

IN THE REPUBLIC OF SINGAPORE

SINGAPORE MEDICAL COUNCIL DISCIPLINARY TRIBUNAL

[2020] SMCDT 5

Between

Singapore Medical Council

And

Dr Ler Teck Siang

... Respondent

FOUNDATIONS OF DECISION

Administrative Law – Disciplinary Tribunals

Medical Profession and Practice – Professional Conduct – Criminal Conviction – Implying a Defect in Character – Fraud or Dishonesty – Removal from Register

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Singapore Medical Council

v

Dr Ler Teck Siang

[2020] SMCDT 5

Disciplinary Tribunal – DT Inquiry No. 5 of 2020
Prof Walter Tan (Chairman), A/Prof Tan Tong Khee, Mr Bala Reddy (Legal Service Officer)
27 February 2020, 16 April 2020 and 14 July 2020

Administrative Law – Disciplinary Tribunals

Medical Profession and Practice – Professional Conduct – Criminal Conviction – Implying a Defect in Character – Fraud or Dishonesty – Striking Off

28 July 2020

GROUNDS OF DECISION

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

Introduction

- 1 The Respondent, Dr Ler Teck Siang, is a medical practitioner. Sometime in or prior to March 2008, the Respondent developed feelings for one “Mikhy K Farrera-Brochez” (“**Mikhy**”), who was then working in Singapore on an employment pass. Mikhy was diagnosed to be HIV-positive in March 2008. In order to ensure that Mikhy could keep his employment pass and continue to remain in Singapore with the Respondent, the Respondent colluded with Mikhy and proceeded to engage in a deceptive course of conduct calculated to conceal Mikhy’s HIV-positive status from the authorities.
- 2 The Respondent’s dishonest and fraudulent acts were eventually discovered. On 17 September 2019, the Respondent was convicted in the State Courts after a full trial on four criminal charges for offences under the Penal Code (collectively, the “**Penal Code**”).

Charges”) and was sentenced to a total of 24 months’ imprisonment. The Respondent’s appeal to the High Court was dismissed. The Respondent’s case was well covered in the news at the relevant time.

- 3 This Disciplinary Tribunal Inquiry was held to hear the four disciplinary charges brought against the Respondent pursuant to section 53(1)(b) of the Medical Registration Act (Cap 174, 2014 Rev. Ed.) (“**MRA**”) for each of his criminal convictions on the Penal Code Charges.

The criminal proceedings

- 4 The particulars of each of the Penal Code Charges are as follows:

(a) **DAC 924817/2016:**

“... that you, on or about 13 March 2008, in Singapore, did abet by intentionally aiding one Mikhy K Farrera-Brochez (“MB”) to deceive the Ministry of Manpower (“MOM”) that MB had undergone a HIV blood test, and in consequence of the abetment, MB submitted a HIV blood test result in his name, dated 14 March 2008, to MOM, in connection with MB’s Employment Pass application, Application No. A220208336533, knowing that the said blood test had been conducted on your blood instead of MB’s, and by such manner of deception MB fraudulently induced MOM to deliver an employment pass to him, which MOM would not have done if it were not so deceived, and you have thereby committed an offence under section 420 read with section 109 of the Penal Code (Chapter 224 1985 Revised Edition).”

(b) **DAC 924818/2016:**

“... that you, on or about 22 November 2013, in Singapore, did abet by intentionally aiding one Mikhy K Farrera-Brochez (“MB”) to deceive the Ministry of Manpower (“MOM”) that MB had undergone a HIV blood test, and in consequence of the abetment, MB submitted a HIV blood test result in his name, dated 22 November 2013, to MOM, in connection with MB’s Employment Pass application, Application No. A220208336533, knowing that the said blood test had been conducted on your blood instead of MB’s, and by such manner of deception MB fraudulently deceived MOM to consent to him retaining a Personalised Employment Pass which had been issued to him, which MOM would not have done if it were not so deceived, and you have thereby committed an offence under section 417 read with section 109 of the Penal Code (Chapter 224 1985 Revised Edition).”

(c) **DAC 924819/2016:**

"... that you, on the 10th day of December 2013, at [Information redacted], in Singapore, gave to a public servant, namely, one [Name redacted], a Manager (Investigation) of the Surveillance and Enforcement Branch, in the Ministry of Health, information which you knew to be false, to wit, in a statement recorded by the said public servant, you stated that the person whom you knew as "Dr Mikhy Malatesta Brochez" did not attend before you at Twin City Medical Centre on 22 November 2013, intending thereby to cause the public servant to cease investigation into offences that were committed in relation to the said blood test, which the said public servant ought not to have done if the true state of facts in respect of the information given were known by him, and you have thereby committed an offence under section 182 of the Penal Code (Chapter 224, 2008 Revised Edition)."

(d) **DAC 924820/2016:**

"... that you, on the 23rd day of January 2014, at Central Police Division, Police Cantonment Complex, 391 New Bridge Street Singapore, gave to a public servant, namely, one Inspector [Name redacted], an Investigation Officer attached to the Central Police Division, information which you knew to be false, to wit, in a statement recorded by the said public servant, you stated that it was the blood of one Mikhy Farrera Brochez which was tested during a HIV blood test on 22 November 2013, intending thereby to cause the said public servant to cease investigation into offences that were committed in relation to the said blood test, which the said public servant ought not to have done if the true state of facts in respect of the information given were known by him and you have thereby committed an offence under section 182 of the Penal Code (Chapter 224, 2008 Revised Edition)."

