what "*condition*" the patient suffered under"

b) why the patient "*needed*" this treatment

c) the procedure and risks, specifically associated with this procedure

d) relevant treatment options

e) likely consequences if those risks occur

f) the significant risks and problems specific to the patient

Between October 2007 and April 2008 the patient complained to the practitioner of continued pain and discomfort in both breasts and rib region and scarring of the breasts.

3.Between 26 November 2007 and 1 December 2007 the practitioner was advised by Dr Accardo and Ms Cozzolino to have the patient's up-lift threads removed as a matter of urgency. Between 26 November 2007 and April 2008 the practitioner failed to take all necessary steps to ensure the removal of the threads in that;

(i) the Practitioner failed to remove the threads in circumstances where he was primarily responsible for the patient's post operative care; or

(ii) he failed to refer the patient to any other Australian surgeon for removal of

the breast threads; or

(iii) he failed to refer the patient to a public hospital for removal of the breast threads.

4.The practitioner failed to comply with the requirements of clause 5 and Schedule 2 of the *Medical Practice Regulation 2003* (repealed) in that he failed to keep:

A.any clinical records for the consultations on:

a) 15 October 2007;

b) 13 November 2007;

c) 17 December 2007;

d) 8 January 2008;

e) 5 March 2008;

f) 21 April 2008;

B.adequate clinical records for the consultations on:

a) 6 August 2007;

b) 20 August 2007;

c) 20 November 2007;

d) 12 March 2008;

5.The medical practitioner failed to comply with the requirements of clause 4 and Schedule 1 (Part 2, 2 (2)), of the *Medical Practice Regulation 2003* (repealed) in that he failed to ensure that aseptic techniques were maintained in his treatment room during the course of the breast procedure, in that;

(i) practitioners shared the use of surgical gowns;

(ii) practitioners failed to change surgical gowns between procedures,

(iii) surgical drapes were not secured;

(iv) sterile trays were placed on non-sterile benches;

(v) surgical needles were re-capped after use;

(vi) incorrect sequence of surgical preparation, in that Patient A's breasts were marked and prepared for surgery at the completion of the facial procedure.

COMPLAINT TWO

is guilty of professional misconduct under section 139E of the National Law in that the practitioner has:

(i)engaged in unsatisfactory professional conduct of a sufficiently

serious nature to justify suspension or cancellation of the practitioner's registration, or

(ii)engaged in more than one instance of unsatisfactory professional conduct that, when the instances are considered together, amount to conduct of a sufficiently serious nature to justify suspension or cancellation of the practitioner's registration.

PARTICULARS OF COMPLAINT TWO

See the particulars 1 to 5 above.

2 Dr Tiong conceded that in the circumstance revealed in the particulars of Complaint One a finding of unsatisfactory professional conduct is appropriate. The doctor accepts his conduct was unsatisfactory professional conduct.

3 As to the second complaint, the doctor challenges the HCCC's contention that the same particulars give grounds for a finding of professional misconduct against him.

4 Section 139B of the *Health Practitioner Regulation National Law* (NSW) No 86a which defines "unsatisfactory professional conduct" of a registered health practitioner as:

139B Meaning of "unsatisfactory professional conduct" of registered health practitioner generally [NSW]

(1) *Unsatisfactory professional conduct* of a registered health practitioner includes each of the following-

(a) Conduct significantly below reasonable standardConduct that demonstrates the knowledge, skill or judgment possessed, or care exercised, by the practitioner in the practice of the practitioner's profession is significantly below the standard reasonably expected of a practitioner of an equivalent level of training or experience.

5 Section 139E of the *National Health Law* defines "professional misconduct" by a registered health practitioner as including more than one instance of unsatisfactory professional conduct that, when the instances are considered together, amount to conduct of a sufficiently serious nature as to be professional misconduct.

6 Dr Tat Kong Joseph Tiong is a medical practitioner practising as a

cosmetic surgeon from private rooms at Kariong on the Central Coast, New South Wales. He holds consulting and surgical rights at Eastern Suburbs Private Hospital in Randwick, Bondi Junction Private Hospital and Maroubra Day Surgery, each in New South Wales. He was awarded a Bachelor of Medicine / Bachelor of Surgery by the University of Sydney. Between 1984-1988, he worked as a registrar at major teaching hospitals in orthopaedic surgery, gastrointestinal surgery, urology and gained experience in looking after trauma patients, requiring external fixators, with osteomyelitis, with MRSA infection and worked closely with Infectious Disease Control Teams.

