

**IN THE REPUBLIC OF SINGAPORE**

**SINGAPORE MEDICAL COUNCIL DISCIPLINARY TRIBUNAL**

**[2019] SMCDT 6**

Between

**Singapore Medical Council**

And

**Dr Yeo Eng Hui Damian**

*... Respondent*

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**FOUNDATIONS OF DECISION**

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Administrative Law — Disciplinary Tribunals

Medical Profession and Practice — Professional Conduct — Removal from Part 1 of the Register – Conditional Registration in Part II of the Register

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## **Singapore Medical Council**

**v**

## **Dr Yeo Eng Hui Damian**

**[2019] SMCDT 6**

Disciplinary Tribunal — DT Inquiry No. 6 of 2019

Prof Walter Tan (Chairman), Dr Chan Kin Ming and Mr Ng Choong Yeong Kevin (Legal Service Officer)

22 July 2019

Administrative Law — Disciplinary Tribunals

Medical Profession and Practice — Professional Conduct — Removal from Part 1 of the Register – Conditional Registration in Part II of the Register

30 July 2019

### **GROUNDINGS OF DECISION**

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

### **INTRODUCTION**

1. The Respondent is a registered medical practitioner. At the material time, the Respondent was a senior resident physician at Tan Tock Seng Hospital ("TTSH"). He is at present, a resident physician at TTSH.
2. The Respondent was arrested on 1 August 2017 by the Central Narcotics Bureau for drug related offences. He was committed to the Drug Rehabilitation Centre ("DRC"). He now faces disciplinary proceedings under the Medical Registration Act ("MRA") on a charge for actions amounting to improper conduct that brings disrepute to the profession.

## **BACKGROUND FACTS**

### The Charge

3. The Respondent faced the following charge:

“That you, Dr Yeo Eng Hui Damian, a registered medical practitioner under the Medical Registration Act (Cap 174, 2014 Rev Ed), are charged that on or around 1 August 2017, you had consumed Methamphetamine and were in possession of 2.69g of Methamphetamine, 3 tablets of Nimetazepam as well as drug-taking utensils:

- (a) On 1 August 2017, you were arrested by the Central Narcotics Bureau for the offences of consumption of a Specified Drug (i.e. Methamphetamine), possession of a Controlled Drug (2.69g of Methamphetamine, 3 tablets of Nimetazepam) and possession of drug taking utensils (i.e. a lighter, cut straws and a syringe);
- (b) for your drug consumption offence, you were committed to the Drug Rehabilitation Centre for treatment and rehabilitation on 8 August 2017 for a minimum period of 6 months;
- (c) for your offences of drug possession and possession of drug-taking utensils, you were served with a stern warning in lieu of prosecution;

and that in relation to the facts alleged, you have been found guilty of such act or conduct which brings disrepute to your profession under section 53(1)(c) of the Medical Registration Act (Cap 174, 2014 Rev Ed).”

## **DISCIPLINARY TRIBUNAL INQUIRY**

### The Plea

4. At the Disciplinary Tribunal (“**DT**”) hearing on 8 May 2019, the Respondent pleaded guilty to the charge and accepted the Agreed Statement of Facts (“**ASOF**”) unconditionally.

### The Agreed Statement of Facts

5. The ASOF sets out the elements of the charge above. As a result of the drug offences, MOH Holdings terminated the employment of the Respondent with effect from 1 August 2017 due to “gross misconduct”.

6. On 19 December 2017, Respondent was re-employed as a resident physician by TTSH. He has completed his probation at TTSH, and on 12 September 2018 had his employment renewed until 28 December 2021. The Respondent is at present a resident in the Emergency Medicine Department of TTSH.

Submission on Sentence by the Singapore Medical Council (“SMC”)

7. The SMC submitted that:
  - (a) Firstly, that drug offences were extremely serious offences;
  - (b) Secondly, the Respondent was arrested for not just one, but multiple drug offences i.e. drug consumption, drug possession and possession of drug-taking utensils; and
  - (c) Thirdly, as the conduct of the Respondent fell short of the standard of care, integrity and conduct expected of medical practitioners, and violated the trust the public places in the medical profession, such professional lapses must be policed and deterred.
  
