

IN THE REPUBLIC OF SINGAPORE

SINGAPORE MEDICAL COUNCIL DISCIPLINARY TRIBUNAL

[2018] SMCDT 13

Between

Singapore Medical Council

And

Dr Khoo Buk Kwong

... Respondent

FOUNDATIONS OF DECISION

Administrative Law — Disciplinary Tribunals

Medical Profession and Practice — Professional Conduct — Removal from Register

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Singapore Medical Council

v

Dr Khoo Buk Kwong

[2018] SMC DT 13

Disciplinary Tribunal — DT Inquiry No. 13 of 2018
Dr Lim Cheok Peng (Chairman), Dr Michael Wong Tack Keong and Mr Soh Boon
Leng Kessler (Legal Service Officer)
28 November 2018

Administrative Law — Disciplinary Tribunals

Medical Profession and Practice — Professional Conduct — Removal from Register

16 January 2019

GROUNDINGS OF DECISION

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

INTRODUCTION

1. On 14 July 2017, Dr Khoo Buk Kwong (the “Respondent”) pleaded guilty at the State Courts to an offence of forgery under s 465 of the Penal Code (Cap 224). He had, sometime in December 2014, dishonestly written out a false prescription purportedly issued by another doctor. He was sentenced to a fine of \$10,000 for the offence. Following his conviction at the State Courts, the matter was referred by the Singapore Medical Council (“SMC”) to the present Disciplinary Tribunal (the “Tribunal”) to inquire into the matter.

2. On 28 November 2018, the Respondent pleaded guilty before this Tribunal to one charge under s 53(2) read with s 53(1)(a) of the *Medical Registration Act* (Cap 174) (“MRA”). The Tribunal had the benefit of the guidance of the Court of Three Judges (the “Court”) in *Wong Meng Hang v Singapore Medical Council and other matters* [2018] SGHC 253. Given that the offence for which the Respondent had been convicted was an offence of dishonesty, the Tribunal considered it appropriate that the Respondent be removed from the Register of Medical Practitioners, and ordered accordingly.
3. The grounds of the Tribunal’s decision are set out below.

THE CHARGE

4. Before the present Tribunal, the charge against the Respondent read as follows:

CHARGE

That you, Dr Khoo Buk Kwong [...], a registered medical practitioner under the Medical Registration Act (Cap. 174) (“MRA”), were, on 14 July 2017, in the State Courts of the Republic of Singapore, convicted of an offence under Section 465 of the Penal Code (Cap. 224), which is an offence involving fraud or dishonesty.

PARTICULARS

- a. In DAC-911970-2017, you were charged that “you, sometime in December 2014, in Singapore, did commit forgery, by dishonestly making a document, to wit, a document dated 1 December 2014, purporting to be a prescription issued by Dr A of Medical Institution B, for “Duromine 30mg om (100 capsules)”, with the intention of causing it to be believed that the said document was made by the said Dr. A, by whom you knew it was not made, with intent to commit fraud, and you have thereby committed an offence under Section 465 of the Penal Code (Cap. 224)”.
- b. On 14 July 2017, you pleaded guilty to and were convicted on the aforesaid charge, and were sentenced to a fine of \$10,000, in default 10 weeks’ imprisonment.

And you are thereby liable to be punished under Section 53(2) read with Section 53(1)(a) of the MRA.

5. Section 53(1)(a) and 53(2) of the MRA provide the following:

53(1) Where a registered medical practitioner is found by a Disciplinary Tribunal —

- (a) to have been convicted in Singapore or elsewhere of any offence involving fraud or dishonesty; [...]

the Disciplinary Tribunal may exercise one or more of the powers referred to in subsection (2).

