

**SINGAPORE MEDICAL COUNCIL DISCIPLINARY TRIBUNAL INQUIRY FOR
DR ONG THENG KIAT ON 1 APRIL AND 29 APRIL 2015**

Disciplinary Tribunal:

Dr Tham Tat Yean - Chairman
Assoc Prof Rathi Mahendran
Ms Jasvender Kaur – Legal Service Officer

Counsel for SMC:

Mr Philip Fong & Ms Shazana Anuar
(M/s Harry Elias Partnership LLP)

Counsel for the Respondent:

Dr Myint Soe & Mr Edward Leong
(MyintSoe & Selvaraj)

DECISION OF THE DISCIPLINARY TRIBUNAL

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

Background

1. On 10 September 2013, the Respondent, Dr Ong Theng Kiat, was convicted on his plea of 'guilty' in the State Courts on two charges of penetrating with his penis the vagina of a girl who was under 16 years of age, with her consent, under section 376A(1)(a) and punishable under section 376A(2) of the Penal Code (Cap 224).
2. On 26 February 2014, the Respondent was sentenced to 10 months' imprisonment on each of the charges, with both sentences to run concurrently.
3. On the same day, he was also convicted on a charge of knowingly making a fraudulent declaration in writing to the Singapore Medical Council ('SMC') in an attempt to procure a Practising Certificate under section 62(a) of the Medical Registration Act (Cap 174) ('the MRA'). He was fined \$4,000.
4. In light of the Respondent's conviction and sentence imposed on him, the SMC took the view that the Respondent's conviction and sentence implied a defect in character which made him unfit for the profession. The matter was referred to the Disciplinary Tribunal ('the Tribunal').
5. At the disciplinary hearing on 1 April 2015, the Respondent pleaded guilty to the charges. Counsel for SMC outlined the case by presenting an agreed statement of

facts, the accuracy of which was confirmed by the Respondent. The salient facts are summarised below.

Summary of agreed facts

Sexual penetration with minor

6. At the time when the two offences took place, the girl was 14 years of age and a secondary school student. The Respondent was then 61 years old. He was an obstetrician and gynaecologist operating two clinics.

7. Sometime in July 2011, the girl signed up on a dating website. She indicated in her online profile that she was 18 years of age, which was the minimum age allowed for registration.

8. She received a message from the Respondent which was non-sexual in nature. She provided him with her telephone number and they began texting each other. In a text message on 2 September 2011, the girl informed the Respondent that she was 14 years of age. Despite being aware of her actual age, the Respondent asked the girl if she was interested to meet and that he would arrange his schedule to suit her availability. She told him that her school holidays were ending on 12 September 2011, and they agreed to meet prior to that. The Respondent told the girl that he wanted to perform sexual acts on her in his car when they met.

9. On 6 September 2011, the Respondent picked up the girl in his car from her home. He drove to Bukit Brown Cemetery. In the course of their conversation in the car, the girl asked the Respondent how old he was. He lied that he was 40 years old and that his work was related to stocks. After some time in the car, the Respondent asked the girl if he could take her to a hotel. She agreed. They then proceeded to Balestier Hotel.

10. Upon arriving at the hotel, the Respondent told the girl to remain in the car whilst he checked-in. Later, the Respondent returned and brought her to Room 211. They undressed and began kissing and hugging. Subsequently, they engaged in consensual sexual intercourse. The Respondent did not use a condom.

11. Prior to dropping the girl home after watching a movie, the Respondent handed her two tablets of the 'morning after pill', '*Postinor (Levo Norgestrel)*', which he had taken from his clinic. He advised the girl to consume the pills 12 hours apart to prevent a pregnancy. Upon the insistence of the Respondent, she took one pill in the car. Later,

the Respondent called her to check if she had taken the second pill. She confirmed that she had.