8. The SMC cited *Singapore Medical Council v Kwan Kah Yee [2015] 5 SLR 201*, where it was held that sanctions in medical disciplinary proceedings sought to ensure that the offender did not repeat the offence, and also to uphold the standing of the medical profession.
  
9. The SMC sought, as the main sanction, an order under section 53(2)(c) of the MRA, i.e. the removal of the Respondent’s name from Part I of the Register of Medical Practitioners (the “**Register**”), and that he be registered in Part II of the Register, with conditions and restrictions within a supervisory framework, before he can apply for registration again in Part I. Section 53(2)(c) of the MRA is set out as follows:

“Section 53

  - (2) For the purposes of subsection (1), the Disciplinary Tribunal may -
    - (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;”
  
10. The relevant provisions of section 21 of the MRA are set out as follows:

“Section 21

  - (4) Every direction by virtue of which a person is registered under this section shall specify the conditions or restrictions of his registration and may further specify one or more of the following:
    - (a) that the person shall work for a specified period under the supervision of a fully registered medical practitioner approved by the Medical Council;

- (b) that the person's performance shall be subject to review by such fully registered medical practitioners or healthcare professionals as the Medical Council may determine;
    - (c) the particular employment or descriptions of employment for the purposes of which he is so registered.
  - (6) The Medical Council may cancel the conditional registration of a medical practitioner if –
    - (a) the medical practitioner fails to comply with any of the conditions or restrictions specified in the direction by virtue of which he is registered; or
    - (b) the Medical Council is of the opinion, having regard to any report of one or more fully registered medical practitioners supervising him and any reviews of the medical practitioners or healthcare professionals referred to in subsection (4)(b), if any, that he is unable to perform the duties of a medical practitioner satisfactorily.
  - (7) A person who is or has been registered with conditional registration may –
    - (a) after the expiration of the period of supervision under subsection (4)(a); and
    - (b) upon the revocation or lapse of the conditions or restrictions specified under subsection (4),apply to the Medical Council to be registered as a fully registered medical practitioner.
  - (8) If the Medical Council thinks fit so to direct, having regard to the knowledge and skill shown and the experience acquired by the applicant referred to in subsection (7), he shall be registered under section 20 as a fully registered medical practitioner.
  - (9) On a medical practitioner with conditional registration becoming registered otherwise than conditionally, his name shall be removed from Part II of the Register of Medical Practitioners.
- 11. The SMC also sought orders for a censure, the usual undertaking not to repeat that misconduct, and the usual costs and expenses.
- 12. The SMC submitted at the hearing that the orders sought were to help reintegrate the Respondent into the medical profession utilizing a formalized framework, serve as a deterrent to the Respondent, and at the same time signal to the profession that such misconduct cannot be condoned or treated lightly. The SMC sought to do all this through the Respondent being re-registered in Part II of the Register and utilizing the supervision framework set out in section 21(4) and (6) to (9) of the MRA (the “**Section 21 Framework**”). Conditions and restrictions of service would then be placed on his registration, which largely comprised of supervision by an approved doctor using the Singapore Medical Council Supervisory Framework for Conditionally / Temporarily

Registered Doctors for Patients' Safety (the “**Supervision Framework**”) for a minimum period of 24 months, and supervision by an addictions specialist or community counsellor for a similar 24 months. Essentially, the Section 21 Framework would be made up of the Supervision Framework, and supervision by an addictions specialist or community counsellor in relation to a drug rehabilitation programme. Additional conditions, such as obtaining further reports from time to time as the SMC required, were also sought. A “liberty to apply” clause was also requested, so as to enable the SMC to apply to the DT for changes to the order when necessary.

13. Consideration was given by the SMC for the four actual months the Respondent had served in the DRC, and that he had pleaded guilty at the earliest opportunity.