- 5 The Respondent appealed against both his conviction and sentence to the High Court. On 11 March 2019, the High Court dismissed both the Respondent's appeal against the conviction as well as his sentence. Whilst no grounds of decision were released by the High Court, the District Court's grounds of decision may be found in *Public Prosecutor v Ler Teck Siang* [2018] SGDC 278 ("*PP v Ler Teck Siang*").

Submissions on the MRA Charges

- 6 For each of the Respondent's convictions on each of the Criminal Charges, the Respondent was charged with a corresponding charge under section 53(1)(b) of the MRA, i.e. that the Respondent had "*been convicted in Singapore... of any offence implying a defect in character which makes him unfit for his profession*" (collectively, the "**MRA Charges**"). The MRA Charges are annexed to these grounds of decision.

7 At the Pre-Inquiry Conference on 18 November 2019, the Respondent indicated that he would be claiming trial to the MRA Charges.

Prosecution's Submissions on the MRA Charges

8 The Prosecution submitted that by virtue of section 53(3) of the MRA the Respondent's convictions on the Penal Code Charges are final and conclusive of his guilt. Section 53(3) of the MRA states:

(3) In any proceedings instituted under this Part against a registered medical practitioner consequent upon his conviction for a criminal offence, a Disciplinary Tribunal and the High Court on appeal from any order of the Disciplinary Tribunal shall accept his conviction as final and conclusive.

9 The Prosecution highlighted that in *Law Society of Singapore v Tay Soo Wan* [2005] SGHC 7, the Court of Three Judges (“C3J”) said of a similar provision under the Legal Profession Act (Cap 161) (“LPA”), that “*it is not open to either the respondent or the court to go behind the respondent's conviction by virtue of s 83(6) of the LPA*”. Section 83(6) of the LPA states:

(6) In any proceedings instituted under this Part against an advocate and solicitor consequent upon his conviction for a criminal offence, an Inquiry Committee, a Disciplinary Tribunal and a Court of 3 Judges of the Supreme Court referred to in section 98 shall accept his conviction as final and conclusive.

10 In determining whether the Respondent has been convicted on a charge implying a defect in character under section 53(1)(a) of the MRA, the Prosecution identified the following as relevant factors to be considered:

- (a) The nature of the offence¹;
- (b) The sentence imposed by the Court for the offences²; and

¹ *In the Matter of Dr Ong Theng Kiat* [2015] SMCDT 2 at [28] and *In the Matter of Dr Khoo Buk Kwong* [2014] SMCDT 7 at [18]

² *In the Matter of Dr Ong Theng Kiat* [2015] SMCDT 2 at [28] and *In the Matter of Dr Khoo Buk Kwong* [2014] SMCDT 7 at [18]

(c) The accused's conduct at the trial³.

- 11 In this regard, the Prosecution argued that where the nature of the offence involved fraud and dishonesty, it necessarily implied a defect in character. In support of this argument, the Prosecution cited various legal disciplinary cases, such as *Law Society of Singapore v Wong Sin Yee* [2003] 3 SLR(R) 209 (“**Wong Sin Yee**”). In *Wong Sin Yee* at [13], the C3J said “*While the concept of defect of character is often associated with dishonesty or fraudulent acts, that is not necessarily so in every case. The word “character” is wide and encompasses the total quality of a person’s behavior as revealed in his habits of thought and expression, his attitudes and interests, his actions and his philosophy of life. This has to be contrasted with the occasional instances of carelessness.*” This illustrates that the default “defect” in terms of “defect of character” is that of dishonesty or fraudulent acts.
- 12 The Prosecution submitted that the approach as regards dishonesty taken in these legal disciplinary cases are equally applicable to these current proceedings as the C3J has confirmed that there should be no difference in the disciplinary approach taken towards dishonest doctors and lawyers in the case of *Wong Meng Hang v Singapore Medical Council and other matters* [2019] 3 SLR 526 (“**Wong Meng Hang**”).
- 13 In addition to the grave nature of the offences for which the Respondent was convicted of, the Prosecution also pointed out that the Respondent was sentenced to a significant period of imprisonment (i.e. 24 months) and that the Respondent had also demonstrated reprehensible conduct at the criminal trial. These serve to strengthen the implication that the Respondent possesses a defect in character making the Respondent unfit for his profession.
- 14 The Prosecution acknowledged that as the MRA Charges were not brought under section 53(1)(a) of the MRA⁴, it would have to prove that the offences that the Respondent had been convicted of implied a defect in character, and not merely that they involved fraud or dishonesty. However, the Prosecution’s position was that section

³ *Singapore Dental Council Disciplinary Inquiry against Dr Hoo Swee Tiang* at [24]

⁴ Where a registered medical practitioner is found by a Disciplinary Tribunal “to have been convicted in Singapore or elsewhere of any offence involving fraud or dishonesty”.

53(1)(b) is wider than and could encompass offences which fall under section 53(1)(a), adding that it would be difficult to envision an offence which would fall foul of section 53(1)(a) but not 53(1)(b)⁵. The Prosecution explained that it had chosen to proceed under section 53(1)(b) as it was of the view that it was important that this Tribunal make a finding that the Respondent's criminal convictions implied a defect in character⁶.

Respondent's Submissions on the MRA Charges

15 The Respondent in his short-written submissions dated 19 January 2020 essentially made the following lines of argument:

- (a) Not every dishonest act implies a defect in character;
- (b) Whilst he was dishonest, his dishonesty did not imply a defect in character as he had committed the dishonest acts out of love, passion and compassion for Mikhy, and not out of greed and avarice; and
- (c) His conduct at the criminal trial and appeal are irrelevant considerations in determining his guilt on the MRA Charges.

