

TRADITIONAL CHINESE MEDICINE PRACTITIONERS BOARD

GROUND OF DECISION ON THE COMPLAINT AGAINST YANG QIXIN (REGISTRATION NO. TXXXX720E) RECEIVED BY THE BOARD

Date of Board Hearing: 16 November 2023

A. INTRODUCTION

1. The complaint against the Registered Person, Ms. Yang QiXin ("**Ms. Yang**"), arose from a complaint or information received by the Traditional Chinese Medicine Practitioners Board ("**the Board**") regarding the convictions of Ms. Yang under section 5(1) read with Sections 5(4)(a) and (b) of the Massage Establishments Act 2017 ("**MEA**") on 23 October 2018 and 18 September 2020. ("**the Convictions**").
2. At all material times, Ms. Yang is and was a registered Traditional Chinese Medicine ("**TCM**") physician. She practiced at and was the registered owner of Clinic C, Singapore (the "**Premises**").
3. An Inquiry Committee ("**IC**"), was appointed to inquire into the complaint against Ms. Yang. The inquiry hearing was held on 30 May 2023 and thereafter, the IC submitted its report and recommendations to the Board, as elaborated hereunder.

B. INQUIRY COMMITTEE'S FINDINGS AND RECOMMENDATIONS

4. Ms. Yang attended the inquiry hearing on 30 May 2023 together with her solicitors.
The appointed person or the Board's solicitor was also present.
5. The terms of reference or issues to be determined by the IC, as succinctly set out at Annex D of the written Notice of Complaint to Ms. Yang dated 8 February 2023 (Tab 1 of Agreed Bundle of Documents dated 23 May 2023), were as follows:
 - (i) Whether Ms. Yang was convicted of an offence in Singapore or elsewhere that implies a defect in character which renders her unfit to remain on the Register under Section 19(1)(h) of the Traditional Chinese Medicine Practitioners Act 2000 (the "**TCMP Act**"); and
 - (ii) Whether Ms. Yang is guilty of any improper act or conduct which renders her unfit to remain on the Register under Section 19(1)(k) of the TCMP Act.
6. The following documents were submitted by the respective parties for the purposes of and/or referred to during the inquiry hearing:
 - (i) Agreed Statement of Facts dated 26 May 2023 duly signed by the Appointed Person and Ms. Yang ("**ASOF**");
 - (ii) Agreed Bundle of Documents dated 23 May 2023 ("**ABOD**");

- (iii) Opening Statement of the Appointed Person dated 23 May 2023;
- (iv) Appointed Person's Bundle of Authorities dated 23 May 2023;
- (v) Appointed Person's Sentencing Submissions dated 29 May 2023; and
- (vi) Registered Person's Written Submissions dated 29 May 2023.

(i) **Undisputed Facts / Admissions**

7. During the inquiry hearing, the ASOF was read and translated in Mandarin to Ms. Yang by the interpreter. Ms. Yang orally confirmed that she agreed to the same. A plea was also taken from Ms. Yang in respect of the complaint, in particular, the issues to be determined by the IC, and she admitted to the same although she said that it was not intentional. Her plea was also set out at [11] of the ASOF, which is reproduced hereunder for easy reference:

"11. The Registered Person admits that by virtue of her First Conviction and Second Conviction:

(a) She has been convicted of offences in Singapore or elsewhere that implies a defect in character which renders her unfit to remain on the Register under section 19(1)(h) of the Traditional Chinese Medicine Practitioners Act (2000) ("TCMP Act"); and in respect of paragraph 4 of the Agreed Statement of Facts, insofar as it is alleged that he committed the offences intentionally, he disagreed and averred that he committed the offences unintentionally; and

(b) She is guilty of an improper act or conduct which renders her unfit to remain on the Register under section 19(1)(k) of the TCMP Act.”

8. The salient agreed facts as derived from the ASOF may be succinctly summarised as follows:

- (i) Ms. Yang is a registered TCM practitioner and she obtained her full registration since 9 October 2003.
- (ii) At all material times, Ms. Yang practiced at and was the registered owner of the Premises.
- (iii) Ms. Yang had pleaded guilty and was convicted on 23 October 2018 vide MCN-902146-2018 for an offence under Section 5(1) read with Section 5(4)(a) of the MEA (**“First Conviction”**).
- (iv) The charge for the First Conviction relates to providing massage services without a license. The charge (page 8 of ABOD) reads as follows:

“You ... are charged that you, on the 7th May 2018, at about 3.14 pm, at the establishment for massage named ‘Clinic C’, located at Singapore, did carry on the business of providing massage services in an establishment for massage, without a license issued under the Massage Establishment Act w2017 (Act 45 of 2017), nor exemption under Section 32 of the said Act, in contravention of Section 5(1) of the said Act, and you have thereby committed an offence under Section 5(1) punishable under Section 5(4)(a)

of the said Act.”