#### Submission on Sentence by the Respondent and Mitigation

14. The Respondent's Counsel submitted that a censure, the usual undertaking and the usual costs and expenses orders would be appropriate as:
  - (a) There were two previous cases where a medical practitioner faced disciplinary proceedings for drug related offences. The Respondent counsel cited the case of *In the Matter of Dr Lim Lok Houw Mervin* [2014] SMCDT 4 (the “**Mervin Lim case**”), and an unnamed 2007 case. The latter case was later identified as *In the Matter of Dr Yeo See Seng Adrian* (the “**Adrian Yeo case**”). In both the cases, the medical practitioner had been convicted in court. At the disciplinary proceedings, they were both censured; and
  - (b) There should be parity in sentencing, and cases must be treated alike, i.e. precedents and benchmarks must be followed. This is in order to bring consistency, fairness and confidence in the judicial or adjudicatory body.
15. As for mitigating factors, Counsel submitted that the Respondent:
  - (a) has pleaded guilty at the earliest occasion, fully cooperated with the SMC, and committed the offences in a moment of folly due to the pressures of work;

- (b) has complied with his treatment and rehabilitation requirements. It was reported that he made good progress in his rehabilitation regime;
  - (c) was contrite and remorseful. He had been honest with and made himself accountable to his superiors and colleagues at TTSH. This insight gained by the Respondent should be a mitigating factor; and
  - (d) had the support of his superiors at TTSH, through their written testimonials for him.
16. The Respondent's Counsel further contended that registration under Part II was not appropriate. It would fly in the face of precedent set by the *Mervin Lim case* and *Adrian Teo case*. The Section 21 Framework was not necessary because the Respondent had already undergone the DRC programme and eight months of counselling carried out by the Singapore Anti Narcotic Association. Since being re-employed by TTSH in December 2017, he has also voluntarily submitted to supervision by his colleagues and has had his prescriptions audited. For the past year-and-a-half, there have been no untoward incidents. The Respondent has also recently completed the Central Narcotics Bureau ("CNB") supervised urine test regime. So to place the Respondent in a further regime of supervision would be demoralising for him, as it would fail to take into account what the Respondent had already gone through, and his efforts for taking responsibility and being accountable to his colleagues and superiors.
17. Particular objections were raised by the Respondent's Counsel in relation to the conditions to be imposed on the Respondent, i.e. that the SMC could call upon further reports in relation to the Respondent's supervision as it saw fit, and that with the liberty to apply clause, there would be no finality as to the orders.

#### Further Submissions Requested by the DT

18. The DT asked both counsel for further submissions covering the appropriateness and workability of section 53(2)(c) in conjunction with sections 21(4) and (6) to (9). In addition, the DT had asked both counsel if the Respondent was under the influence of Methamphetamines while on duty at TTSH as an emergency department doctor prior to his arrest. This arose from the statement by the Respondent that "*he has never*

*consumed controlled substances when at work or when on active duty*” (Agreed Bundled (marked “AB”) at Tab 5, pages 15 and 16). The further submissions were received by the DT on 13 June 2019.

#### SMC Further Sentencing Submissions and Reply Submissions

19. In further submissions requested by the DT, SMC reiterated that the orders sought were largely rehabilitative in nature. They submitted that due to the nature of a supervisory framework, there would be an inherent uncertainty in matters such as when the period of supervision would actually complete, although there would be a minimum set period imposed. This is because it would depend on the progress made by the Respondent. In addition, to be able to carry out the supervision and to ensure the Respondent complied with the conditions and restrictions and to ascertain his rehabilitation progress, the SMC would need some powers, e.g. to be able to call for further reports from specialists, as it saw fit.
20. The SMC has also requested a “liberty to apply” clause in the orders, in the event the conditions and restrictions needed to be extended, varied or otherwise changed. In its further submissions however, the SMC submitted that the “liberty to apply” clause may not strictly be necessary due to the presence of section 54 of the MRA, which deals with breaches of orders made under section 53(2)(c), and the revocation or variation of the conditions and restrictions, amongst other things. SMC still contended though, that the “liberty to apply” clause would lend clarity to the way a breach of conditions or restrictions by the Respondent could be dealt with.
21. In response to the further query of the DT, SMC stated they did not have evidence as to whether the claim by the Respondent that “*he has never consumed controlled substances when at work or when on active duty*” was accurate or not.