(2) For the purposes of subsection (1), the Disciplinary Tribunal may —

- (a) by order remove the name of the registered medical practitioner from the appropriate register;
- (b) by order suspend the registration of the registered medical practitioner in the appropriate register for a period of not less than 3 months and not more than 3 years;
- (c) where the registered medical practitioner is a fully registered medical practitioner in Part I of the Register of Medical Practitioners, by order remove his name from Part I of that Register and register him instead as a medical practitioner with conditional registration in Part II of that Register, and section 21(4) and (6) to (9) shall apply accordingly;
- (d) where the registered medical practitioner is registered in any register other than Part I of the Register of Medical Practitioners, by order impose appropriate conditions or restrictions on his registration;
- (e) by order impose on the registered medical practitioner a penalty not exceeding \$100,000;
- (f) by writing censure the registered medical practitioner;
- (g) by order require the registered medical practitioner to give such undertaking as the Disciplinary Tribunal thinks fit to abstain in future from the conduct complained of; or
- (h) make such other order as the Disciplinary Tribunal thinks fit, including any order that a Complaints Committee may make under section 49(1).

BACKGROUND FACTS

6. On 14 July 2017, at the State Courts, the Respondent pleaded guilty to and was convicted on one charge of forgery. He had dishonestly made a document dated 1 December 2014, purporting to be a prescription issued by Dr A (“Dr A”) of Medical Institution B, for “*Duromine 30 mg om (100 capsules)*”, with the intention of causing it to be believed that the document was made by Dr A, by whom he knew that it was not made, with intent to commit fraud, which is an offence under s 465 of the Penal Code (DAC-911970-2017) (the “Criminal Charge”). The Respondent was sentenced to a fine of \$10,000, in default 10 weeks’ imprisonment. (The fine was paid.)

7. The salient facts relating to the Criminal Charge were as follows:
- (a) From April 2013 to 19 May 2014, the Respondent was appointed as a relief doctor at the Clinic C (the “Clinic”).
 - (b) During his time at the Clinic, the Respondent obtained a name stamp bearing the name and Medical Council Registration number of Dr A without the latter’s consent or knowledge.
 - (c) In December 2014, Dr Khoo took a “Parkway Shenton” memo sheet and wrote his name and NRIC number on it. Under this, he wrote the words “Duromine 300 mg om (100 capsules)” and applied Dr A’s stamp and the Clinic C’s stamp to the memo sheet (the “Forged Prescription”). The Respondent signed his own signature above Dr A’s stamp and dated the Forged Prescription 1 December 2014.
 - (d) Duromine contains phentermine, which acts as an appetite suppressant. A prescription is required for Duromine to be sold and purchased. The Forged Prescription was meant for the Respondent to obtain Duromine capsules for his ex-wife.
 - (e) On 9 January 2015, the Respondent obtained three boxes of Duromine capsules by presenting the Forged Prescription to the duty pharmacist at the Unity Pharmacy located at 3155 Commonwealth Ave West, #B1-10/11, The Clementi Mall, Singapore 129588. The Respondent subsequently gave the Duromine capsules to his ex-wife.
 - (f) The Respondent did not comply with the Ministry of Health guidelines dated 23 February 2009 on the prescription of drugs containing phentermine in supplying the Duromine capsules to his ex-wife.
 - (g) In his statement to the police concerning the Forged Prescription, the Respondent claimed that he could easily have backdated the prescription to June 2014 (when he was still practicing) and it would then have been fine to stamp his own name on the prescription.

8. Apart from the Criminal Charge, a similar charge under s 465 of the Penal Code (DAC-911971-2017) was taken into consideration for the purposes of sentencing at the State Courts (the “TIC Charge”). The TIC Charge related to an offence committed on or before 9 January 2015, in which the Respondent similarly forged a prescription purportedly issued by Dr A for the following medication: Stemetil (100 tablets), Hyoscine (100 tablets), Dorithricin (60 tablets), Oracort E (2 tubes), Paracetamol (200 tablets), Dimenate (100 tablets), Suniton (70 tablets), and Cetirizine (70 tablets).
9. At the material time when these offences were committed, the Respondent’s medical practice had been suspended. His practice was suspended for a total of 12 months as a result of two separate SMC Disciplinary Tribunal inquiries heard in June 2014, during which an order of three (3) months’ and nine (9) months’ suspension were made respectively, and ordered to run consecutively.