- (v) For the First Conviction, Ms. Yang pleaded guilty and was sentenced to a fine of S\$3,000 and in default, 2 weeks' imprisonment.
- (vi) Thereafter, on 13 February 2019, the police conducted a check at the Premises and discovered that the windows were covered by posters and entrance was obscured by frosted glass. Ms. Yang was required to comply with all the exemption conditions under the Massage Establishments (Exemption) Order 2018 (the “**Exemption Order**”). Paragraph 6(1)(b) of the Exemption Order requires that the massage be provided in full public view by ensuring that *“no window in the premises and no entrance to the premises is obscured with any device or accessory, such as a tinted glass panel, a curtain, blinds, or any poster or notice”*. By covering the Premises' windows with posters and obscuring the entrance with frosted glass, Ms. Yang had contravened the exemption conditions under the Exemption Order.
- (vii) Ms. Yang was charged in the State Courts of Singapore for an offence under Section 5(1) of the MEA. As she had a prior conviction, she was liable for enhanced punishment under Section 5(4)(b) of the MEA.
- (viii) The relevant charge (page 18 of ABOD) reads as follows:

“You ... are charged that you, on 13 February 2019, at about 3.00 pm, at “Clinic C”, Singapore, an establishment for massage, did carry on the business of providing massage services, without a license issued under the Massage Establishment Act 2017 (No. 45 of 2017), nor by exemption under

Section 32 of the said Act, and you have thereby committed an offence under Section 5(1) of the said Act.

And further that you, before the commission of the said offence, had on 23 October 2018, been convicted in State Court No. 23, vide MCN-902146-2018, for an offence under Section 5(4)(a) for contravening Section 5(1) of the said Act, which conviction and sentence has not been set aside to date, and you are hereby liable for enhanced punishment under Section 5(4)(b) of the said Act.”

(ix) On 18 September 2020, Ms. Yang pleaded guilty and was sentenced to a S\$6,000 fine and in default, 3 weeks’ imprisonment (**“Second Conviction”**).

(x) At [11] of the ASOF, Ms. Yang admitted to the complaint, namely, as follows:

“11. The Registered Person admits that by virtue of her First Conviction and Second Conviction:

*(a) She has been convicted of offences in Singapore or elsewhere that implies a defect in character which renders her unfit to remain on the Register under section 19(1)(h) of the Traditional Chinese Medicine Practitioners Act (2000) (“**TCMP Act**”); and in respect of paragraph 4 of the Agreed Statement of Facts, insofar as it is alleged that he committed the offences intentionally, he disagreed and averred that he committed the offences unintentionally; and*

(b) She is guilty of an improper act or conduct which renders her unfit to

remain on the Register under section 19(1)(k) of the TCMP Act.”

9. Further, in Ms. Yang's written explanation provided by way of her solicitors' letter dated 28 February 2023 (pages 55 & 56 of ABOD), she admitted to the First Conviction and Second Conviction, expressed deep remorse and regret, and undertook not to repeat the offences.
10. A query or preliminary issue was also raised by her under Section 26E of the TCMP Act, i.e. that the IC had run out of time to complete its inquiry, which is reproduced hereunder as follows:

“10. Further and based on section 26E of the Traditional Chinese Medicine Practitioners Act, our client is of the view that the Inquiry Committee has run out of time to complete its inquiry of the complaint and report its findings and recommendations to the Board. Following the Board's first letter dated 26 February 2021, it has been more than 6 months since the complaint was referred to the Inquiry Committee.”

(ii) **Preliminary Issue**

11. In respect of the aforesaid preliminary issue, which was also set out at [4] and [5] of the Registered Person's Written Submissions, the IC informed Ms. Yang that the IC had complied with Section 26E of the TCMP Act as the IC was only appointed on 19 January 2023. Insofar as Counsel for Ms. Yang referred to the IC bearing number 2022/x, the IC clarified that it was an administrative number assigned by secretariat and has no bearing on when the IC was appointed.

