

TRADITIONAL CHINESE MEDICINE PRACTITIONERS BOARD

GROUND OF DECISION ON THE COMPLAINT AGAINST Mr. L

A. INTRODUCTION

1. The complaint made against the Registered Person, Mr. L, arose from a complaint or information received by the Traditional Chinese Medicine Practitioners Board (the “**Board**”) regarding the conditional warning administered to Mr. L by the Singapore Police Force for a case of outrage of modesty (“**Conditional Warning**”), an offence under Section 354(1) of the Penal Code (Cap. 224) (“**Penal Code**”). The Conditional Warning relates to two (2) alleged offences for outrage of modesty purportedly committed on 10 March 2012 and another instance sometime in March 2012.

2. The brief facts pertaining to the complaint are as follows:
 - (i) Mr. L is a Traditional Chinese Medicine (“**TCM**”) physician registered with the Board since 5 November 2004.

 - (ii) At the material time, he practiced as a TCM physician at the N Clinic on a freelance basis.

 - (iii) Based on the information provided by the Singapore Police Force, sometime in 2019, Mr. L was under investigation for a case of outrage of

modesty, an offence under Section 354(1) of the Penal Code. It eventually resulted in the Conditioned Warning being administered to Mr. L on or about 3 June 2021.

- (iv) The Conditional Warning referred to two (2) separate instances of outrage of modesty, namely on 10 March 2012 and another incident in March 2012, at the Clinic.
- (v) The Conditional Warning expressly provided that it "*does not amount to a conviction for an offence or a finding of guilt by a court of law*". In other words, the offence has not been proven in a court of law.

3. An Inquiry Committee ("**IC**") was constituted and it has since completed the inquiry and submitted its report ("**IC Report**") to the Board.

B. BOARD'S DECISION

The Preliminary Objections

4. The Board, having carefully considered and deliberated on the IC Report as well as the documents, submissions and evidence pertaining thereto, agrees and accepts the findings of the IC as set out below.
5. First, in relation to the preliminary issues, the Board agrees with the IC's decision to dismiss the 2 preliminary objections raised by the Respondent.

6. In respect of the first objection, namely that the Respondent's conduct referred to in the Terms of Reference in Annex B of the Notice of Hearing can only refer to his conduct in being the subject of investigations and Conditional Warning, and cannot amount to professional misconduct or negligence, the argument is untenable. The Terms of Reference requires the IC to inquire into and "*establish the facts leading to the conditional warning that was administered to [Mr. L] on 3 June 2021*". As such, there is no merit in the Respondent's contention as it would be based on the facts to be established by the IC to ascertain whether the Respondent's conduct amounted to professional misconduct or negligence.

7. In respect of the second objection, namely that pursuant to Sections 26B(2) and 26F of the Traditional Chinese Medicine Practitioners Act 2000 (the "**TCMP Act**"), the complaint has to be supported by a statutory declaration, which is to be served on the Respondent together with the Notice of Hearing, the assertion is clearly unmeritorious. Section 26B(2)(b) of the TCMP Act expressly provided that a statutory declaration is not required if the complaint or information is provided by a public officer, which was the case here.

8. The Board therefore agrees with the dismissal of the 2 preliminary objections raised by the Respondent.

The Complaint

9. In relation to the complaint, the Board agrees and accepts the findings of the IC that there are reasonable doubts and the complaint has not been proven beyond a reasonable doubt. The complaint is therefore dismissed.

10. First, in respect of the burden of proof, it is trite that disciplinary proceedings are quasi-criminal in nature. The burden of proof lies with prosecution and the standard of proof is beyond a reasonable doubt. (*Wee Teong Boo v Singapore Medical Council* [2022] SGHC 169 citing *Law Society of Singapore v Chiong Chin May Selena* [2013] SGHC 5; at [41 - 43]) This standard of proof “is not so stringent as to mean that every item of evidence adduced should be isolated, considered separately and rejected unless the Prosecution satisfies the trial judge that it is incredible beyond reasonable doubt: See *Nadasan Chandra Secharan v PP* [1997] 1 SLR(R) 118 at [85]. All the principle requires is that upon a consideration of all the evidence presented by Prosecution and/or Defence, the evidence must be sufficient to establish each and every element of the offence for which the accused is charged beyond reasonable doubt.” (*Jagatheesan s/p Krishnasamy v PP* [2006] 4 SLR(R) 45; at [48])

11. A reasonable doubt is one which is “real or reasonable” as opposed to one which is “merely fanciful”. (*Jagatheesan s/p Krishnasamy v PP* [2006] 4 SLR(R) 45; at [50]) Further, a tribunal must bear in mind that “the starting point of the analysis is not neutral. An accused is presumed innocent and this presumption is not displaced until the Prosecution has discharged its burden of proof. Therefore, if the evidence throws up a reasonable doubt, it is not so much that the accused should be given the benefit of the doubt as much as the Prosecution’s case simply not being proved.” (*Jagatheesan s/p Krishnasamy v PP* [2006] 4 SLR(R) 45; at [61])

12. Further, where it is based solely on the evidence of a single witness, a tribunal

should be mindful of the inherent dangers of such a conviction and scrutinize the evidence carefully. It has been held that “*a conviction can only be upheld if the testimony is so compelling to the extent that a conviction can be founded entirely and exclusively on it.*” (*Jagatheesan s/p Krishnasamy v PP* [2006] 4 SLR(R) 45; at [45]).