7 In 1993, he began work as a general practitioner and director of Curringa, where he remains. He obtained further experience looking after patients who had undergone total hip replacements and subsequently developed MRSA infection, day in and day out in the community in conjunction with infectious disease specialists and district nurses at Gosford Hospital.

8 He has passed the FRACS primary examination and has done two years of the recognised Advanced Surgical Training Program with the Royal Australian College of Surgeons in addition to many years of non-accredited registrar posts. He also did one year of a research program under late Prof Ted Keogh and Prof Stan Wisniewski at Sir Charles Gairdner Hospital, Keogh Institute for Medical Research, Western Australia.

9 Between 2002 and 2004, Dr Tiong undertook a registrar traineeship with the Australasian College of Cosmetic Surgery and the American Academy of Cosmetic Surgery. In 2004, he commenced work as a cosmetic surgeon.

10 Dr Tiong employs four casual staff in his day surgery. He is married and has two children of university age.

11 For 20 years the doctor has practised as a general practitioner, the last eight years specialising in cosmetic surgery This is the first time there has been complaint as to the doctor's conduct.

As to the First Complaint

(i)The Procedure

The first set of particulars challenge the circumstances in which the patient agreed to have a breast lift, which agreement, it is contended, was not professionally obtained by the doctor.

(ii)Consent

The second set of particulars relate to the failure of the doctor to obtain a proper consent from the patient.

(iii)Post-Operative Care

The third set of particulars deal with the doctor's unsatisfactory post operative dealings with the patient who complained of continuous pain and expressed dissatisfaction with the result of the treatment. She further complained as to the practitioner's failure to properly treat her complaints.

(iv)Record Keeping

The fourth set of particulars deal with an examination of the doctor's clinical record keeping and reveal a failure to both properly record elementary details revealed in consultations as well as a failure to record at all some consultations.

(v)Aseptic Practices

The fifth set of particulars address evidence of a lack of compliance with Medical Practice Regulations 2003, since repealed, regarding necessary techniques to ensure infection free surgical procedures.

12 The doctor formally admitted each of the many particulars relied

upon but offered to the Tribunal an explanation, in mitigation, as to some of the factual matters as contained therein. His counsel, Mr Gregg, said "the respondent asks the Tribunal to look at the broader factual context" meaning the circumstances surrounding the lodging of the complaint.

13 The Tribunal issued a Suppression Order in relation to the patient's name and in relation to the mention of her name in any documentation relied upon in the hearing.

The First Complaint

(i)The Procedure

14 Dr Tiong determined he wished to promote a new thread procedure for a company, Promo Italia, by supporting a demonstration of a new procedure for a breast lift by threads by a visiting Italian surgeon, Dr Accardo. To effect the demonstration and to persuade that Dr Tiong should be the "trainer" of Australian surgeons in the procedure, a licence to practice in NSW was obtained for Dr Accardo.

15 Much of the evidence given in relation to the surrounding circumstance which led to the patient's agreement to have a breast lift were in dispute. The dispute focused on the allegation contained in Particular 1(i) which asserts no inquiry or request had ever been made by the patient for a breast procedure. The complainant pressed for a finding on this issue contending such a finding:

> ... does have an impact upon the gravity of the impropriety and, thus, the nature of the seriousness of the conduct of the practitioner.

16 The history of this patient's care by the doctor is a relevant consideration. The patient who works in the cosmetic industry (as a qualified hairdresser) acknowledged she first attended at the

doctor's surgery on 6 August 2007. Dr Tiong specialized in cosmetic work. She said of that visit:

> I wanted a mole removed and, going (sic) on a fishing expedition, to have a younger fresher look.

There was, at that time, a general discussion between Dr Tiong and the patient in regard to possible facial cosmetic surgery including facial threads.

At the next visit the mole was removed and the doctor told her of the proposed visit of Dr Accardo, an Italian Cosmetic Surgeon, who she contends she was told:

> ... was promoting a (sic) absorbable thread ... and ask (sic) would I be interested ...

At this visit the patient agreed to have the thread lift by Dr Accardo to her cheeks, brow and neck.

17 The patient contends the idea of her having the further procedure, namely a breast lift, was first raised with her by the doctor in a telephone conversation some days before the surgery when the doctor made the enquiry "How are your boobies?". He then raised with her the possibility of having the breast thread lift. The doctor directed her to an internet site to explain what he identified as a new procedure and asked her to send him photos of the breasts. She took the photos and immediately sent them to him.