12. The preliminary issue was therefore dealt with and any preliminary objection, if any, disposed of by the IC.

(iii) **Findings of the IC**

13. Based on the report submitted by the IC, the findings made by the IC were as follows:

(i) Ms. Yang has been convicted of offences in Singapore that implies a defect in character which renders her unfit to remain on the Register under Section 19(1)(h) of the TCMP Act.

(ii) Ms. Yang is guilty of an improper act or conduct which renders her unfit to remain on the Register under Section 19(1)(k) of the TCMP Act.

14. In respect of the 2 aforesaid findings made by the IC, i.e. that Ms. Yang has been convicted of offences in Singapore that implies a defect in character and guilty of an improper act or conduct, which renders her unfit to remain on the Register under Sections 19(1)(h) and (k) respectively of the TCMP Act, the IC was of the view that they were not in dispute as they were admitted by Ms. Yang (as set out in [7] to [9] above).

15. The IC was also satisfied that the First Conviction and Second Conviction were substantiated by documentary evidence submitted for the inquiry proceedings, in particular, pages 5 to 21 of the ABOD.

16. The IC also referred to Section 22 of the TCMP Act which mandated that the IC shall accept the Convictions as final and conclusive. Section 22 of the Act provided as follows:

*“22. The Board in taking action under section 19, and the General Division of the High Court on appeal from an order of the Board under section 21, **are to accept the conviction of a registered person for a criminal offence as final and conclusive.**” (Emphasis added.)*

17. The IC also considered the nature and circumstances of the Convictions, as well as the punishments meted out by the State Courts of Singapore on Ms. Yang. In particular, the IC was of the view that Ms. Yang was a repeat offender and in respect of the Second Conviction, she was liable for enhanced punishment under Section 5(4)(b) of the MEA. Insofar as Ms. Yang alleged that it was due to her poor command of the English language or ignorance (page 55 of ABOD), as admitted by her own lawyers, ignorance of the law is not an excuse.
18. It appeared to the IC therefore that Ms. Yang was unrepentant after the First Conviction and continued to breach the law which resulted in the Second Conviction. Such breach was, in the IC’s view, intentional as she had the windows covered by posters and entrance obscured by frosted glass in respect of the Second Conviction.
19. The IC therefore found that Ms. Yang has been convicted of offences in Singapore

that implies a defect in character which renders her unfit to remain on the Register under Section 19(1)(h) of the TCMP Act as well as guilty of an improper act or conduct which renders her unfit to remain on the Register under Section 19(1)(k) of the TCMP Act.

20. Sections 19(1)(h) and 19(1)(k) of the TCMP Act provide as follows:

“19(1) The Board may cancel the registration of a registered person if the Board is satisfied that the registered person –

...

(h) has been convicted of an offence in Singapore or elsewhere implying a defect in character which renders him or her unfit to remain on the Register;

...

(k) has been guilty of any improper act or conduct which renders him or her unfit to remain on the Register ...”

(iv) **Mitigating factors and Recommendations by the IC**

21. In mitigation, Counsel for Ms. Yang urged the IC to take into consideration her honesty and remorse in declaring her Convictions when she attempted to renew her practicing certificate. He also urged the IC to take into account the long period of time that has elapsed since her last conviction to the inquiry, as well as the fact that she did not reoffend during that period of time.
22. The IC did not agree with the first mitigating factor as TCM practitioners are mandatorily required to declare any prior convictions when applying to renew their

practicing certificates. This can be seen from Ms. Yang's application at page 31 of ABOD. Given that it was a mandatory requirement to declare any prior convictions or offences, the IC was of the view that it cannot be taken as a mitigating factor. In respect of the second mitigating factor, the IC was of the view that it should be taken into account in deciding the recommendations to be made to the Board save that it was not an unduly long period of time as her last conviction was on 18 September 2020.

23. In her submissions, the Appointed Person adopted the sentencing framework as enunciated in the landmark case of *Wong Meng Hang v SMC* [2019] 3 SLR 526 (***“Wong Meng Hang”***) (Annex A of Appointed Person's Sentencing Submissions). The IC agreed with the sentencing framework in *Wong Meng Hang* and applied the same in deciding the recommendations to be made to the Board.
24. In this regard, the IC was of the view that the level of harm was moderate and level of culpability was low to moderate. The indicative sentencing range as enunciated in *Wong Meng Hang* would be a suspension of 3 months to 1 year. Having regard to the comparative precedents, the starting point for sentencing would be a suspension of about 6 months. The IC then took into account the offender-specific aggravating and mitigating factors, namely as follows:
 - (i) the nature and seriousness of the offences and Convictions, taking into account also that Ms. Yang was a repeat offender;
 - (ii) the need to repair the damage done to the profession as a result of her Convictions;

(iii) Ms. Yang did not reoffend since her last conviction on 18 September 2020 and was no longer operating a massage establishment; and

(iv) that she was remorseful and admitted to the complaint, hence saving much time and costs in these proceedings.