16 At the hearing of the matter on 27 February 2020, whilst the Respondent admitted that he had been dishonest, the Respondent denied that there was any element of "personal, financial or material gain" in his commission of the offences. He repeated his arguments that his convictions did not imply a defect in character as he had committed the dishonest acts out of love, passion and compassion. The Respondent said⁷:

"So, my point is that all these acts were -- there was no element of greed involved, there was no element of personal financial or material gain. It was all done to -- in order for us to stay together. It was done so that I could continue to provide him with the care and support. I mean I do realise that it is dishonest but there was no other avenue that I could see where we could stay together. ... I mean I do realise that it's dishonest, but I had to make a choice between being dishonest and being with the person that I was in love with at that time. ..."

⁵ Page 25 of the Transcript for 1st Tranche Hearing on 28 February 2020.

⁶ Pages 25 and 26 of the Transcript for 1st Tranche Hearing on 28 February 2020.

⁷ Pages 45 and 56 of the Transcript for 1st Tranche Hearing on 28 February 2020.

17 The Respondent also drew an analogy with spousal cheating, saying:

"So although the primary charge for which I have been convicted has been labelled as "cheating", it should not be considered in the same vein as other cases of fraud and that's why I thought the more parallel, more appropriate parallel should be drawn with spousal cheating, because in spousal cheating, the offender betrays his marital obligation to his spouse, his or her spouse in order to be with someone else that he or she loves. In my case, I had a statutory obligation to the Ministry of Manpower, which I was convicted of betraying in order to be with someone I loved.

So in both kinds of cheating, there's a betraying of obligations. The only difference between the two is that in one case, the victim is a civilian, in the other case, the victim was a government agency and because of that, it's a criminal offence and because of that I was convicted. And because of that, I am currently being punished.

So in terms of parallel, I thought this was a more appropriate parallel, because in spousal cheating, it's also very clearly a dishonest act, but in this case it was not motivated -- in spousal cheating, it's not motivated by greed, it's motivated by love and passion. So it's a much more appropriate comparison. And as far as I am aware, in spousal cheating, the Medical Council would not have -- somebody who is found to have committed spousal cheating, a medical practitioner would not have incurred any form of censure from the Medical Council."

18 In other words, the Respondent disagreed with the Prosecution that convictions for offences involving fraud or dishonesty are convictions which implied a defect in character and further took the position that his motivation(s) behind the offences were also relevant towards the determination of whether his convictions implied a defect in character.

Our finding of the Respondent's guilt on the MRA Charges

19 The Prosecution rightly submitted that under section 53(3) of the MRA, it is not open to the Respondent to re-open the question of whether he did commit the offences stated in the Penal Code Charges nor for this Tribunal to consider such a question. This Tribunal is bound to accept that the Respondent's conviction is final and conclusive as to his guilt, which also means that the facts which were found by the trial judge at his conviction on the Penal Code Charges and upheld by the appellate judge in the High Court are not open to challenge at these proceedings.

20 This Tribunal notes that if the Prosecution had chosen to bring the MRA Charges under section 53(1)(a) of the MRA, the disciplinary charges would have clearly been made out. Nevertheless, given the strong case authority that convictions for offences involving fraud and dishonesty are typically also offences implying a defect in character rendering a respondent unfit for his profession, this Tribunal has no difficulty finding that the MRA Charges, which have been brought under section 53(1)(b) of the MRA, are equally made out in that the Respondent's convictions on each of the Penal Code Charges implied a defect in character rendering him unfit for his profession.

21 Although the cases cited by the prosecution in support of its proposition that convictions for offences involving fraud or dishonesty imply a defect in character were decided in the context of the Legal Profession Act proceedings, those principles are equally be applicable to medical disciplinary proceedings.

22 That this should be the position was clearly articulated by the learned Chief Justice Sundaresh Menon in his lecture delivered to the Academy of Medicine on 14 March 2018:

"Patients and the public must be able to trust you implicitly with their lives and their well-being. To justify this trust, you have to maintain a good standard of care, conduct and behavior... Unless we say these are just nice-sounding but ultimately empty words, the argument that dishonesty within the medical profession can be tolerated because honesty is not essential to the discharge of a doctor's duties and functions does not in this light seem to be a particularly persuasive one. **In fact, because patients entrust their very lives in the hands of medical professionals, honesty might be said to be at least of equal importance in the medical profession as it is in the legal profession. ...**" (emphasis in bold added)

23 Subsequently, these views were entrenched in the judgment of the C3J in *Wong Meng Hang*, where the court said at [71]:

"It is clear that the time-honoured values of honour, integrity and honesty are not only important for the legal profession... but also integral to the ethos of the medical profession... doctors are routinely trusted with matters of grave importance including those involving life and death, and the trust and confidence reposed by a patient in his doctor is **certainly no less than** that which applies in a solicitor-client relationship... the commitment of lawyers to the values of truth, honesty and ethics is shared with members of the medical profession

and that there ought to be greater consistency in the way that each profession responds to grave breaches of such values. ...”
(emphasis in bold added)