18 The doctor, however, had a different recollection of the above event. He said he had the conversation with her in the surgery after the second visit as she was leaving his surgery premises and agrees he raised the possibility with her of breast lift surgery. The telephone conversation was, he contends, a follow up. Further, he denies he used the word "boobies".

19 The fact that the doctor initiated the invitation to his patient to

consider a breast lift is not in dispute. He invited his patient to consider the breast lift under a new procedure he was promoting. In agreeing he wanted to become the "trainer" for interested cosmetic practitioners, he had therefore a commercial interest in promoting the procedure.

20 The patient agreed to surgery on her face, brow, neck and breasts. Subsequently, medical analysis of the condition of her breasts revealed they were not PTOTIC. The literature of Promo Italia recommends surgery for a patient with Grade 1 or 2 PTOSIS. The peer review doctor examined the photos of the patient's breasts. The doctor was of the view the patient did not have even Grade 1 PTOSIS. We accept this stated view. Therefore, there was no physical need demonstrated for a breast uplift to be undertaken on the patient.

21 The Tribunal considers that had the doctor conducted the proper medical examination of the patient, taking guidance from the written literature on the new procedure, he would have realised she was not a suitable recipient.

22 The doctor was aware the patient was searching for a younger, fresher look. His direct approach to her to volunteer for the new procedure reveals a willingness on the doctor's part to use an expressed insecurity on the part of the patient simply to facilitate a demonstration of surgery in which demonstration, were it successful, he had a commercial interest to promote.

23 Further, and it is the Tribunal's major concern, given the invitation was extended by the doctor to a patient to volunteer for a surgical procedure, no matter how, or even when, the doctor sought her permission, he was nonetheless professionally obliged to conduct a proper medical examination to assess her physical and as well her mental state to properly determine if she was a fit and proper person to have such a surgical procedure. Even the literature on

the procedure required this specific assessment and gave the doctor guidance on what type of breast was suitable. Here we accept there was no evidence she physically needed the procedure and there was no assessment of her mental state.

24 In her first consultation the patient indicated she was not attracted to invasive surgery.

25 We adopt the peer doctor, Dr D Kennedy's, expressed view as to the way the patient entertained having the procedure:

> There is a duty of care of the practitioner to be first mindful of the patients' best interests and psychological health. It seems that this practitioner is oblivious to the serious consequences of suggesting that a patient has a deficit requiring surgery when they did not complain of any deficit.

(ii)Consent

26 As to whether the patient's consent to a surgical procedure was "informed consent", a number of matters came before the Tribunal for its consideration. The doctor emailed the patient relevant literature on the procedure but, on the evidence, he failed to satisfy himself she had read and understood its significance.

27 The patient's evidence on the issue of informed consent was relevantly as follows:

> Q. You also referred to receiving an email that you couldn't open?
>
> A. Yes.
>
> Q. That was the one with the promo Italia brochure attached?
>
> A. Yes.
>
> Q. You saw the first page?
>
> A. Yes, then it clicked straight off. But I'm sure it had "happy lift" written across the top of it.
>
> GREGG
>
> Q. Happy lift?
>
> A. Yeah.

> Q. When you were unable to open that attachment, did you contact Dr Tiong's rooms?
>
> A. Yes.
>
> Q. And say that you couldn't open it?
>
> A. Yes.
>
> Q. Was it resent to you?
>
> A. No.

28 The doctor also required on the scheduled day for the surgery that she sign a consent form. On examination, the form completely lack's reference to the fact that the breast threads were not soluble. The patient presses it was her understanding that the threads were absorbable.

29 The doctor was able to show a number of forms signed by the patient indicating her consent. She had also sent in photographs which, at that time, were indicative of her interest. However, we accept the evidence the patient held a belief the threads were "absorbable" and therefore would never require invasive surgery for their removal.

30 Dr Kennedy suggested there should be a 30 day 'cooling off' period before performing cosmetic surgery. Dr Tiong is a member of the Australian College of Cosmetic Surgery and within their 'code of practice', under their Guidelines of Informed Consent, it is written at 3.17:

> Generally there should be a "cooling off" period of at least 5 days between the initial consultation with the doctor performing the procedure and the procedure itself. It is accepted that there may be circumstances where, for practical reasons, this period may need to be shorter but it should never be less than one night. If the '"cooling off" period is less than 5 days the reasons for this must be properly documented and acknowledged by both the members and patients signature.

31 On this occasion Dr Tiong and Dr Accardo carried out only one 'face to face' consultation in regard to the breast surgery and it

occurred only half to one hour prior to the surgery being performed. This conduct is a clear breach of recommended good practice whether the cooling off period be 5 days or 30 days before voluntary surgical intervention. There should be a cooling off period and full disclosure of risk.