25. Based on the aforesaid, although the IC was of the view that Ms. Yang was liable to have her registration cancelled for her aforesaid breaches of Sections 19(1) (h) and 19(1)(k) of the TCMP Act, the IC recommended that the following measures under Section 19(2) of the Act should be meted out instead:

- (i) suspension of her registration as a TCM physician for a period of 4 months;
- (ii) that she gives an undertaking that she will abstain from such conduct and not repeat the same or similar offences again; and
- (iii) censure.

C. BOARD'S DECISION

26. The hearing before the Board was conducted on 16 November 2023. Ms. Yang attended together with her solicitors.

27. In essence, Ms. Yang raised in mitigation that she is apologetic and willing to accept the undertaking and censure but asked for 2 months suspension instead as it affected her livelihood. Further, she sought to persuade the Board that some weight ought to be given in mitigation for her honest disclosure pertaining to the Convictions as otherwise, the Board would not be aware of the same.

28. The Board, having considered and deliberated on the documents, submissions and the IC's report, concurs with the findings of the IC that the complaint has been made out, namely that Ms. Yang has been convicted of offences in Singapore that implies a defect in character which renders her unfit to remain on the Register under Section 19(1)(h) of the TCMP Act as well as guilty of an improper act or conduct which renders her unfit to remain on the Register under Section 19(1)(k) of the TCMP Act.
29. The findings are based on the aforesaid undisputed facts and admissions made by Ms Yang (summarized in [7] to [9] above), which were substantiated by documentary evidence submitted for the inquiry proceedings. Further, Section 22 of the TCMP Act mandates by law that the Convictions are to be accepted as final and conclusive.
30. In relation to sentencing, the Board agrees with the IC's approach and sentencing framework in *Wong Meng Hang*. The indicative sentencing range as enunciated in *Wong Meng Hang* would be a suspension of 3 months to 1 year where the level of harm was moderate and level of culpability was low to moderate.
31. Although Ms. Yang sought in mitigation to reduce the suspension to 2 months, the Board did not find any exceptional circumstances to justify a reduction below the aforesaid suspension range of 3 months to 1 year. Moreover, insofar as she sought to persuade the Board that some weight ought to be given in mitigation for her honest disclosure pertaining to the Convictions, the Board was not persuaded and did not agree with her arguments. This is because it was a mandatory requirement

to disclose the Convictions in her application to renew her practicing certificate and failure to do so would amount to an offence.

32. Taking into account the offender-specific aggravating and mitigating factors as set out in [24] above, in particular that the Convictions relate to licensing offences under the MEA, she was remorseful and admitted to the complaint, and she did not reoffend since her last conviction on 18 September 2020 and was no longer operating a massage establishment, the Board is of the view that a suspension of 4 months, which is on the lower end of the scale, would be appropriate.

33. In light of the above and pursuant to Section 19(2) of the TCMP Act, the Board decided that the following measures shall be taken against Ms. Yang:

- (i) suspension of her registration as a TCM physician for a period of 4 months, effective from 10 March 2024 to 9 July 2024;
- (ii) that she gives an undertaking that she will abstain from such conduct and not repeat the same or similar offences again; and
- (iii) censure.

34. Further, pursuant to Section 20 of the TCMP Act, the Board directs that Ms. Yang shall bear and pay for all the costs and expenses of and incidental to the inquiry proceedings.

D. CONCLUSION

35. In conclusion, the decision of the Board pursuant to Section 19(2) of the TCMP Act is that the following measures shall be taken against Ms. Yang:

- (i) suspension of her registration as a TCM physician for a period of 4 months, effective from 10 March 2024 to 9 July 2024;
- (ii) that she gives an undertaking that she will abstain from such conduct and not repeat the same or similar offences again; and
- (iii) censure.

36. Pursuant to Section 20 of the TCMP Act, the Board directs that Ms. Yang shall bear and pay for all the costs and expenses of and incidental to the inquiry proceedings.

Date of publication: 11 March 2024

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