PROSECUTION’S SENTENCING SUBMISSIONS

10. Counsel for the SMC submitted that the Respondent’s conduct was so egregious that his name should be removed from the Register of Medical Practitioners.
11. It was submitted that medical practitioners have a unique privilege in the prescription of medicines. They act as “gatekeepers” in the supply of potentially dangerous substances to the public, which is a serious responsibility that should never be abused. The public relies on medical practitioners to ensure that such potentially dangerous substances are only supplied to a person after professional consultation, and in the right quantities and dosages that would benefit the person. The Respondent abused this privilege when he created the Forged Prescription.
12. The Respondent’s lack of remorse and his audacity could be seen from his statement to the police on the Forged Prescription. He claimed that he could easily have backdated the prescription to June 2014 (when he was still practicing) and it would then have been fine to stamp his own name on the prescription. This not only showed that the Respondent thought lightly of his own wrongful actions and he had no respect for the responsibility borne by medical practitioners in

prescribing medication. It also evidenced that the Respondent's audacious sense of entitlement extended to falsely backdating prescriptions in order to wrongfully and dishonestly justify the Forged Prescription.

13. The TIC Charge showed that the Forged Prescription was not a one-off incident.
14. The Respondent was not a first-offender, having been found guilty by Disciplinary Tribunals in two previous disciplinary cases for having been convicted of criminal offences that implied a defect in character which rendered the Respondent unfit for his profession.
15. The Respondent's antecedents were as follows:

Date	Description
15-23 January 2008	<p>The Respondent, together with two accomplices, engaged in the business of selling cough mixtures containing Codeine and Promethazine (i.e. SP-Cosedyl, Cophadyl – E and Sunsedyl).</p> <p>Amount of cough mixtures sold:</p> <ul style="list-style-type: none"> (a) 200 x 3.8 litre canisters of SP-Cosedyl; (b) 250 x 3.6 litre canisters of Cophadyl – E; and (c) 200 x 3.8 litre canisters of Sunsedyl. <p>(The "Sale of Poisons Incidents")</p>
3 November 2010	<p>Respondent refused to settle his bill at the K-Box at Orchard Cineleisure. He was later found sleeping at the entrance of the K-Box. The police were contacted.</p> <p>In the course of the police officers' attempt to physically support the Respondent to the cashier counter to pay the bill (as his gait was unsteady), the Respondent started to gesticulate wildly and shouted at the officers to let him go. The Respondent shouted, "<i>the female officer is a bitch</i>" and pushed her arms several times with both his hands. The Respondent then kicked the female officer's abdomen. The female officer felt pain at her abdomen when she was kicked, and sustained a laceration on her right forearm.</p> <p>(The "Causing Hurt Incident")</p>
March 2011	<p>Convicted in the Subordinate Courts (as it then was) on six criminal charges for selling poisons without a licence from a licensing officer in respect of the Sale of Poisons Incidents.</p>

Date	Description
27 May 2011	Convicted in the Subordinate Courts (as it then was) on one criminal charge of causing hurt to the female police officer in respect of the Causing Hurt Event. A charge for disorderly behaviour and of using abusive language were taken into consideration for sentencing.
11 June 2014	Convicted before an SMC Disciplinary Tribunal in respect of his criminal conviction for the Causing Hurt Incident. Respondent was sentenced to <i>3 months' suspension</i> .
12 June 2014	Convicted before an SMC Disciplinary Tribunal in respect of his criminal convictions for the Sale of Poisons Events. Respondent was sentenced to <i>9 months' suspension</i> , which was to run consecutively with the 3 months' suspension earlier ordered.
December 2014	Made the Forged Prescription (as detailed in the Criminal Charge).
Around 9 January 2015	Made the forged prescription detailed in the TIC Charge.