32 A medical opinion was placed before the Tribunal by Dr M Baldwin who opined on the issue of consent:

> ... it is my view that Ms. ... was not able to provide fully informed consent for the procedures on her face and breasts. It is my view, however, that as she was aware that this was to be a procedure carried out for the purpose of demonstration it is my view that Dr. Tiong's conduct did fall below that standard expected of a practitioner of equivalent level of experience but that this departure from the standard, bearing in mind the circumstances, was not significantly below the standard expected of a reasonable practitioner and invites no criticism.

However, Dr Kennedy opined:

> Consent must be a meeting of the minds and not merely a listing of facts and complications which may occur. This level of consent was significantly below what is expected of a practitioner with the same training or experience as this practitioner but does not invite my strong criticism. (Part of the responsibility was with the visiting surgeon, Dr Accardo.)

33 The Tribunal is satisfied the evidence establishes, in the circumstance, the patient did not give informed consent and we are of the view the patient proceeded to operative treatment without full knowledge of the risks. Such conduct by the doctor invites our criticism.

(iii)Post Operative Care

34 Dr Tiong commenced practice some 30 years ago. He has specialised in cosmetic surgery since 2002 some nine years. The doctor conducts most of his procedures in his own clinical day surgery at Kariong. He, however, also performs surgical procedures at Hurstville in another clinic and has rooms at

Macquarie Street Sydney.

35 The patient after the breast uplift complained of pain, redness, distress and limited shoulder movement. She also had a post-operative infection. She has been left with deformity.

36 The doctor was asked about his post operative care. He said:

> Q. ... what did you mean when you said, once she goes into the public hospital system the matter will be VERY COMPLICATED and secondly we will have no say in the matter?
>
> A. I mean exactly what I say because the system, once they go into hospital, whoever the patient, if a public patient, whoever the patient admitted under that particular doctor or surgeon, I don't know who he or she may be admitted under will have full control.
>
> Q. Doctor, what was the problem with that, noting that on your own admission you didn't have the experience to deal with the problem anymore, why were you concerned that the public hospital would have full control over a patient that you knew was suffering and in pain?
>
> WITNESS
>
> A. I disagree that I was not capable of managing the patient. I think by I was not able to manage the patient in terms of actually surgically actively surgically intervening; that's what I meant. But I could manage the patient very well in terms of infection and she was already under control and she was well; she wanted to work; she wanted to stay at the work force.
>
> Q. Doctor, she was in pain and you knew she was in his pain?
>
> A. She was in some sort of pain, but she was still able to want to go to work.
>
> Q. Why were you not happy to send your patient into a public hospital to have her threads removed?
>
> A. I'm not unhappy because I said (she) did not ask me she want to go to hospital; she was happy with the way I was managing; she was having district nurse Sinclair, together with Dr De Wit's supervision and she want to continue to work. Also around that time, around about December by then she is a hair dresser, she is busy and that she doesn't want to lose work. So I'm manage

37 The patient developed post-surgical complications, including an MRSA infection and ongoing pain. She was also dissatisfied with her breast appearance. Dr Tiong saw the patient during the period

September 2007 to April 2008 for treatment of her post-operative condition. Dr Tiong did not feel qualified to do the removal of the breast threads. Dr Accardo agreed to travel to Australia to perform breast thread removal on the patient in midDecember 2007. The trip was later cancelled by him. Dr Accardo subsequently arranged to perform the breast thread removal on her in February 2008. This trip was also cancelled by him. On 14 February 2008, Dr Accardo saw her in consultation, but decided not to perform the breast thread removal. The patient continued to feel pain and discomfort although the infection had resolved with the proper antibiotic treatment, which appropriate treatment was provided by Dr Tiong. In late February 2008 Dr Tiong, after the patient contacted the Medical Board, then referred her to Dr Sawjin Tew (Plastic Surgeon) for a second opinion on breast thread removal. This was later performed by another surgeon.

38 Dr Tiong, in outlining what was his post-operative treatment and his actions related to her post operative care, revealed a level of panic and self interest rather than exhibiting a professional reaction on receiving the patient's complaints of pain with infection. He explained his concern was such that he met the patient at her convenience in car parks, a friend's home, etc. Concern is not care. While admitting he did not have the necessary skills to remove the breast threads was a fair and proper reaction to the patient's complaints, the doctor failed to understand he had complete responsibility for the patient's care and he failed to meet the appropriate standard of care in the post operative stage of his treatment of the patient. There was a lack of prompt and professional management in the after care, which after care was Dr Tiong's responsibility.