#### Respondent’s Further Submissions on Sentence and Reply Submissions

22. Counsel for the Respondent submitted that an order under section 53(2)(c) of the MRA was not appropriate given the circumstances for this case. They sought to draw a distinction between character misconduct (the DT terms it as personal misconduct) and professional misconduct by a doctor. Counsel argued that the supervisory framework sought by the SMC, i.e. the Supervision Framework, is based on the framework for the

conditional registration of doctors. That framework was essentially a “training” framework to ensure that foreign doctors were qualified to practise in Singapore. Therefore, section 53(2)(c) made sense and was appropriate only for doctors who were guilty of professional misconduct and needed a period of supervision to be “re-trained”. The section was not appropriate for type of character misconduct the Respondent was guilty of.

23. The Respondent’s Counsel also submitted, given that SMC sought a “minimum” period of 24 months, that it was also uncertain how long the supervision would be. The “minimum” period could be extended. Additionally, there was little clarity on the conditions and restrictions that could be imposed. It was further submitted that there should not be powers given to the SMC to call for progress reports on the Respondent, and nor should there be the ability of the SMC to apply for changes to the orders as this would only be within the purview of the DT.
24. In relation to whether their client was under the influence of Methamphetamines while on duty, the Respondent’s Counsel stated that the Respondent was off duty on the day before his arrest. This was affirmed by the Respondent under oath at the hearing on 22 July 2019, where he stated that he was off duty the day before and on the of his arrest.

#### **DELIBERATION OF THE DT**

25. The Respondent pleaded guilty to the charge and accepted the ASOF unconditionally. Upon considering the facts admitted, the DT finds him guilty of the charge of conduct that brings the medical profession to disrepute.
26. In relation to the question whether the Respondent was under the influence of Methamphetamines while on duty prior to his arrest by the CNB, given the testimony of the Respondent before the DT to that question, and the submission of SMC that they did not have evidence one way or another, the DT can make no findings on that question.

#### Deliberations on the Submissions of the SMC

##### *The Standards Expected of Doctors*

27. The DT considered the sentencing submissions of the SMC. The DT agrees that illicit drug consumption needs to be dealt with seriously in Singapore. The possession of

controlled drugs carries a penalty of up to 10 years' imprisonment. The consumption of a controlled drug and the possession of drug taking utensils carries an imprisonment term of up to three years. What the Respondent did has eroded the faith and confidence of the public in relation to the medical profession.

28. Medical practitioners are held to a higher standard than the ordinary citizen by virtue of the Ethical Code and Ethical Guidelines of the SMC (the “ECEG”) they subscribe too, whether in their professional or personal lives. Under the ECEG, a doctor in Singapore needs to, amongst other things<sup>1</sup>:
- (a) Be dedicated to providing competent, compassionate and appropriate medical care to patients;
  - (b) Be an advocate for patients' care and well-being and endeavour to ensure that patients suffer no harm;
  - (c) Maintain the highest standards of moral integrity and intellectual honesty.
29. Being a doctor practising emergency medicine in a major hospital, the professional competence of the Respondent in treating and not doing harm to patients would be placed in question upon his arrest for possessing and consuming illicit drugs (albeit, according to the Respondent, not while on active duty). The duty to act with the highest standards of integrity is also lacking.
30. In the UK Court of Appeal judgement of *Solicitors Regulation Authority v Wingate and another [2018] 1 WLR 3969*, Lord Justice Jackson in delivering the judgement said that “an enduring feature of professional codes of conduct is that they set higher standards for their members than the general norms of society” [62]. Though that case was dealing with the professional disciplinary proceedings of UK solicitors, the DT believes the principle of higher standards, in view of the ECEG, is nonetheless relevant for doctors in Singapore as well.

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<sup>1</sup> Ethical Code and Ethical Guidelines of the Singapore Medical Council [3. Ethical Code]

31. To make it clear to the medical profession and the public that such misconduct will not condoned, and to assure the public that measures have been put in place to ensure the Respondent does not relapse or abuse drugs while on duty, the DT is of the view that a censure, being a formal statement of disapproval, would be wholly inadequate as a sanction. The DT has the function of ensuring its orders have a specific deterrent effect on the Respondent, and a general deterrent effect on doctors and other medical professionals.