16. Counsel for the SMC submitted that the Respondent's two disciplinary antecedents should be considered an aggravating factor in the present case. They show that the Respondent had repeatedly demonstrated a cavalier attitude towards causing harm or potential harm caused to others. Such a recalcitrant attitude is highly damaging to the reputation of the medical profession. Given that society trusts and looks to medical practitioners for the relief of their suffering and ailments, such a dismissive attitude towards the welfare of others cannot be condoned.
17. Alarming, by making the Forged Prescription whilst his registration as a medical practitioner was under suspension for earlier disciplinary offences, the Respondent also demonstrated a flagrant disregard of the orders of the earlier Disciplinary Tribunals and their role in upholding the reputation of the medical profession and in the protection of the public.

RESPONDENT'S PLEA IN MITIGATION

18. Counsel for the Respondent presented a written Plea in Mitigation on his behalf. The Respondent is presently 57 years of age and a practising medical doctor. He had been a qualified medical doctor since 1987. He started practicing medicine first at the Hospital D and then at the Hospital E. In 1992, he set up his own practice called Health Plus at Choa Chu Kang.
19. Various character references were attached to the Plea in Mitigation attesting to the Respondent's dedication and compassion as a doctor; sincere care for the wellbeing of his patients, including his siblings and children; and the offence being wholly out of character. The references were provided by:
 - (a) Prof B, Senior Consultant Cardiologist and Director, Institution F, who had known the Respondent for about 30 years;
 - (b) A/Prof C, Senior Consultant in Gastroenterology, who had known the Respondent for over 25 years;
 - (c) Mr D, a patient who had known the Respondent for about 20 years; as well as other patients of the Respondent.
20. As regards the circumstances in which the offence was committed, it was explained that the Respondent's ex-wife needed her appetite suppression medication (Duromine) to help her cope with her weight management issues. Although he was divorced from her, in line with his caring and compassionate nature he still attended to her medical needs.
21. It was submitted that he did not profit from the offence. He also did not put anyone at risk, as he is a doctor with the requisite medical training and knowledge albeit he was suspended from practice. The fact that another doctor was able to prescribe the same medication and the same quantity suggested that save and except for the prescription being forged, all else was in order. He could have very easily obtained a proper prescription from any doctor as he had many practising colleagues in the profession who would have readily obliged him. However, he was embarrassed at

that time to approach his colleagues and fellow doctors and acted out of sheer desperation and acted impulsively.

22. It was also submitted that the Respondent co-operated fully with the police in their investigations. He pleaded guilty before the Tribunal at the earliest opportunity, just as he did at the State Courts. The Respondent was most remorseful, and this was a manifestation of his desire to face justice and to make amends.
23. Although the Respondent had previously been given a 12-month suspension, the offences for which he was suspended were different from the present offence. This was not a case of the Respondent repeating the offences.
24. What the Respondent did was clearly out of character. He was not motivated by any financial or commercial gain and, in fact, there was no gain to him and no loss to anyone.
25. Counsel suggested that the Tribunal could impose on the Respondent a fine or a short suspension of three months. A striking off or any suspension for more than three months would be a crushing sentence for the Respondent.

TRIBUNAL'S SENTENCING CONSIDERATIONS

Sentencing guidance in Wong Meng Hang v SMC [2018] SGHC 253

26. In deciding upon the appropriate sentence, the Tribunal was guided by the decision of the Court of Three Judges in *Wong Meng Hang v Singapore Medical Council and other matters* [2018] SGHC 253 (“*Wong Meng Hang*”).
27. In *Wong Meng Hang*, the Court set out the sentencing approach for cases where the conduct of the medical practitioner caused harm to the patient (at [29]-[44]). The Court also considered the circumstances where a striking-off order to remove an errant doctor from the register of approved practitioners would be appropriate (at [45]-[67]), and the relevance of an errant doctor's dishonesty to these considerations (at [68]-[74]). A summary of the sentencing principles is set out at [75].

28. Of particular relevance for the present case is the general rule laid down by the Court that misconduct involving dishonesty should almost invariably warrant an order for striking off, unless there are exceptional circumstances. The Court held (at [72]):

[A]s a general rule, *misconduct involving dishonesty should almost invariably warrant an order for striking off where the dishonesty reveals a character defect rendering the errant doctor unsuitable for the profession*: see *Chia Choon Yang* at [39]. *This would typically be the case where dishonesty is integral to the commission of a criminal offence of which the doctor has been convicted*, or where the dishonesty violates the relationship of trust and confidence between doctor and patient. In our judgment, *exceptional circumstances would have to be shown to avoid its imposition in such circumstances*.