39 Close to five months after the surgery, the doctor had failed to have the patient referred for a second opinion notwithstanding her ongoing complaints. He acknowledged from the first sign of

infection (which he correctly addressed with a swab and antibiotics) he was concerned. However, he failed to address her ongoing pain. A referral for a second opinion to another surgeon or a public hospital reference when the patient continued to complain of pain was a professional imperative.

40 Notwithstanding the facts reveal Dr Accardo agreed to perform the removal and cancelled on two separate occasions, there can be no acceptable credible excuse for the practitioner in not taking responsibility for his patient and ensuring her relief from her pain and discomfort. As early as 1 December 2007, Promo Italia's Ms Cozzolino informed Dr Tiong via email he should arrange immediate release or removal of the threads. They were not removed until July 2008.

41 The peer doctor, Dr Kennedy, as to the after care, opined:

> The patient would have done best if admitted into the public or private hospital system early in the course of treatment and have the threads removed at an appropriately early time to allow the infection to settle without the subsequent degree of scarring and deformity.
>
> 'Jollying' the patient along and not referring her to a practitioner with a registerable and recognized surgical qualification was to her detriment and has caused her great harm. This letter is dated December 2007 by which time the patient has already suffered an infection that has been discharging since October and is causing pain and disability. This conduct was significantly below what is reasonably expected and invites strong criticism of the conduct of the practitioner.

42 Dr Baldwin, as to the post operative care, opined:

> It is my view that once Dr. Tiong is consulted by a patient with a complication it becomes his responsibility to ensure that appropriate treatment is received. If he is not prepared to undertake such treatment himself it is now his obligation to ensure that the patient is referred to a practitioner or an institution so that the most appropriate treatment can be carried out.
>
> It is my view, therefore, that in this regard Dr. Tiong's conduct fell

below the standard expected of a practitioner of equivalent level of training or experience and that this departure was significantly below that standard and does invite strong criticism.

(iv)Record Keeping

43 The respondent's clinical records are most unsatisfactory. In evidence the doctor explained he cared so much about the patient he saw her wherever she wished. It became clear the doctor did not only fail to keep proper notes at consultation, but he failed to keep any record of these consultations.

44 Previous to the operative procedure, Dr Tiong kept no record specifically in relation to the breasts. He had no face to face consultation with the patient in relation to the proposed breast operation until about half to one hour prior to the surgery. Photographs, however, by patient A did form part of the record.

45 Therefore there was no record outlining the patient's concerns in relation to her breasts; no record of her expectations from this surgery and whether these could be met; no record relating to past history of breasts i.e no history re lumps, surgery, mammograms; no record relating to breast examination, size (bra), ptosis if present or not, measurement of nipple/areola position.

46 Further, the doctor's post operative notes were extremely inadequate. To properly assess the notes it is best to address his omissions. There were consultations as evidenced by charges made to Medicare on eight occasions. Dr Tiong made notes only twice between the operation date of 3 September 2007 and the last patient visit on 21 April 2008. The content of the two clinical records were directed to the patient's complaints or concerns.

47 The clinical examination post operative consultations read as follows:

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26/11/07 - (query 20 November 2007)
R abscess drained
photo
Still have dragging feeling
...
CT/Ultrasound done
Call Long Jetty LR
12/03/08
Pulling muscle on external rotation
Difficulty with abduction
R worse than the left
Dimpling
Scarring
Distress about .....
Difficulty pulling over clothes
Abduction limited

48 The doctor tells of meeting the patient at any place she dictated after the operation given her complaints but has kept no record of such consultations.

49 When infection in right breast became evident Doctor Tiong failed to record her symptoms of which she spoke, namely redness, swelling, bruising, pain, tenderness, the area of the breast involved. There was no comment re size, depth or position of open wound. No comment about general condition of patient how unwell, fever or not, axillary lymph nodes enlarged or not, was patient A septic, did she need urgent removal of threads or not. No comment about which antibiotics were used or for how long. No comment about the patient's progress or the state of the open wound. Comments about the state of the wound were made by the nurse doing the dressings (not at Doctor Tiong's surgery). No comment about the eventual result in the infected right breast or the outcome of the left breast. No comment about the patient's concerns about the breasts resulting from the surgery and the

infection.