12. In early 2012, the Respondent picked the girl up from her school. He drove her to the Bukit Brown cemetery. In the car, they began kissing and petting. They subsequently engaged in sexual intercourse. A condom was used. Thereafter, the Respondent dropped the girl back at her school.

13. On 18 September 2012, the girl lodged a police report.

False declaration charge

14. On 10 July 2013, the Respondent received a letter from the SMC informing him that his practising certificate was due to expire on 31 December 2013. The renewal form was enclosed with the letter.

15. Paragraph 3.a(i) in Section (A) of the form asked:

“Since your last declaration, have you been convicted or been the subject of any inquiry or an investigation by any professional body, licensing, health authority or the police in Singapore or elsewhere, the subject matter of which may form the basis of professional misconduct or amount to improper conduct which may bring disrepute to the medical profession?”

16. The Respondent answered ‘No’ in response to the question. He also signed a declaration at page 2 of the form to confirm that the information furnished by him was true and correct. On 31 July 2013, he posted the form to SMC. On 1 August 2013, SMC received the application form.

17. The Respondent had knowingly made a false declaration as he had in fact been arrested on 28 December 2012 by the Serious Sexual Crimes Branch of the Criminal Investigation Department and released on bail pending further investigations.

Mitigation

18. The salient points of the written mitigation are summarised here. The Respondent’s wife died on 13 May 2011 due to a ruptured aneurysm in the brain. It was said that *[s]he was everything and the main pillar of his life*, and the shock and unexpected loss of his wife hit him as *‘a very destructive tsunam’*. It was said that the depressive moods and accompanying loneliness caused the Respondent to surf the C-date website hoping for some companionship.

19. It was submitted that after the first sexual intercourse, the Respondent was 'anxious' to end the relationship and lied to the girl by telling her that he would be in Indonesia for a few months. However, she continued to contact him.

20. Counsel for the Respondent emphasised that the statement of facts did not refer to the girl as a 'victim' but a 'minor'. He described her to be 'sexually precocious' and said that she was not 'deceived, induced or exploited'. He also said that the Respondent was unaware of the new section 376A of the Penal Code (Cap 224) which prescribed severe punishment for consensual sexual intercourse with minors.

21. Counsel for the Respondent referred to a report from a psychiatrist, Dr DE, dated 30 January 2013, which was also tendered at the criminal proceedings. Dr DE stated that the Respondent was suffering from major depressive disorder at the material time. He stated that there was a causal link between the disorder and the offences. He asserted that the Respondent was '*so preoccupied with his depressed mood that he could not exercise his reason and think of the consequences of his behaviour*'. Learned counsel submitted:

"It is respectfully submitted that even though there may be differences of opinion between psychiatrists with regard to causal links, it is good common sense that the loss of a wife who is with him all the time and forms the main pillar of his life would cause deep and continued depression. No one would deny that but for her death and consequent depression and loneliness, the relationship between the minor and Dr Ong would never have taken place."

22. It was also emphasised that the arrest and subsequent proceedings caused immense suffering and led to suicidal thoughts. The Respondent closed his Katong Clinic since March 2013 and the Gleneagles Clinic since July 2013. It was submitted that the Respondent has been in de facto suspension as a doctor since then.

23. As regards the offence of false declaration, it was said that '*there was always an optimistic possibility that the representations by his lawyers could be successful*'. It was added that the Respondent 'ticked' the answer without thinking through. It was added that the offence was regarded as 'minor' as it resulted in a fine of \$4,000.

24. The Respondent has since remarried in January 2015 and he and his wife are expecting a child. It was said that the Respondent wishes to resume medical practice and fit back as a useful member of society. He has re-applied to the SMC for a practising certificate in January 2015 and two psychiatric certifications stating that he is fit to continue medical practice were tendered.