[Emphasis in *underline and italics* added]

29. The Court also set out a number of factors that may be relevant to the question of whether a doctor's conduct was so serious that it rendered the doctor unfit to remain as a member of the medical profession (at [66]-[67]):

- (a) *Striking off should be considered when the misconduct in question involves a flagrant abuse of the privileges accompanying registration as a medical practitioner*. This was certainly the case in relation to Dr AAN, Dr Ho as well as the doctor in *Duck*. These cases involved doctors who had access to prescription drugs by virtue of being doctors, and grossly violated the trust that had been placed in them by their profession and by society.
- (b) Striking off should also be considered where the practitioner's misconduct has caused grave harm. Such harm was evident in relation to the individual patients in Dr AAN's case as they developed a dependency on the hypnotic drugs he had prescribed, as well as the child patient in *Balasubramaniam* who suffered severe blood loss. Although there was no single identifiable victim or patient in Dr Ho's case, serious harm was caused to society as a whole as a result of his actions which undoubtedly would have facilitated the black market trade and abuse of addictive controlled substances by numerous unidentified victims. In *Hill*, it was evident that the appalling way in which the doctor maintained his patients' charts created a real risk of enormous *potential harm* to his patients. It is safe to say that these doctors endangered their patients, abdicated their responsibility and calling as doctors and posed a risk to the public. Society has no interest or benefit at all in permitting such persons to continue to practise medicine.
- (c) Culpability will be a critical and relevant consideration in this analysis. Dr AAN and Dr Ho, in *deliberately and improperly* prescribing and selling controlled medicines

over extended periods of time, had acted in callous disregard of their professional duties as well as the health of their patients or the general public. The same applies to the doctor in *Hill* who abdicated his basic duties as a doctor by falsifying his patients' charts for no reason other than his own sloth. The harshest of sanctions was therefore warranted to punish the errant doctors severely and to ensure that their misconduct would not bring the profession into disrepute.

- (d) Where a doctor's misconduct evinces a serious defect of character, striking off is likely to be appropriate. This might arise from conduct underlying a predicate criminal conviction which is harmful to the repute of the profession or incompatible with the offender remaining a member of it, and the disciplinary charge is brought under s 53(1)(b) of the Medical Registration Act, as in the cases of Dr Ong and Dr Lee where sexual offences were committed. This might also arise independent of any criminal proceedings but where the character defect relates directly to the doctor's professional duties: see *Duck* and *Hill*. The position here is similar to that which we take in respect of errant solicitors. In *Ismail* at [21], we noted that "even in cases that do not involve dishonesty, where a solicitor conducts himself in a way that falls below the required standards of integrity, probity and trustworthiness, and brings grave dishonour to the profession, he will be liable to be struck off" [emphasis omitted].
- (e) Striking off should be considered when the facts of the case disclose an element of dishonesty. In Dr AAN's and Dr Ho's cases, deception was inherent in the maintenance of inaccurate patient records and other clinical documents in order to facilitate the improper prescription and sale of the hypnotic drugs and cough syrup respectively. Dr Ong, on the other hand, had lied to the victim to encourage her to having sexual intercourse with him, and both Dr Ong and Dr Lee had lied to the SMC when they falsely stated in their written forms that there were no investigations against them in order to get their practising certificate renewed. Dishonesty on the part of a professional will generally be viewed with severity. In the following section, we will set out in greater detail our views on the relevance of dishonesty in the disciplinary context.
- (f) Finally, where any of the above factors exist, a further consideration which might suggest that the punishment of striking off is especially warranted, is where the errant doctor has shown a persistent lack of insight into the seriousness and consequences of his misconduct. As noted by the courts in *Balasubramaniam* and *Hill* [...], this factor was present in both of those cases. It was also present in the case of Dr AAN, who was struck off for similar offences but proceeded to reoffend after he had been restored to the register. We emphasise that this will generally be a further or *additional* factor, in that there must be sufficiently serious misconduct before a doctor's persistent lack of insight may contribute to a finding that striking off would be appropriate. In such cases, the lack

of insight might suggest an impediment to reform or rehabilitation which warrants the sanction of striking off.