50 Dr Tiong's clinical notes, however, do record he did seek the assistance of the Italian team and did ensure the proper tests (for infection) were done and x-rays, cat scans and ultra sounds performed on the breasts. However, the records of email correspondence with Italy also reveal a persistent attitude by the doctor to keep the patient in his care rather than, in acknowledging he was not competent to remove the threads, referring her on to an appropriate specialist. His clinical records reveal comments such as he could lose full control of the patient. Such comments, as contained in the records, reflect the doctor's concern to keep this patient, who had well founded complaints and pain arising from the new procedure performed within his care, close to him rather than ensure the patient was given appropriate treatment. The records are both unsatisfactory and also reveal the doctor perceived a conflict between acknowledging his own inadequacy to perform a particular post operative procedure and the priority of care for his patient.

(v)Aseptic Practices

51 The fifth section of the particulars relied upon in the first complaint addresses the aseptic practices in the doctor's day surgery room, as exposed during the particular breast thread surgical procedure.

52 As to the standards required in any surgical procedure to avoid infection, the video of the demonstration of the thread operative procedure (which was conducted by another doctor, Dr Accardo, but with the assistance of Dr Tiong) reveals many basic breaches of the necessary aseptic practices by the doctor himself, as well as breaches by the other medical practitioners in attendance. There was a sharing of surgical gown; needles re-capped after use; surgical drapes unsecured; etc. as outlined in [5] of the particulars. The Tribunal expresses grave concern and shock at

this exposure in the DVD of unsafe medical practices in operative conditions as performed in the practitioner's surgery that day.

53 No explanation as to the great success of the demonstration and the surprise attendance of so many professionals (doctors) can explain the breach of safe working procedures. While the doctor may have redesigned his own day surgery since this incident, there has as yet been no audit conducted upon his practice, any assessment of the redesign of his day surgery clinic or how the day surgery procedures in operative conditions are now conducted.

54 The peer review doctor, as to the conduct of the practitioner during the breast lift procedure, opines:

> My impression from the overall viewing of video clips is that this was performed under inadequate anaesthesia in an inappropriately small operating room with inadequate aseptic technique and that the breast procedure was done for the purposes of the demonstration rather than for the benefit of the patient as the patient had no ptosis present in the pre-operative views. The procedure was performed on a smoker who has taken ibuprofen with resultant troublesome bleeding and the facial procedure was fore-shortened by not completing the brow with the neck as the patient expected and desired. Was this to allow demonstration of the breast technique? It seems as there was a pressure of time as Dr Accardo had to leave before the end of the second procedure. It would seem that the demonstration of the second technique may have been more important than the completion of the first one to the process of the demonstration. I think that it would be appropriate for an expert in sterilization to review the videos to comment on the use of an autoclave tray placed on the bench and then handed into the field for access and the particular techniques for prepping and draping as documented in my notes above.

55 As to the conduct of the procedure, the doctor opined:

> I think it is important in the setting of having a visiting expert the 'home surgeon' retains ownership of the patient and responsibility for issues such as anaesthesia, provisional of instrumentation, sterility and after care in particular. In watching the DVD it was apparent that Dr Tiong had not made adequate preparation or provision for the procedure in terms of the operating space

> required, the type of anaesthesia appropriate to the procedure, the preparation and draping of the patients and the time required for the appropriate procedures.

56 We are satisfied the complaint, as particularised, is established and the conduct was unsatisfactory professional misconduct. By his act and omission, the doctor's practice of medicine falls below the standard reasonably expected of a practitioner of an equivalent level of training or experience; contravened the Medical Practice Regulation 2003 (since repealed); and engaged in improper and unethical conduct.

The Second Complaint

57 The HCCC contends where there has been: conduct revealing a breach of the obligations to properly assess the suitability of a patient for a surgical procedure; the failure to obtain informed consent for a new medical procedure; the failure to properly record all consultations with a patient; the failure to provide proper after care for a patient in pain and the co-existing failure to properly recognise responsibility for the care of the patient; all such conduct establishes the doctor is guilty of professional misconduct.

58 Of concern to the Tribunal was the doctor's view of his responsibility for this patient. The doctor said:

> Q. Doctor Tiong, did you feel, after having introduced (the patient) to Dr Accardo, that you had no responsibility at all towards the patient that you introduced; is that what you are saying?
>
> ...
>
> A. I have responsibility for the patient care, of course. If, in hindsight, I know what is going to happen, I would not let this happen, but the thing is
>
> Q. Answer the question, doctor?
>
> A. My responsibility is mainly try to learn how this procedures have to be done and the way it is done.