25. Testimonials from eight doctors, a longstanding friend, the Respondent's daughter (who is also a doctor) and son, and a retired pastor were tendered. The salient points are summarised below:

- a) Dr RTA's clinic was opposite the Respondent's, and the Respondent used to 'cover' Dr RTA when he was on holiday. He said his patients found the Respondent to be 'responsible and very professional in his dealings'.
- b) Dr RTB is an anaesthetist whom the Respondent engaged for his patients. Dr RTB stated that he was impressed by the empathy and care the Respondent had always displayed towards his patients, his fairness in apportionment of fees and the detailed notes he took on patient management.
- c) Dr RTC had on occasions managed the patients of the Respondent in Gleneagles when the Respondent was on leave. Dr RTC stated that the Respondent was a 'very competent and experienced gynaecologist and his patients have benefitted from his care throughout the years.' He added, *'His patients trust him and he maintains a good rapport with them. Dr Ong always does what is in the best interests of his patients. As a fellow gynaecologist I always have the utmost respect for his management of his patients.... I can testify to his good character, and it will be a loss to the O & G community if he is suspended from practice'*.
- d) Dr RTD has known the Respondent as a colleague for a decade or more. Dr RTD stated that the Respondent *'always kept his patients' interests central to his management. He always strived to obtain the best outcomes and cost for the patients whom we co-managed. In the period that Dr Ong was unavailable to his patients, a significant number have expressed to me their concerns about his well-being and whether it might be possible to receive a similar level of medical care again. I know that it will be a relief to his patients and colleagues if Dr Ong can continue to offer his clinical services and expertise in future'*.
- e) Dr RTE stated that the Respondent was his preferred referral doctor as he is *'competent and does what is best for patients'*. Dr RTE added, *'All the feedback from my patients under his care was positive comments and they maintained a good rapport with him for years'*. He described the Respondent to be a *'responsible, caring, trustworthy and meticulous doctor.'*

I feel strongly that it is a one time-time transgression and not a character flaw as such.

- f) Dr RTF stated that the Respondent was his platoon commander and he found him to be 'responsible and caring officer'. Dr RTF also referred patients with gynaecological and obstetric problems to the Respondent, and said that the patients found him to be '*compassionate and trustworthy*'.
- g) Dr RTG had anaesthetised a 'fair number' of the Respondent's patients. She found him to be a '*dedicated doctor whose patients appreciated his close care, concern and professional expertise*'.
- h) Dr RTH provided anaesthetic cover for some of the Respondent's patients in the early days of his career starting from 1986. Dr RTH said he did not come across or hear of any incident or complaint that reflected on the professional skill and integrity of the Respondent when managing patients.
- i) Rev Dr RTI has known the Respondent since 1972. Rev Dr RTI described him to be a family man. He said that his wife's death left him '*empty, broken and adrift. He seemed to have lost his moorings and soon he was in deep trouble with the law*'. He stated that the Respondent was determined to move on with his new life.
- j) Mr RTJ is a close personal friend of the Respondent for 48 years. Mr RTJ said the Respondent felt '*totally helpless and desperate*' after his wife's demise and often called him to voice his sorrow and fear of loneliness. He characterised the incident as a '*single isolated lapse of personal judgment, at a time of extreme personal grief and distress*' and added that the Respondent had '*undergone proper rehabilitation*'.
- k) The Respondent's daughter and son-in-law stated that the offences were '*out of character of the man*'. They characterised the offences as a '*brief lapse in judgment brought about by the stress of the ongoing police investigations at the time, which resulted from his depression due to my mother's demise*'. They said that the Respondent had endured '*abject humiliation*' and was '*truly repentant*'.
- l) The Respondent's son stated that his father was a family man and dedicated to his profession. He said the Respondent had very little social life outside of his family and the death of his mother left a 'huge void' in the Respondent's life. He believed the Respondent's '*intense loneliness and the*

resulting inability to sleep as well as loss of appetite made him lack the proper judgment and rationality of his actions'. He said the Respondent had been an upright man with very strong religious background, that he regretted the moment of poor judgment and was a 'rehabilitated man'.