- 24 With regards to the Respondent’s submissions, this Tribunal is of the view that the Respondent’s arguments against his guilt are wholly misconceived and must be rejected.
- 25 Firstly, it must be emphasised that the Respondent is not being brought to task for a simple dishonest act, but for criminal convictions involving fraud and dishonesty – i.e. these are dishonest acts of sufficient gravity and importance where Parliament has penalised such conduct and prescribed deterrent criminal penalties. The Respondent’s analogy to spousal cheating is also misplaced because spousal cheating per se is not a criminal offence. In fact, we found the Respondent’s attempts to trivialise his repeated deceptions of government agencies, which are responsible for the safeguarding of public interests, as being akin to spousal cheating deeply disturbing and worrying.
- 26 Whilst we do not go so far as to say that all convictions satisfying section 53(1)(a) of the MRA would also satisfy section 53(1)(b), it will be rare to envision circumstances in which no defect in character can be implied. We note that both a finding of fraud⁸ or dishonesty⁹ requires proof of the respondent’s wrongful intentions.
- 27 Secondly, the Respondent took the C3J’s statement in *Wong Sin Yee* that “*While the concept of defect of character is often associated with dishonesty or fraudulent acts, that is not necessarily so in every case*” out of context. This statement was made in the context of the C3J having to decide when convictions for offences that did not involve dishonesty or fraudulent acts might imply a defect in character. *Wong Sin Yee*

⁸ Section 24 of the Penal Code (Cap. 224) defines “dishonestly” as:

24. A person (A) is said to do an act dishonestly if —

(a) A does that act with the intention of causing wrongful gain to A or another person, or wrongful loss to another person, regardless of whether such gain or loss is temporary or permanent; or

(b) that act done by A is dishonest by the ordinary standards of reasonable and honest persons and A knows that that act is dishonest by such standards.

⁹ Section 25 of the Penal Code (Cap. 224) defines “fraudulently” as:

25. A person (A) is said to do an act fraudulently if A does that act with intent to deceive another person (B) and by means of such deception, that an advantage should accrue to A or another person or detriment should befall B or another person (other than A), regardless of whether such advantage or detriment is temporary or permanent.

Explanation 1.—Where the advantage or the detriment A intended by means of the act done is so slight that no reasonable person of ordinary sense or temper would complain of it, the act is not done fraudulently.

Explanation 2.—It is sufficient in any charge for an offence under this Code involving doing an act fraudulently to allege a general intent to act fraudulently without naming any particular person intended to be deceived

concerned a conviction for a charge of causing alarm by uttering insulting words under section 13A(1)(a) of the Miscellaneous Offences (Public Order and Nuisance) Act and a charge of voluntarily causing hurt under section 323 of the Penal Code. In fact, read in context, this statement in *Wong Sin Yee* means that the default “defect” in terms of “defect of character” is that of dishonesty or fraudulent acts.

- 28 Thirdly, and as supported by case authority in the case of *Singapore Dental Council Disciplinary Inquiry against Dr Hoo Swee Tiang*, this Tribunal is entitled to look at the Respondent’s conduct at trial and/or appeal to determine if his convictions on the Penal Code Charges imply a defect in character. Such considerations are not “an irrelevant non-starter” as claimed by the Respondent, but serve to shed light as to whether a defect in character may be implied from the conviction given that the trial is an integral part of the criminal conviction. In the same vein, however, it is not inconceivable for a respondent’s motivations behind his commission of the offences to have some relevance. However, the gravity of the Respondent’s offences in the present case are so severe that we would disregard the Respondent’s purported motivations behind his criminal offences, even if his motivations had been laudable, which, as will be explained further below, we find were clearly not.
- 29 Fourthly, the Respondent’s claim that he had made no “personal, financial or material gain” from his commission of the offences is incorrect. As acknowledged by the Respondent himself after making that claim (see paragraph 16 above), he had committed the offences so that he could continue staying together with Mikhy. This was entirely a personal gain by the Respondent, achieved by abusing his position as a medical practitioner and sacrificing his professional responsibilities.
- 30 The rationale for mandatory HIV-testing of foreigners who wish to work in Singapore was explained by then-Minister for Home Affairs Mr Wong Kan Seng on 4 September 1998 at the Second Reading of the Immigration (Amendment) Bill. The said Bill proposed extending HIV screening from only new Permanent Residency and work permit applicants to employment pass and other long-term immigration pass holders. Mr Wong Kan Seng said:

"The extension of medical screening to these groups of foreigners will help to keep out foreigners who are a potential threat to our public health¹⁰."

- 31 Medical practitioners perform an integral role in safeguarding public health and safety, and the Respondent had betrayed this role in assisting Mikhy in concealing his HIV-positive status.
- 32 Moreover, The Respondent had engaged in the deception of governmental authorities not once, but four times. In DAC 924817/2016 and DAC 924818/2016, the Respondent had aided in the deception of the Ministry of Manpower. In DAC 924819/2016, the Respondent gave a false statement to the Ministry of Health, and in DAC 924820/2016, the Respondent gave a false statement to the police. The Respondent's four offences took place over the course of several years, with the false statements to the Ministry of Health and the police made in order to cover up his earlier wrongdoing, which could in no way be said to be a one-off lapse in judgment or otherwise trivial. The Respondent's carefully planned, deliberate and flagrant deception of governmental authorities and undermining of the safeguards put in place by them for selfish personal purposes clearly shows that the Respondent possesses a defect in character rendering him unfit for his profession.
- 33 The following statements in the State Courts' grounds of decision on the Respondent's conduct at the trial further illuminates the defective character of the Respondent (all emphasis in bold added):
- (a) "it could not be denied that the Accused was **very much the prime mover and a very significant player in an elaborate scheme to deceive a government ministry**, and to circumvent policies put in place pertaining to the employment of foreigners in Singapore¹¹;"
 - (b) "the Accused had **abused his training and his position of trust as a medical professional**, as he not only made use of his medical knowledge and medical expertise to take his own blood and replace it for that of Mikhy's, but also, through his work as a locum doctor... in the submission of the false blood samples in order to generate false results that were submitted to MOM¹²;" and

¹⁰Session 1, Volume 69, Column 937.