59 Although the Tribunal has analysed only one patient's care, undertaken by a doctor who has a thirty year unblemished record as a medical practitioner, we are of the view the minute examination that has been conducted of this one patient's care has revealed such fundamental breaches of basic requirements for the safe practice of a surgical procedure, that the doctor is guilty of professional misconduct.

60 In summary Dr Tiong's conduct reveals a serious departure from the acceptable standards of care in the management of this patient in that:

he initiated the invitation for breast lift

did not examine breasts

did not obtain informed consent

did not research the full extent of the proposed surgery

at operation exposed the patient to extremely poor aseptic technique in an inadequate facility.

post operatively did not document progress, treatment or outcome

did not seek second opinion or refer the patient appropriately

was against referral to a public hospital

did not and still does not understand that he had full responsibility for his patient's care.

61 Further, Dr Tiong did not appear to recognise the vulnerability of patients who have done their own 'research' or 'homework' before coming to ask him to perform a cosmetic procedure. The doctor, in oral evidence before the Tribunal, said he would do a procedure in a week for 'some patients who come in demanding what they are having because they have done a lot of homework'. This judgement is challenged by the Tribunal. On questioning, Dr Tiong revealed a lack of insight into the guideline requirements and

standard practice of requiring a cooling off period between a patient request for cosmetic surgery and the procedure. When asked if he would change his practice, having heard the expert peer reviewer evidence, he said:

> Q. Would you now change your practise to say: Alright, I will agree to do the eye lift but you must think about this for the next month and I will put you in in a month's time. Would you now change your attitude to the one week and give them a month?
>
> A. Well, if that what I asked to do, I will comply with the request asked of me.
>
> Q. What is really being put to you is, if you read Dr Kennedy's report, he suggests in that report a different way for you to conduct your practise. Have you taken all the doctor's suggestions that are in his report into your practise to date?
>
> A. Yes, I will, yes.
>
> Q. You will from today on?
>
> A. Yep.

62 The Tribunal was similarly concerned with Dr Tiong's lack of adherence with acceptable infection control and record keeping guidelines in relation to the relevant patient.

63 In considering protective orders, the relevant test is set out in *Health Care Complaints Commission v Litchfield* (1997) 41 NSWLR 630 (at 638):

> The gravity of professional misconduct is not to be measured by reference to the worst cases, but by the extent to which it departs from proper standards. If this is not done there is a risk that the conduct of the delinquents in a profession will indirectly establish the standards applied by the Tribunal.

64 The ultimate role of the Tribunal is to protect the public. In particular, the public is to be assured that:

> (a)It will be protected from the risk of the practitioner in question repeating the misconduct.
>
> (b)The decision will have a deterrent effect on others that might be tempted to fall short of the high standards required of them.

(c)The decision will have the effect of encouraging the maintenance of high standards in the medical profession.

(d)The decision will have the effect of maintaining public confidence in the profession.

(e)The decision will not unnecessarily deprive the public of the services of the practitioner.

(See *Childs v Walton*, NSW Court of Appeal, Unreported, 13 November 1990; *Buttsworth v Walton*, NSW Court of Appeal, Unreported, 19 December 1991; *Law Society of New South Wales v Bannister* (1993) 4 LPDR 24; *Council of Law Society of New South Wales v Foreman* (1994) 34 NSWLR 408; *Health Care Complaints Commission v Litchfield* (1997) 41 NSWLR 630; *Law Society of New South Wales v Walsh*, NSW Court of Appeal, Unreported, 15 December 1997).

65 We find the evidence and admissions of the doctor establish the doctor's conduct not only gives ground for a finding of unsatisfactory conduct but was conduct sufficiently serious to be professional misconduct.

Orders

1.The Tribunal marks its strong disapproval of Dr Tiong's conduct by reprimanding Dr Tiong pursuant to s 149A(1) of the *Health Practioner Regulation National Law (NSW) No 86a.*

2.Dr Tiong is restricted from the practice of cosmetic surgery for a period of six months.

3.Dr Tiong's registration as a general practitioner is to be also subject to the following conditions:

Educational Courses

(i)To participate in and complete within 12 months of the date of this Decision and at his own expense, the course "Dealing with

Difficult Doctor-Patient Relationships" conducted by the Cognitive Institute.

The doctor is required to supply to the Council a copy of the Institute's Certificate detailing satisfactory completion (or otherwise) within two weeks of its receipt.

(ii)Dr Tiong is to complete at his own expense prior to resuming his cosmetic surgery practice the course on Medical Ethics conducted in distance mode by the Department of General Practice, Monash University, Victoria. Within two weeks of completing the Ethics course, Dr Tiong is to provide documentary evidence to the Council that he has satisfactorily completed the course.