*The Suitability for Rehabilitation*

32. In considering the appropriate sanction for this matter, the DT adapted the factors proposed by the SMC (set out in the Prosecution’s Further Sentencing Submissions (marked “PFSS”) at [20]. These factors themselves appear to be adapted from the UK Medical Practitioners Tribunal Service Sanctions Guidance (February 2018). The DT has recast the factors as follows, to consider if an order under section 53(2)(c) of the MRA is suitable (the “Section 21 Framework Suitability Criteria”):
- (a) That as part of the conditions and restrictions that could be imposed by section 21 (4) of the MRA, a period of supervision and rehabilitation may be helpful to address the shortcomings of the doctor, be they in professional or personal conduct;
  - (b) The doctor has insight, is likely to be able to comply with the conditions and restrictions imposed, and be able to positively respond to the supervision and the rehabilitation; and
  - (c) The setting the doctor practices in is appropriate for the supervision and rehabilitation, or that there is a likelihood the doctor is able to procure such an appropriate setting.
33. The DT finds all the above factors present in this case. The Respondent is young, and from all accounts in the positive testimonials tendered in mitigation [Respondent’s Bundle (marked “RB”) at S/No.3, 5 and 6], has a promising medical career ahead of him. For the past year and a half, he has been compliant with the informal conditions and restrictions imposed on him by TTSH, with no reports of any incidents since then.

Also, there would not be any issue regarding the suitability of TTSH as the setting by which to carry out the Supervision Framework. The Respondent appears to have a good level of support from his colleagues and supervisors there.

34. The DT is therefore of the view that the rehabilitation of the Respondent, given the facts of this particular case, is appropriate and indeed, necessary.
35. All this would be in line with the present focus on the rehabilitation of drug offenders. In a Straits Times report dated 16 January 2019 entitled "*Law amended to focus more on rehabilitation of drug abusers*", the Home Affairs Minister stated that "pure abusers" who only consume drugs, have minor consumption related offences like possession of small quantities of drugs and possession of drug taking utensils, will be channelled to the Drug Rehabilitation Centre if they admit to their offences. So it is clear that for this category of drug offenders, the approach is now rehabilitation as opposed to outright punishment through incarceration. The re-registration of the Respondent to Part II of the Register allows for the rehabilitation to take place.
36. The Respondent has been, in effect, supervised since he began employment at TTSH, albeit informally. However, the reintegration of the Respondent into the medical community should be carried out in a structured way. The DT thus agrees with the adoption of the Section 21 Framework, which incorporates the Supervision Framework, to reintegrate the Respondent safely into the medical profession. It also serves as an assurance to the public there is in place a structured programme for the supervision and rehabilitation of the Respondent. The conditions and restrictions of the Section 21 Framework to be imposed on the Respondent are a formalized way to ensure compliance by the him. In addition to the Supervision Framework, and as part of the rehabilitation and accountability regime, the Respondent shall also be required to attend drug rehabilitation and treatment sessions with an SMC approved addictions specialist.
37. The DT recognizes that the Respondent has been through the DRC rehabilitation regime and community counselling. He has also completed the urine test regime. These though, were imposed pursuant to his arrest in accordance with the protocols of the CNB for an ordinary citizen. There are higher standards and expectations of doctors, because they deal directly with the lives of others. A doctor flouting drug laws (where a section

53(2)(c) order may be an appropriate sanction) can expect an additional period of professional supervision and drug rehabilitation under a supervision framework as part of the medical profession disciplinary process.