¹¹ [122]

¹² [124]

- (c) "I accepted the Prosecution's argument that "Medical professionals play an important role in the medical screening process of foreigners who seek employment in Singapore. When such gatekeepers turn rogue, as we have seen in the present case, the entire medical screening system fails." By his criminal acts, **the Accused had not only brought the entire medical profession into disrepute, he had also circumvented procedures put in place to advance the public interest**¹³."

34 In view of all the above, this Tribunal is of the view that it is patently clear that the Respondent is guilty on the MRA Charges. We accordingly convicted him on the same.

Submissions on sentencing

35 At sentencing, the Prosecution submitted that the Respondent's name should be removed from the register of medical practitioners, whilst the Respondent objected to any sentence involving a suspension or removal of his name from the Register.

Prosecution's Submissions on Sentence

36 The Prosecution submitted that as a presumptive rule, a doctor who has been convicted of a criminal offence to which dishonesty was integral would be struck off the register of medical practitioners unless there are exceptional circumstances. This is drawn from the C3J's decision in *Wong Meng Hang*, where the C3J aligned the position for medical disciplinary cases in line with disciplinary cases involving lawyers and said at [72] and [75(e)]:

"72 Therefore, as 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... 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 cases.

75 In our judgment, the foregoing analysis may be summarised as follows:

...

¹³ [125]

(e) Further, where dishonesty reveals a character defect rendering the errant doctor unsuitable for the profession, such as **where the dishonesty is integral to the commission of a criminal offence** of which the doctor has been convicted, or where it violates the relationship of trust and confidence between doctor and patient, **striking off will be the presumptive penalty, absent exceptional circumstances.**"

37 The Prosecution pointed out that the C3J had observed that there was no reason to take a different approach with regards to doctors, given that the time-honoured values of honour, integrity and honesty are likewise integral to the ethos of the medical profession (*Wong Meng Hang* at [71]), and that adopting this rule in relation to the medical profession would also align the position in Singapore with that taken in the UK, and give greater effect to the overarching sentencing objectives of general deterrence and the need to safeguard public confidence in the medical profession (*Wong Meng Hang* at [74]).

38 Moreover, the Prosecution submitted that Dr Ler's case involved a high level of culpability on his part. As can be observed from the facts of Dr Ler's conviction on the Penal Code Charges, the Respondent had:

- (a) instigated the dishonest acts: the idea for substituting Mikhy's blood sample came from the Respondent (see *PP v Ler Teck Siang* at [64(b)]);
- (b) carried out a high degree of planning and premeditation: the Respondent instructed Mikhy to visit the clinic where he was performing locum duties in the evening, so as to make it appear that Mikhy was there for an employment permit medical screening, and after he had drawn his own blood for the blood test on 22 November 2013, he "*stuck a plaster on Mikhy's left arm to make it appear that his blood had been drawn from him*" (see *PP v Ler Teck Siang* at [64(f)]);
- (c) committed the acts of giving the false blood samples in his professional capacity: he submitted these false blood samples while working as a locum doctor at two different clinics (see *PP v Ler Teck Siang* at [64(b)] and [64(f)]), and in so doing, he abused the privileges that had been granted to him as a medical professional (a point noted at [124] of the case);

- (d) abused his privileges as a medical professional to assist another party in breaking the law: the Respondent's actions allowed Mikhy to breach the restrictions imposed on foreigners who are infected with HIV under section 8(3)(ba) of the Immigration Act (Cap 133, 2008 Rev Ed);
- (e) committed his dishonest acts on two separate occasions: the Respondent substituted his blood sample for Mikhy's in 2008 and then again in 2013; and
- (f) attempted to cover up his acts of deception by more deception: the Respondent gave false information to the authorities to throw them off the trail of their investigations.

39 The Prosecution added that the Respondent's criminal acts had brought the entire medical profession into disrepute, and had contributed to the wastage of public resources.

40 The Prosecution further submitted that the principle of general deterrence is applicable, as it was in the Respondent's sentencing on the Penal Code Charges (see *PP v Ler Teck Siang* at [123] and [126]), and that there are no exceptional circumstances in this case to warrant a departure from the presumptive rule.

Respondent's Submissions on Sentence

41 The Respondent submitted that whilst he had been dishonest, there are no elements in his offences over and above dishonesty which would render him unfit for his profession. As such, the Respondent was of the view that a suspension or removal of his name from the Register was unwarranted.

42 The Respondent submitted that the following mitigating factors are present in his case:

- (a) He had committed the offences out of love, passion and compassion;
- (b) There was no harm caused and no risk posed to anyone as a result of his offences.

- 43 The Respondent analogized his case to the case of *Re Dr H M* (2011) in support of his argument that a suspension is not warranted where there is no monetary gain and no harm had resulted from the medical practitioner's wrongful conduct. In any event, if the DT decides to impose a period of suspension, the Respondent submitted that it should be in line with the case of *Dr B* (2006), where the medical practitioner had forged documents to make a false claim to MINDEF for reimbursement for loss of income for reservist training amounting to about \$10,000. A five-month suspension was imposed on Dr B in that case.
- 44 The Respondent further submitted that it is wrong to find that a Respondent who claims trial as showing no remorse as he is only exercising his legal right under the law and should not be "*disadvantaged by it if he decides to claim trial*". In support of this argument, the Respondent cited the case of *Dr Hoo Swee Tiang*.