26. Counsel for the Respondent also referred to the Respondent's 'public service and achievements'. It was highlighted that he acted as an examiner for some courses prescribed by the Royal College of Obstetricians and Gynaecologists; an examiner for medical students and post-graduate doctors; and has been awarded the SAF service medal and the SAF reservist medal (1989).

Conviction implying a defect in character - section 53(1)(b) MRA

27. The Respondent did not contest the allegation that his convictions on the charges imply a defect of character which makes him unfit for the medical profession under section 53(1)(b) of the MRA (Cap 174).

28. In determining whether the convictions made the Respondent unfit for his profession, both the nature of the offences and the sentence imposed by the court must be taken into consideration. It is clear that the convictions need not relate to conduct in his professional practice.

29. The offence of having sex with a minor is serious. The Respondent knew the girl was 14 years old. Despite that, he had sex with her on two occasions. Subsequently, he dishonestly tried to conceal his arrest to obtain a medical practising certificate. The Tribunal is therefore satisfied that the convictions do imply a defect in character rendering him unfit for the profession.

Submissions on Sentencing

30. Counsel for SMC submitted that the appropriate sanction was for the Respondent to be struck off the Register, or in the alternative, that his registration be suspended for 36 months.

31. With respect to the offences of sex with a minor, he highlighted the following aggravating factors:

- a) The Respondent was aware that the actual age of the girl was 14 years;
- b) The first meeting with the minor was suggested by the Respondent after he was aware of her actual age;

- c) The wide age disparity;
- d) The Respondent did not use a condom during the first sexual intercourse and instead gave the girl two 'morning after' pills; and
- e) The sexual intercourse took place on two occasions.

32. With regard to the offence of false declaration, it was submitted that it was reflective of the Respondent's dishonesty and lack of integrity.

33. Four cases where medical practitioners had sexual relationships with a patient were cited. In one case, the doctor was struck off from the Register, and in the other three cases it led to a suspension of 24 months in one case and three years' suspension in the other two. Three local cases involving a court conviction for a sexual offence were cited. In Dr C's case, where the doctor was convicted of outraging the modesty of his patient, he was ordered to be removed from the Register. In Dr D's case, the doctor was convicted of intruding into the privacy of a woman whilst she was in a vehicle. He was ordered to be removed from the Register. In the third case of Dr E, he was convicted of two charges of taking 'upskirt' photos with his mobile phone. He was suspended for two years, fined \$5,000, and ordered to continue with psychiatric treatment for such period as determined by his psychiatrist.

34. Counsel for the Respondent referred to three authorities. He first referred to *Law Society v. Advani* [1998] 1 MLJ 477 where an advocate and solicitor faced disciplinary action for conspiring with three other persons to forge a will of his late father-in-law. It had always been the wish of the deceased that should he predecease his wife, as it happened, all his property should go to his wife. The three persons gave the respondent a blank piece of paper with the deceased's signature. He instructed his secretary to make a copy of the paper and to cut out the signature. He then started to dictate the will in which the deceased was to give all his property to his wife. He did not complete the dictation because while dictating he looked up and noticed the uneasy look of his secretary, who also said something. That immediately alerted him that what he was doing was not proper. He acknowledged that it was not proper and abandoned what he was doing. He then destroyed the paper. What the respondent did was not motivated by any gain but to give effect to the wishes of the deceased. In fact, the respondent's wife would have been deprived of 10% of the substantial estate. The court held as follows:

"... the circumstances in which the respondent carried out those preparatory acts were highly exceptional. Fortunately for him, in his emotional state, he was alerted of the impropriety of his acts by his secretary and he immediately abandoned what he was doing. Having regard to the very exceptional circumstances – here we must emphasise

strongly the exceptional circumstances – we are not satisfied that those preparatory acts carried out by the respondent amount to grossly improper conduct in the discharge of his professional duty. It seems to us fair and just to describe his conduct in all the circumstances as improper but not grossly improper.”