38. Having said that, the conditions and restrictions to be imposed by the DT need to be clear, workable, achievable and with a minimum of ambiguity. The DT is therefore of view that the orders to be made need to be balanced and not unduly onerous on the Respondent. There is a need to ensure certainty and clarity as to the conditions and the restrictions. These should be straightforward to carry out, and that the Respondent has a clear end date to aim towards. The DT also recognizes that when the Section 21 Framework is put in place, it would not be practical for the DT to monitor the conditions and restrictions. It rightly should be the SMC to do so, and the Section 21 Framework allows this.
39. In considering the appropriate duration under the Supervisory Framework and the period of drug rehabilitation, the DT takes into account the period the Respondent spent in the DRC, and the year and a half or so under the informal supervision at TTSH.
40. Upon completion of the period under the Supervisory Framework and the period of rehabilitation, the Respondent may apply to be re-registered in Part I of the Register. Any breach of the conditions or restrictions imposed, or if there is a need to vary or revoke the conditions, restrictions or orders, can be dealt with in accordance with section 54 of the MRA.
41. The DT therefore agrees with the SMC that an order under section 53(2)(c) of the MRA should be imposed on the Respondent. This would entail the de-registration of the Respondent from Part I of the Register, and registering him in Part II. While the SMC has submitted that section 53(2)(c) of the MRA is largely rehabilitative and should not be seen as a punishment, the SMC has also conceded that the Respondent could perceive that through the conditions and restrictions imposed on him, he is indeed being punished. The DT believes that is the desired effect of the sanction. It has the dual purpose of rehabilitation and punishment. The sanction can be seen as a “demotion” of the Respondent’s status from a doctor with full registration and all the privileges it entails, to one with conditional registration where conditions and restrictions upon his

practice are imposed. This would make plain to the Respondent and the medical profession that such misconduct will be met not just with a censure or rehabilitation, but with a sanction which would have a significant impact. At the same time, it gives the opportunity to the Respondent to be rehabilitated and reintegrated into the medical profession.

### Deliberations on the Submissions of the Respondent

#### *The Question of Parity in Sentencing*

42. The Respondent relies mainly on the *Mervin Lim case* to support the submission for a censure. While the facts on the surface appear somewhat similar to the present case, it is not squarely on all fours as submitted by the Respondent's Counsel. In the *Mervin Lim case*, the quantity of the Methamphetamine was 0.37 grams, lower than the Respondent's 2.69 grams. This is over seven times more by quantity. Moreover, Dr Mervin Lim was tried and convicted in court. He was sentenced to 12 months of imprisonment and was released after serving eight months. He had also been detained at the DRC for four months prior to his court conviction. In total, he had served 12 months. The Respondent spent four months in DRC. This is three times less than Mervin Lim's total of 12 months. Most importantly, in the *Mervin Lim case*, the doctor was neither charged nor convicted for consumption of the drug. He was only charged for possession of drugs and possession of drug taking utensils. Similarly, in the *Adrian Teo case* cited by the Respondent's Counsel, it also appears to be one where the offender was charged and convicted on possession of controlled drugs, and not consumption. It must be noted that the facts from the *Adrian Yeo case* was actually gleaned from the grounds of decision of the *Mervin Lim case*. This because the record of proceedings for the *Adrian Yeo case* (Prosecution's Supplementary Bundle Of Authorities (marked "PSBOA") at Tab 8), from what has been tendered to the DT, contains a lack of factual information.
  
43. In short, the differences between the Respondent's case and that of the *Mervin Lim case* was that the latter was charged in court, had served a longer period in prison and DRC combined compared with the Respondent, was arrested with a lower quantity of Methamphetamines in his possession, and was not charged with consumption of drugs.

44. As such, the issue of parity of sentencing does not arise. Even if it were to arise, had the facts of the *Mervin Lim case* been identical to the case at hand, the *Mervin Lim case* was decided in 2014 and the Adrian Yeo case in 2007. That was some five and 12 years ago respectively, and may have been lenient sentences. In *Wong Meng Hang v Singapore Medical Council [2018] SGHC 253* (the “*Wong Meng Hang case*”), it was noted by the Court that the outcomes in precedents cited in that case had been unduly lenient, and the sentencing benchmarks, albeit for professional misconduct in the medical context, were to be recalibrated [38]. While the *Wong Meng Hang case* dealt with professional medical negligence, the DT is of the view there may be a similar need to recalibrate sentences in the area of personal misconduct by doctors.