Our Decision on the Appropriate Sentence

- 45 As we had clearly set out at paragraphs 19 to 34 above, the Respondent has been found guilty on the MRA Charges, i.e. that his convictions on the Penal Code Charges imply a defect in character which makes him unfit for his profession. The only matter left to be decided is the appropriate sanction to be visited on the Respondent.
- 46 The C3J in the case of *Singapore Medical Council v Kwan Kah Yee* [2018] 5 SLR 201 at [50] explained the purpose of disciplinary sanctions as follows:

"... the sanctions in medical disciplinary proceedings serve two functions: first, to ensure that the offender does not repeat the offence; and second, to uphold the standing of the medical profession. With respect to the former, we considered that the ultimate aim is to ensure that the public is protected from the potentially severe outcomes arising from the actions of errant doctors..."

- 47 In cases where a lawyer's misconduct involves dishonesty, it has invariably been the position that a striking off is warranted where the dishonesty reveals a character defect rendering the errant solicitor unsuitable for the profession or undermines the administration of justice (*Law Society of Singapore v Chia Yoong Yang* [2018] 5 SLR

1068 at [39]. However, the medical disciplinary proceedings had historically taken a more lenient approach.

48 However, the approach taken in legal disciplinary proceedings has now been expressly affirmed by the C3J in *Wong Meng Hang* at [72] (see paragraph 36 above) as being equally applicable to medical disciplinary proceedings.

49 This Tribunal observes that since the decision in *Wong Meng Hang*, even a conviction on one offence for a singular incident where fraud and dishonesty is involved may be sufficient to warrant a striking off. Such was the case in *Singapore Medical Council v Dr Khoo Buk Kwong* [2018] SMCDT 13, where Dr Khoo faced one disciplinary charge under section 53(1)(a) of the MRA for his criminal conviction for forging a prescription to obtain Duromine capsules for his ex-wife. Although Dr Khoo had committed the offence whilst under suspension for earlier disciplinary offences, it does not appear that the absence of this factor would have led to a different outcome. *Wong Meng Hang* was relied upon by the Disciplinary Tribunal in arriving at its decision to remove Dr Khoo's name from the Register in that case.

50 We are unable to agree with the Respondent's submissions on sentencing for the following reasons:

- (a) Given that the Respondent has been convicted on the MRA Charges, the Respondent's assertions that there was no defect in character which rendered him unfit for his profession are no longer relevant.
- (b) As we had elaborated on in paragraphs 29 to 33 above, it is not correct for the Respondent to claim that he had gained nothing from the commission of the offences and that no harm had been caused. The Respondent had derived non-monetary gain from his commission of the offences in the Penal Code Charges, and had undermined the safeguards put in place by governmental authorities for the maintenance of public health.
- (c) The sentencing precedents relied upon by the Respondent, i.e. *Dr H M* (2011) and *Dr B* (2006), are relatively old and unreported cases. Most significantly,

they pre-date *Wong Meng Hang* and are no longer reliable as guidance in determining the appropriate sentence.

- (d) The Respondent is not “*disadvantaged*” for claiming trial, but the fact that the Respondent had claimed trial certainly cannot be considered a mitigating factor.

51 The Tribunal notes that the relevant paragraph in the grounds of decision of *Dr Hoo Swee Tiang* dated 3 October 2018 referred to by the Respondent reads as follows:

“59. Secondly, whilst pleading guilty to a charge may be said to be showing remorse and therefore a factor to consider in mitigation, it would be wrong to find a Respondent who claims trial as showing no remorse and therefore deserves no leniency for that. The Respondent is after all exercising his legal right that the law had accorded him and he should not be disadvantaged by it if he decides to claim trial so long as his defence is properly conducted.”

52 It appears that the Respondent had already raised this same issue of being disadvantaged by claiming trial during his criminal proceedings and it was addressed by the District Judge (“**DJ**”) in *PP v Ler Teck Siang* at [121], where the DJ said (emphasis in bold added):

“I was of the view that while the Accused was entitled to claim trial, this also meant that **he could not avail himself of the sentencing discount that a person who had pleaded guilty, and who had shown remorse and saved public time and resources in the process, may have expected to receive**. Further, the Accused had cast aspirations essentially of misconduct against several police officers, notably DSP [Name redacted], and then flip flopped when challenged on the allegations that he had made.”

53 Likewise, the Respondent cannot be considered for any sentencing discount here. This is not a disadvantage, but merely the lack of a positive factor. The Respondent cannot avail himself of a possible sentencing discount by claiming trial, because claiming trial is a neutral factor rather than a positive mitigating factor that pleading guilty would be.

54 We agree with the Prosecution that the Respondent’s case shows highly aggravating factors (see paragraph 38 above), which would more than justify a sentence that the Respondent’s name be removed from the Register of Medical Practitioners. Moreover,

there are no exceptional circumstances in the present case which would justify imposing any sentence other than a striking off in the Respondent's case.