(iii)Dr Tiong is to complete at his own expense prior to resuming his cosmetic surgery practice the course on Mastering Shared Decision-Making conducted in distance mode by the Cognitive Institute.

Within two weeks of completing the Mastering Shared Decision-Making course, Dr Tiong is to provide documentary evidence to the Council that he has satisfactorily completed the course.

(iv)Dr Tiong is to participate and complete the Australian College of Cosmetic Surgeon's Continuing Medical Education Course requirement each year for the next three years.

The doctor is required to supply to the Council a copy of the satisfactory completion (or otherwise) within two weeks of its receipt.

Supervision

4.Dr Tiong is to nominate a supervisor within 28 days of the date of this Decision (to be approved by the Medical Council) to monitor and review his clinical practice and compliance with Conditions in

accordance with Level 3 Supervision as contained in the Council's Guidelines for Supervision. The supervisor should have surgical qualifications acceptable to the Medical Council. The approved supervisor is to be provided with a copy of the Council's Guidelines and a copy of this Decision. The practitioner is to be responsible for all costs associated with the supervision arrangement. The supervisory arrangement remains in place over his general practice and when he resumes his surgical practice until such time as the Medical Council considers it is no longer necessary.

The practitioner is to ensure that:

(a)he and the supervisor meet on a monthly basis for at least one hour, the first meeting to occur within one month of being advised by the Council that his nominated supervisor has been approved;

(b)at each meeting they address clinical cases and selection, record keeping and surgical practices;

(c)at each meeting, the supervisor completes a record of matters discussed at the meeting in a format prescribed or approved by the Council;

(d)the supervisor forwards to the Council each month a Supervision Report in a format prescribed or approved by the Council;

(e)the supervisor is authorised to inform the Council immediately if there is any concern in relation to the practitioner's compliance with the supervision requirements, compliance with other conditions of registration, clinical performance or if the supervisor relationship ceases;

(f)in the event that the approved supervisor is no longer willing or able to provide the supervision required, details of a replacement supervisor are to be forwarded for approval by the Council within 21 days of the cessation of the original supervisory relationship.

5.Following the period of restriction Dr Tiong on resuming his practice of cosmetic surgery must practice under the following special condition:

Dr Tiong is not to perform surgery that requires intravenous sedation or anaesthesia unless an anaesthetist is present.

6.**Medical Records Audit**

Dr Tiong is to submit to an audit, at the premises where he conducts his medical practice, of a random selection of his medical records by a person or persons nominated by the Council, to assess his compliance with Part 4 of the *Health Practitioner Regulation (NSW) Regulation* 2010 and the standards set out in the Standards for General Practice 3rd Edition, Royal Australian College of General Practitioners (RACGP) and to ensure that Dr Tiong is complying with practice conditions. An audit is to occur within two months following the doctor's return to surgical practice and at six monthly intervals until the Medical Council determines they are no longer required. Dr Tiong will meet all costs associated with any audit/s and report/s.

7.Infection Control

That the Medical Council of NSW arrange an inspection of Dr Tiong's medical premises within three months of the date the restriction is lifted and thereafter at six monthly intervals until no longer required by the Council, in order to assess and ensure his compliance with the Infection Control Standards as set out in Part 3 of the *Health Practitioner Regulation (NSW) Regulation* 2010. The doctor is to meet the cost of the inspection.

8.The Medical Council of NSW is the appropriate review body for the purpose of a review under Part 8 Div 8 of the *Health Practitioner Regulation National Law* (NSW).

9.The respondent to pay the complainant's costs.

Amendments

- 11 Jul 2012 The words "after being contacted by the HCCC" amended to read as "after the patient contacted the Medical Board" Paragraphs: 37
- 11 Jul 2012 The words "Dr Cozzolino" amended to read as "Ms Cozzolino" Paragraphs: 40
- 11 Jul 2012 In Order 1, the words "s 61 of the Medical Practice Act" amended to read as "s 149A(1) of the Health Practitioner Regulation National Law (NSW) No 86a". In Orders 2, and 7, the word "suspension" amended to read as "restriction". Paragraphs: Coversheet/Decision
- 11 Jul 2012 In Order 1, the words "s 61 of the Medical Practice Act" amended to read as "s 149A(1) of the Health Practitioner Regulation

National Law (NSW) No 86a". In Order 2, the word "suspended" amended to read as "restricted". In Orders 5, and 7, the word "suspension" amended to read as "restriction". Paragraphs: 65

Last updated 1 November 2011