*The Appropriateness of Imposing Section 53(2)(c) MRA*

45. In relation to section 53 (2)(c) of the MRA being not an appropriate order in this case, the Respondent’s Counsel had drawn a distinction between professional misconduct and character misconduct. The DT is not certain that distinction is what section 53(2)(c), or section 53(2) generally for that matter, has in mind. SMC is correct in saying that there is nothing in the MRA that points to this sort of distinction, nor are there any Parliamentary Debates reports tendered to the DT to that effect. What is clear is that section 53(2) lists a series of possible powers the DT could impose, once a finding under section 53(1) is affirmatively made. It is also clear that Parliament intended to introduce conditional registration and section 21 (4) and (6) to (9) as part of the range of sanctions a DT may impose, when it amended the MRA in 2010 to replace the more general sanction of the imposition of conditions to restrict the practice of a registered medical practitioner. Parliament also had removed the maximum time frame of three years for which restrictions could be imposed, indicating that the DT could impose a time frame it saw fit, as long as it was reasonable and justified.
46. The Respondent’s Counsel further submitted that section 53(2)(c) of the MRA was not suitable as a sanction for character misconduct, as misconduct like road rage, dishonesty or molesting a patient would not lend itself to rehabilitation.
47. The SMC cited the *UK Medical Practitioners Tribunal case of Dr Nicholas John David Arnold (2019)* to illustrate that in exceptional cases, even misconduct involving dishonesty could benefit from rehabilitation. Dr Arnold was convicted of dishonesty

and fraud. He was sentenced to 24 weeks of imprisonment (suspended for 18 months) by the criminal courts. The Tribunal subsequently imposed conditions on his medical registration. The Tribunal in that case stated that normally a criminal conviction involving dishonesty and fraud would attract a suspension from medical practice. However, due to the exceptional facts of the case, the Tribunal was of the view that imposing conditions of the doctor's registration would be appropriate.

48. The DT agrees and it is likely that a doctor guilty of serious personal misconduct like dishonesty or sexual offences would not meet the Section 21 Framework Suitability Criteria. Also, it would be highly likely that a DT would impose a more severe sanction than that of section 53(2)(c). However, the DT is of the view that section 53(2)(c) of the MRA would be appropriate for misconduct, whether professional or personal, if it meets the said criteria and if the facts warrant it. For this case, and as set out above, the DT does agree with the Respondent's Counsel that what the Respondent needs is addictions counselling. This would fit into the rehabilitation portion of the Section 21 Framework.
49. That the Respondent may be inconvenienced by and suffer potential embarrassment from being placed in the Section 21 Framework and being "demoted" to a Part II conditional registration would be missing the forest for the trees. The aim of the DT in this case is to reintegrate the Respondent into his professional work, to build the confidence of, and to show good faith to, his colleagues and the public. As stated earlier, the other aim is to ensure the specific deterrent effect. To this extent, there are concurrent rehabilitative and punitive elements to section 53(2)(c) of the MRA. The DT acknowledges that a section 53(2)(c) order may be more difficult to put in place for doctors who already have their own private practice, as opposed to doctors who are in tertiary or other larger healthcare institutions. Though it may be more difficult, it may not be impossible, depending on the facts of the case.
50. The DT agrees that the SMC should not have unfettered or general discretion to call for additional reports, or to include a liberty to apply clause in the order. As part of a disciplinary process, it is important that the orders made by the DT not be ambiguous, vague or open to too wide an interpretation. As such, DT believes there should be a fixed term for the period of supervision and the rehabilitation. In the event the

Respondent fails to comply with the requirements imposed as the conditions and restrictions of his registration, or if there is a need for the DT to revoke the order, or revoke or vary the conditions or restrictions imposed by the order (including the period of supervision or rehabilitation), the recourse would have to be as set out in appropriate part of section 54 of the MRA.

51. The DT does recognize that SMC needs some latitude to carry out its work as the oversight authority of the medical profession under the Section 21 Framework. Also, the DT is unable, from a practical point of view, to exercise such an oversight function over the Respondent. Therefore, progress reports should be submitted to the SMC from time to time, so as to enable SMC to carry out its role under section 21, to exercise its discretion to review the matter and to consider re-registering the Respondent in Part 1 upon fulfilment of the conditions and restrictions, or to trigger section 54 of the MRA if there is breach or need, as the case may be.