[Emphasis in underline and italics added]

Application to Respondent's case

30. In the present case, the Tribunal found that dishonesty was integral to the Criminal Charge (forgery) for which the Respondent had been convicted. The Respondent's dishonest act of creating the Forged Prescription would warrant an order for striking off, as the dishonesty reveals a character defect that would render the Respondent unsuitable for the medical profession. The question that the Tribunal had to consider was whether there were any exceptional circumstances to avoid the imposition of such an order on the Respondent.
31. Counsel for the Respondent submitted that the Respondent had a lot to give back to society. He had gone the extra mile to help others. On this occasion he acted in a misguided sense of duty to his wife and family. He did not benefit from the dishonesty. There was no evidence of harm – actual or potential. To strike him off for his misjudgement in forging of one prescription would be too high a price to pay. It was highlighted that the State Courts did not impose a jail term but a \$10,000 fine.
32. Counsel for the SMC reiterated that the decision in *Wong Meng Hang* was clear. As a general rule, striking off would be the starting point where the medical practitioner had committed an offence of dishonesty. It would then be for the Respondent to show exceptional circumstances. None of the submissions put forward by the Respondent's counsel amounted to exceptional circumstances.
33. The Tribunal was in agreement with the submission of the SMC. The Tribunal was of the view that, far from there being any exceptional circumstances that could avoid the order of a striking off, the Respondent's antecedents and his conduct in the matter were so egregious that a striking off was the most appropriate order.
 - (a) This was the third time that the Respondent was appearing before an SMC Disciplinary Tribunal. His antecedents showed a recalcitrant attitude that

was highly damaging to the reputation of the medical profession. Although the antecedents related to offences of a dissimilar nature, taken together, they show quite plainly the Respondent's disregard of his standing and duty as a medical practitioner.

- (b) The Respondent made the Forged Prescription while still under *suspension* for his earlier disciplinary offences, thus demonstrating a cavalier disregard for the orders of suspension made by the earlier Disciplinary Tribunals.
- (c) In making the Forged Prescription, the Respondent abused the privilege and ignored the attendant responsibilities in the prescription of medicine. It was not a one-off incident of forging a prescription. Apart from the incident in December 2014 (the Criminal Charge), the Respondent committed a similar forgery offence in January 2015, as particularized in the TIC Charge (the salient details of which are summarised at [8], above).
- (d) The Respondent had not shown any appreciation of the gravity of his wrongdoing, or any clear evidence of remorse. As has been noted (at [7(g)], above), in his statement to the police on the Forged Prescription, the Respondent said that he could easily have backdated the prescription to June 2014 (when he was still practicing) and it would then have been fine to stamp his own name on the prescription. The Respondent plainly did not appreciate that such an action would likewise have been dishonest. The Tribunal found this persistent lack of insight into what is proper or improper to be deeply troubling.

ORDERS MADE

34. Accordingly, in exercise its powers under s 53(2) of the MRA, the Tribunal made the following orders:

- (a) that the Respondent's name be removed from the Register of Medical Practitioners; and

- (b) that the Respondent pay the costs and expenses of and incidental to these proceedings, including the costs of the solicitors to the SMC.

PUBLICATION OF DECISION

35. We order that the Grounds of Decision be published with the necessary redaction of identities and personal particulars of persons involved.
36. The hearing is hereby concluded.

Dr Lim Cheok Peng
Chairman

Dr Michael Wong Tack Keong

Mr Soh Boon Leng Kessler
Legal Service Officer

Mr Burton Chen, Ms Junie Loh (M/s Tan Rajah & Cheah)
for Singapore Medical Council; and
Mr Amolat Singh (M/s Amolat & Partners)
for the Respondent.