35. Next, Counsel for the Respondent referred to the case of *Dr Teo Tiong Kiat*, where the subject-matter of the charges before the tribunal related to three hit-and-run offences, i.e., failing to stop after a road accident where serious injuries were caused to a pedal cyclist and the death of another, failure to render assistance after the road accident, and moving the vehicle without the authority of a police officer after the road accident. The respondent was fined a sum of \$20,000 by the tribunal. From the grounds of decision of the tribunal, it is clear that the main reason for the imposition of a fine was because the respondent had returned to the scene within 30 minutes, unlike typical hit-and-run cases. The tribunal stated:

“As noted previously, the offences in question, while undeniably serious, are nevertheless not pre-meditated ones involving fraud, dishonesty or violence, for which suspension if not striking off were clearly warranted to punish, deter and protect.

... For the avoidance of doubt, we would add that had the Respondent been drunk and/or had he not returned to the scene of the accident, albeit much later, we would certainly have taken a different view of the matter and would have been quite inclined to impose a suspension.”

36. For the third case of *Dr Lim Houw Mervin* which involved a conviction for possession of a controlled drug under section 8(a) of the Misuse of Drugs Act (Cap 185) and a charge of possession of utensils intended for the use of consumption of a controlled drug under section 9 of the said Act, the respondent was censured. The tribunal explained the sanction imposed on the grounds that the respondent had committed the offences in a ‘momentary lapse in judgment’ and that he had not been in practice for a period of 12 months as he had served eight months of imprisonment and was detained for four months in a Drug Rehabilitation Centre.

Reasons for sanction

37. Counsel for the Respondent had in his oral submission dwelled on the fact that the girl was not stated to be a ‘victim’ in the statement of facts. He described her to be sexually precocious and remarked that the Respondent was not ‘spoiling her in any way.’ He said the girl told the Respondent that she had sexual intercourse with two boys and cited two newspaper articles which published the conviction of two men who had sex with her in mid-2012. He emphasised that she lodged the report only on the

advice of a church friend. He also added that the Respondent was unaware of the introduction of the new section 376A of the Penal Code.

38. The Tribunal finds these submissions to be irrelevant. The objective of section 376A(1) (like the overlapping offence of carnal intercourse with a girl below 16 under section 140(1)(i) of the Women's Charter (Cap 353)) is to protect the young against their own immature sexual experimentation, relative naivety and lack of life experience which may result in them succumbing to temptations or taken advantage of. As Yong CJ stated in *Annis Bin Abdullah v PP* [2004] 2 SLR (R) 93 at [50] in the context of the offence of carnal connection:

“The underlying principle in this regard is that young girls under the age of 16 may not have the experience or the maturity to make decisions in their own best interests about their own sexuality and that the law must step in to prevent their exposure to sexual activity regardless of their purported consent.”

39. As regards the submission that the arrest and subsequent proceedings caused immense suffering and led to suicidal thoughts and that the Respondent has been in defacto suspension since July 2013, the Tribunal does not regard these as matters of significance. These are the unfortunate and natural consequences of the Respondent's own doing.

40. In terms of the chronology of events, the Respondent's wife died unexpectedly in May 2011. The two offences of having sex with a minor were committed in September 2011 and early 2012. In September 2012, the girl lodged a police report against the Respondent. In December 2012, the Respondent was arrested and released on police bail. In July 2013, he committed the offence of false declaration.

41. The Tribunal has no doubt that the Respondent would have undergone considerable grief and loneliness after the sudden loss of his beloved wife. The first time that he saw a psychiatrist was in January 2013 when his lawyers made the referral, which was after his arrest. The psychiatrist stated the Respondent suffered from major depressive disorder and that he *'was so preoccupied with his depressed mood that he could not exercise his reason and think of the consequences of his behaviour'*.