13. The Court of Appeal in *Public Prosecutor v GCK and another matter* [2020] 1 SLR 486 (at [57]) also held that “*the “unusually convincing” standard is the only standard to be applied where an eyewitness’s uncorroborated testimony forms the sole basis for a conviction*”.
14. As can be seen from the above, it is a high threshold to discharge the burden of proof particularly where it is based solely on the evidence of a single witness, i.e. based on the oral testimony of the victim in the complaint, Ms. K. Further, where a reasonable doubt has been raised, a conviction based on the complaint cannot be upheld.

Reasonable Doubts

15. Having carefully considered and deliberated on the IC Report as well as the documents, submissions and evidence submitted for the inquiry, the Board agrees with the findings of the IC that there are reasonable doubts and a conviction based solely on the evidence of Ms. K would be unsafe and cannot be upheld.
16. First, the Board accepts the IC’s finding that Ms. K’s identification of Mr. L during

the inquiry hearing was not wholly satisfactory. It cannot be said that she has positively identified Mr. L during the inquiry hearing as she said that it was because she has an impression that she has seen him before. This, coupled with the fact that she cannot recall his name or the name of the Clinic, plus the absence of any supporting or corroborative evidence, creates a reasonable doubt as to whether she has positively identified Mr. L as the perpetrator in the complaint.

17. Secondly, the Board accepts that there are reasonable doubts regarding Ms K's evidence.
18. Based on Ms. K's version of events, she was very certain that she consulted with Mr. L only twice. According to her, they were both on weekdays and about a week apart. However, based on the receipts of the consultations produced by Mr. L for the inquiry (namely exhibits D2, D6, D6A, D7, D7A, D8 and D8A), there is evidence to suggest that Ms. K consulted him on three (3) occasions, namely on 3, 13 and 17 October 2012. That is, a Wednesday, Saturday and Wednesday respectively.
19. This evidence was corroborated by Ms. G, an administrative staff of the Clinic, who gave evidence during the inquiry hearing that the names written on the back of the receipts, in particular Ms. K's name, were written by her and she had given the said receipts to Mr. L at the material time. This was to enable Mr. L to keep track of the commissions he would receive from the Clinic based on the consultations and treatments he had rendered as he was working on a freelance basis. The aforesaid evidence by Mr. L and Ms. G raised reasonable doubts to

Ms. K's version of events, in particular, whether it was only two (2) consultations where the alleged outrage of modesty took place, or three (3) consultations.

20. Thirdly, there are material inconsistencies in the evidence pertaining to when the alleged incidents took place. In her oral testimony during the inquiry hearing, she said that it was in 2011 or 2012. However, in her police report, she stated it was in 2010. Based on the police investigations and as set out in the Conditional Warning by the police, it was stated as 10 March 2012 and March 2012. There was no explanation as to how the police obtained these dates and Ms. K was also unable to shed any light on the same. Further, based on the three (3) aforesaid receipts of the consultations produced by Mr. L (namely exhibits D2, D6, D6A, D7, D7A, D8 and D8A), it appears to be on 3, 13 and 17 October 2012. As can be seen from the aforesaid, there are material inconsistencies pertaining to when the alleged outrage of modesty took place.

21. Further, Ms. K was very definite in her evidence that she consulted Mr. L on weekdays and about a week apart. According to Ms. K, the first consultation was in the evening after work and the second was in the evening after work and her yoga class. When she was cross-examined during the inquiry hearing, she was very certain it couldn't have been on a weekend as she had to look after her child. However, based on the three (3) aforesaid receipts (namely exhibits D2, D6, D6A, D7, D7A, D8 and D8A), it appears to be on a Wednesday (3 October 2012), Saturday (13 October 2012) and Wednesday (17 October 2012). Further, based on the Conditional Warning by the police, the date of 10 March 2012 was a Saturday. There are therefore material inconsistencies in the evidence and reasonable doubts regarding Ms. K's evidence that the incidents took place on

two (2) weekdays.

22. For the reasons set out above therefore, the Board is of the view that there are reasonable doubts and the complaint has not been proven beyond a reasonable doubt. Further, the Board did not find Ms. K's evidence to be "*unusually convincing*" or "*so compelling to the extent that a conviction can be founded entirely and exclusively on it.*" (*Jagatheesan s/p Krishnasamy v PP* [2006] 4 SLR(R) 45; at [45]). It would therefore be unsafe for the Board to convict or make a guilty finding against Mr. L based on the uncorroborated evidence of Ms. K as there were material inconsistencies and reasonable doubts raised.

23. In the premises, the Board has decided that the complaint be dismissed.

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