*Costs of the solicitors of the SMC*

52. The Respondent's Counsel requested that the DT reconsider the usual order for the costs of the solicitors for the SMC be borne by the Respondent. The Respondent's Counsel said that although the intention of the Respondent had been to plead guilty and agree to pay for those costs, that had changed somewhat. The further submissions and replies required of both parties by the DT would have increased the costs to be paid by the Respondent to the solicitors for the SMC. When pointed out by the DT that DTs did not, as a matter of practice, award specific costs, the Respondent's Counsel then asked that the DT consider ordering the Respondent to pay only a certain percentage of the costs. Respondent's Counsel conceded that the further submissions and replies were necessary, given that this case may have been the first time a DT had to consider a sanction under section 53(2)(c) of the MRA.
53. In reply, SMC pointed out that there was no undue delay in the proceedings, and that essentially, there was no justifiable reason to ask for a discount on the costs on the basis of the further submissions and replies required by the DT.
54. The DT had directed the further submissions from both parties, to enable it to fully consider the sentence for this case. The directions were part and parcel of the process

needed for the deliberations. In fact, the further submissions from both sides aided the DT greatly. The DT thus finds no significant reason to warrant an order that the Respondent only bears a percentage of the costs of the solicitors of the SMC.

## **SENTENCE**

55. The DT fully considered all the facts and circumstances and the respective submissions of both parties, including examining the available sentencing precedents. The DT finds that the Respondent has brought disrepute to the medical profession through his misconduct as charged. The DT took into account that the Respondent admitted to the drug consumption, his early plea of guilty before the DT, his promise as a doctor, his insight into his actions, his commitment to make amends, and the strong testimonials.
56. The orders made against the Respondent are as follows:
- (a) That he be de-registered from Part I of the Register of Medical Practitioners, and be registered under Part II of the said Register;
  - (b) That his registration under Part II of the Register be subject to the following conditions and restrictions:
    - (i) That the Respondent shall engage in clinical practice only under the equivalent of Level Two supervision of a supervising medical practitioner in accordance with the prevailing SMC Supervisory Framework for Conditionally/Temporarily Registered Doctors for Patients Safety (the “Supervision Framework”), for **a period of 18 months**;
    - (ii) Before the commencement of the medical practice as a medical practitioner registered under Part II of the Register, the Respondent shall provide the SMC with a Letter of Undertaking in accordance with the Supervision Framework, signed by the supervising medical practitioner who agrees to supervise the Respondent’s medical practice;

- (iii) With effect from the date of commencement of the Respondent's registration under Part II of the Register, the Respondent shall, for a period of 18 months, regularly attend drug rehabilitation and treatment sessions with an SMC approved addictions specialist. At six-monthly intervals, i.e. in month 6, 12 and 18 from the date of commencement of the Respondent's registration under Part II of the Register, the Respondent shall submit a progress report from the specialist to the SMC, stating the Respondent has not been consuming any controlled drugs as specified under the Misuse of Drugs Act (Cap. 185), the rehabilitation of the Respondent is positive, and that there is a low risk of relapse.
  - (iv) Subject to the Respondent satisfying the conditions and restrictions set out in paragraphs 56 (b) i – iii above, the Respondent may apply to the SMC for re-registration in Part I of the Register.
- (c) That he be censured;
  - (d) That he gives a written undertaking to the SMC that he will not engage in the conduct complained of or any similar conduct; and
  - (e) That he pays the costs of these proceedings, including the costs of the solicitors to the SMC.

57. The DT orders that the Grounds of Decision be published.

58. The hearing is hereby concluded.

Prof Walter Tan (Chairman)

Dr Chan Kin Ming

Mr Ng Choong Yeong Kevin (Legal Service Officer)

Mr Chia Voon Jiet and Ms Grace Lim Rui Si (M/s Drew & Napier LLC)  
for Singapore Medical Council; and  
Mr Fong Wei Li (M/s DC Law LLC)  
for the Respondent.