42. The Tribunal does not find the diagnosis of major depression to lessen the responsibility of the Respondent. We shall explain. First, it is not in dispute that it was the Respondent who initiated the meeting with the girl. When he made the suggestion, he already knew the actual age of the girl and that she was schooling. To ensure the

meeting will take place, he told the girl that he would arrange his schedule to suit her availability. They then agreed to meet during her school holidays.

43. Second, it is significant that the Respondent told the girl before they met that he wanted her to perform sexual acts on him in his car. He also brought two 'morning after pills' which he had taken from his clinic along with him before he drove to pick her up. It is therefore plain that the Respondent did not act on impulse without planning but intended to have sexual intercourse with the girl even before they met. It was also the Respondent who suggested to the girl to go to a hotel. He also had the presence of mind to inform the girl to remain in the car whilst he checked-in.

44. Third, the unprotected sexual intercourse is also a matter of aggravation as it gave rise to the risk of consequences to the girl. The Respondent callously subjected her to the risk and then tried to mitigate it by insisting that she take the first pill in the car. He also called her to check if she had taken the second pill. Five days later, he sent her a text message asking her to inform him when she had her menstruation.

45. Fourth, the 47-year age gap between the Respondent and the girl is also relevant. To cover up this staggering age gap, the Respondent lied to the girl that he was 40 years old. To cover up his fundamentally incompatible behavior as an obstetrician and gynaecologist, he did not reveal his true profession and lied that his occupation was related to stocks.

46. Fifth, this was not a one-off offence. The Respondent knew perfectly well that what he had done was fundamentally wrong and lied to the girl that he would be in Indonesia. He was certainly capable of exercising restraint and was in a position to put a stop to his conduct. However, he met her again and on this occasion he picked her up from school and brought a condom along. He had sexual intercourse with her in the car. After the sexual intercourse, he dropped her back at school.

47. Sixth, the Respondent had tried to hide his arrest from the SMC when he attempted to renew his practising certificate. The Tribunal does not accept the explanation that has been put forth. The Tribunal is satisfied that the Respondent was dishonest and he had deliberately tried to conceal his arrest for the serious offences.

48. In favour of the Respondent, the Tribunal has noted that he pleaded guilty and indicated his remorse. The Tribunal has noted his public service, but without detracting from the contributions made, we do not think there was service to the community in an exceptional way. The Tribunal has also noted the testimonials which speak well of him.

However, the Tribunal does not find these mitigating factors to tip the scales at all heavily in favour of the Respondent.

49. The Tribunal has given careful consideration to the precedents cited. We did not find the three precedents cited by counsel for the Respondent to be of assistance, as they relate to matters which are very different from the instant case. As regards the precedents cited by counsel for SMC, the Tribunal is of the view that the instant case involving criminal convictions of having sexual intercourse with a minor is more serious than the precedents of professional misconduct by way of having a sexual relationship with a patient which resulted in terms of suspension. The Tribunal noted Dr D's case involving a conviction for a single sexual offence under section 509 of the Penal Code (Cap 224), which is a lesser offence than having sex with a minor. The doctor was ordered to be struck off the Register as the Council considered the offence to ridicule the medical profession and to uphold the integrity of the medical profession.

50. Turning now to the instant case, the Tribunal is of the view that the offence of sex with a minor is a grave offence which brought the profession into disrepute. The nature of the offence and the matters which we have highlighted at paragraphs 42 to 47 relating to the convictions render the Respondent fundamentally unsuited to continue as a registered medical practitioner. The Tribunal has determined that the maximum period of suspension and/or any other lesser sanction is insufficient. The Tribunal is of the view that the only appropriate sanction to uphold the proper standards of conduct and behaviour and public confidence in the profession is for the name of the Respondent to be struck off from the Register.

Orders by Disciplinary Tribunal

51. Accordingly, the following orders are made against the Respondent:

- a) that the Respondent be struck off from the Register; and
- b) that he pays the costs and expenses of and incidental to the proceedings, including the costs of the solicitors to the SMC.

52. We also order that the Grounds of Decision be published.

Dated this 29th day of April 2015.