- 55 In addition, this Tribunal notes that the Respondent's conduct at the present disciplinary proceedings in attempting to make light of his offences has only served to further illustrate his recalcitrant and unremorseful attitude in failing to appreciate the gravity of his criminal conduct, and thus the severity of the defect in character on the part of the Respondent, indicating that a severe sentence is justly warranted.
- 56 The grave nature of the MRA charges would by itself have been sufficient to warrant a removal of the Respondent's name from the Register. This accompanied by the need for general deterrence, the protection of the public and upholding the standing of the medical profession firmly buttresses our view that the appropriate sanction in this case cannot be anything but a removal of his name from the Register.
- 57 In the course of the proceedings this Tribunal had clarified with the Prosecution that the Respondent does not currently hold a practising certificate. However, unless the Respondent is suspended or his name is ordered to be removed from the Register, the Respondent may apply for a new practising certificate at any time. Hence, it remains pertinent that an order for the removal of the Respondent's name from the Register of Medical Practitioners be made, notwithstanding that he does not at present hold a practising certificate.
- 58 The Prosecution has also asked that the Respondent be ordered to bear the costs of and incidental to these disciplinary proceedings. As these costs are usually so ordered should the Respondent be found guilty, and there are no grounds for a departure from this norm, costs are ordered against the Respondent.

Sentencing Guidelines for Singapore Medical Disciplinary Tribunals

- 59 After the hearing for this matter had concluded, and our oral verdict issued on 14 July 2020, the Singapore Medical Council released the Sentencing Guidelines for Singapore

Medical Disciplinary Tribunals (June 2020 edition) (“**2020 Sentencing Guidelines**”) on 15 July 2020.

60 As we did not have the benefit of Counsel’s submissions on the 2020 Sentencing Guidelines, we shall only set out below our observations that the sentence meted out in this case is entirely consistent with the 2020 Sentencing Guidelines.

61 The 2020 Sentencing Guidelines centers on a harm-culpability matrix for indicative sentencing, which is reproduced below.

Harm	Slight	Moderate	Severe
Culpability			
Low	Fine or other punishment not amounting to suspension.	Suspension of up to 1 year.	Suspension of 1 to 2 years.
Medium	Suspension of up to 1 year.	Suspension of 1 to 2 years.	Suspension of 2 to 3 years.
High	Suspension of 1 to 2 years.	Suspension of 2 to 3 years.	Suspension of 3 years or striking off.

62 The MRA Charges on which the Respondent has been convicted in this case is of the severe-harm and high-culpability range, which justifies an order for striking off to be made against the Respondent.

63 The MRA Charges are non-clinical care offences, in which harm to public confidence in the profession, and the health and safety of the public must be considered under the “harm” element¹⁴. The Tribunal is entitled to consider not just the actual harm caused, but also potential harm.¹⁵

64 For the reasons stated in paragraph 30 to 32 above, this Tribunal is of the view that severe harm or potential harm had been caused to public confidence in the profession,

¹⁴ Paragraphs 15, 16 and 49 of the 2020 Sentencing Guidelines

¹⁵ Paragraph 50 of the 2020 Sentencing Guidelines.

and the health and safety of the public, by the Respondent's conduct in each of the Penal Code Charges on which the MRA Charges are based.

65 Meanwhile, under the "culpability" element¹⁶, the most relevant factor to be considered in the present case is the extent of premeditation and planning involved, including the lengths to which the doctor went to cover up his or her misconduct.

66 Based on the factors highlighted by the Prosecution (see paragraph 38 above), which this Tribunal agrees with, we are of the view that the Respondent had exhibited a high level of premeditation and planning in the commission of his criminal offences, and thus is of high culpability in respect of each of the MRA Charges.

67 Therefore, this Tribunal would consider striking off to be the most appropriate sentence for each of the MRA Charges.

68 Given that no harsher sentence than striking off can be ordered, there would be no change in the Respondent's sentence regardless of whether the "one-transaction" rule applies¹⁷. Nevertheless, this Tribunal notes that whilst the Respondent had essentially committed the Penal Code offences in DAC 924819/2016 and DAC 924820/2016 to cover up his earlier offences in DAC 924817/2016 and DAC 924818/2016, the Tribunal is of the view that the "one-transaction" rule should not apply because each of the MRA Charges are based on distinct Penal Code offences that took place significant time periods apart.

69 Lastly, this Tribunal does not consider that the sentence of striking off is either excessive or manifestly inadequate such that any adjustment by the "totality principle"¹⁸ would be necessary.

Conclusion

70 Accordingly, this Tribunal orders that:

¹⁶ Paragraphs 53 and 54 of the 2020 Sentencing Guidelines.

¹⁷ Paragraphs 79 and 80 of the 2020 Sentencing Guidelines.

¹⁸ Paragraph 82 to 85 of the 2020 Sentencing Guidelines.

- (a) The Respondent's name be **removed** from the Register of Medical Practitioners; and
- (b) the Respondent pay the costs and expenses of and incidental to these proceedings and the Interim Orders Committee ("**IOC**") Inquiry held on 7 March 2019, including the costs of the respective solicitors to the SMC and the Legal Assessor for the IOC Inquiry.

71 We further order that the Grounds of Decision be published with the necessary redaction of identities and personal particulars of persons involved.

72 The hearing is hereby concluded.

Prof Walter Tan
Chairman

A/Prof Tan Tong Khee

Mr Bala Reddy
Legal Service Officer

Mr Chia Voon Jiet and Mr Sim Bing Wen (M/s Drew & Napier LLC)
for Singapore Medical Council; and

Dr Ler Teck Siang in person

1st Charge

1. That you, Dr Ler Teck Siang, a registered medical practitioner under the Medical Registration Act (Cap. 174, 2014 Rev Ed), are charged that on 17 September 2018, you were convicted in Singapore of the offence of abetting and inducing delivery of property, under section 420 read with section 109 of the Penal Code (Cap. 224, 2008 Rev Ed):

Particulars

- (a) On or about 13 March 2008, you did abet by intentionally aiding one Mikhy K Farrera-Brochez (“**MB**”) to deceive the Ministry of Manpower (“**MOM**”) that MB had undergone a HIV blood test, and in consequence of the abetment, MB submitted a HIV blood test result in his name, dated 14 March 2008, to MOM in connection with MB’s Employment Pass application, knowing that the said blood test had been conducted on your blood, instead of MB’s blood, and by such manner of deception MB fraudulently induced MOM to deliver an employment pass to him, which MOM would not have done if it were not so deceived;
- (b) On 17 September 2018, you were convicted in the State Courts by the learned District Judge Luke Tan of an offence under section 420 read with section 109 of the Penal Code (Cap. 224, 2008 Rev Ed) and on 27 September 2018, were sentenced to serve 15 months’ imprisonment; and
- (c) the aforesaid conviction has not been set aside;

and that in relation to the facts alleged, you have thereby been convicted of a criminal offence implying a defect in character which makes you unfit for your profession within the meaning of section 53(1)(b) of the Medical Registration Act (Cap. 174, 2014 Rev Ed).

2nd Charge

2. That you, Dr Ler Teck Siang, a registered medical practitioner under the Medical Registration Act (Cap. 174, 2014 Rev Ed), are charged that on 17 September 2018, you were convicted in Singapore of the offence of abetting cheating, under section 417 read with section 109 of the Penal Code (Cap. 224, 2008 Rev Ed):

Particulars

- (a) On or about 22 November 2013, you did abet by intentionally aiding one Mikhy K Farrera-Brochez (“**MB**”) to deceive the Ministry of Manpower (“**MOM**”) that MB had undergone a HIV blood test, and in consequence of the abetment, MB submitted a HIV blood test result in his name, dated 22 November 2013, to MOM in connection with MB’s Employment Pass application, knowing that the

said blood test had been conducted on your blood, instead of MB's blood, and by such manner of deception MB fraudulently induced MOM to consent to him retaining a Personalised Employment Pass which had been issued to him, which MOM would not have done if it were not so deceived;

- (b) On 17 September 2018, you were convicted in the State Courts by the learned District Judge Luke Tan of an offence under section 417 read with section 109 of the Penal Code (Cap. 224, 2008 Rev Ed) and on 27 September 2018, were sentenced to serve nine (9) months' imprisonment; and
- (c) the aforesaid conviction has not been set aside;

and that in relation to the facts alleged, you have thereby been convicted of a criminal offence implying a defect in character which makes you unfit for your profession within the meaning of section 53(1)(b) of the Medical Registration Act (Cap. 174, 2014 Rev Ed).

3rd Charge

- 3. That you, Dr Ler Teck Siang, a registered medical practitioner under the Medical Registration Act (Cap. 174, 2014 Rev Ed), are charged that on 17 September 2018, you were convicted in Singapore of the offence of giving false information to a public servant, under section 182 of the Penal Code (Cap. 224, 2008 Rev Ed):

Particulars

- (a) On 10 December 2013, you gave to a public servant, a Manager (Investigation) of the Surveillance and Enforcement Branch in the Ministry of Health, information which you knew to be false, *to wit*, in a statement recorded by the said public servant, you stated that the person whom you knew as "Dr Mikhy Malatesta Brochez" did not attend before you at Twin City Medical Centre on 22 November 2013, intending thereby to cause the said public servant to cease investigation into offences that were committed in relation to the said blood test, which the said public servant ought not to have done if the true state of facts in respect of the information given were known by him;
- (b) On or about 24 June 2016, you were charged in the State Courts with an offence under section 182 of the Penal Code (Cap. 224, 2008 Rev Ed);
- (c) On 17 September 2018, you were convicted in the State Courts by the learned District Judge Luke Tan of the aforesaid offence and on 27 September 2018, were sentenced to serve four (4) months' imprisonment;
- (d) the aforesaid conviction has not been set aside;

and that in relation to the facts alleged, you have thereby been convicted of a criminal offence implying a defect in character which makes you unfit for your profession within

the meaning of section 53(1)(b) of the Medical Registration Act (Cap. 174, 2014 Rev Ed).

4th Charge

4. That you, Dr Ler Teck Siang, a registered medical practitioner under the Medical Registration Act (Cap. 174, 2014 Rev Ed), are charged that on 17 September 2018, you were convicted in Singapore of the offence of giving false information to a public servant, under section 182 of the Penal Code (Cap. 224, 2008 Rev Ed):

Particulars

- (a) On 23 January 2014, you gave to a public servant, an Investigation Officer attached to the Central Police Division, information which you knew to be false, *to wit*, in a statement recorded by the said public servant, you stated it was the blood of one Mikhy Farrera Brochez which was tested during a HIV blood test on 22 November 2013, intending thereby to cause the said public servant to cease investigation into offences that were committed in relation to the said blood test, which the said public servant ought not to have done if the true state of facts in respect of the information given were known by him;
- (b) On or about 24 June 2016, you were charged in the State Courts with an offence under section 182 of the Penal Code (Cap. 224, 2008 Rev Ed);
- (c) On 17 September 2018, you were convicted in the State Courts by the learned District Judge Luke Tan of the aforesaid offence and on 27 September 2018, were sentenced to serve five (5) months' imprisonment;
- (d) the aforesaid conviction has not been set aside;

and that in relation to the facts alleged, you have thereby been convicted of a criminal offence implying a defect in character which makes you unfit for your profession within the meaning of section 53(1)(b) of the Medical Registration Act (Cap. 174, 2014 Rev Ed).