

IN THE REPUBLIC OF SINGAPORE

SINGAPORE MEDICAL COUNCIL DISCIPLINARY TRIBUNAL

[2020] SMCDT 7

Between

Singapore Medical Council

And

Dr Azman Bin Osman

... Respondent

FOUNDATIONS OF DECISION

Administrative Law – Disciplinary Tribunals

Medical Profession and Practice – Professional Conduct – Conviction in Court – Suspension

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Singapore Medical Council

v

Dr Azman Bin Osman

[2020] SMCDT 7

Disciplinary Tribunal – DT Inquiry No. 7 of 2020

A/Prof Siow Jin Keat (Chairman), Dr Wong Sen Chow, Ms Chong Chin Chin (Legal Service Officer)

11 October 2018 and 16 November 2020

Administrative Law – Disciplinary Tribunals

Medical Profession and Practice – Professional Conduct – Conviction in Court – Suspension

6 May 2021

GROUNDS OF DECISION

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

Introduction

- 1 The Respondent was, at all material times, a registered medical practitioner under the Medical Registration Act (Cap. 174) (“**MRA**”) and he faced one charge of professional misconduct under section 53(1)(b) of the MRA brought by the Singapore Medical Council (“**SMC**”). The charge reads as follows:

“CHARGE

That you, **Dr Azman bin Osman (NRIC No. SXXXXXXXX)**, a registered medical practitioner under the Medical Registration Act (Cap. 174) (“**MRA**”), were, on 18 July 2017, in the State Courts of the Republic of Singapore, convicted of an offence under Section 509 of the Penal Code (Cap. 224), which is an offence implying a defect in character which makes you unfit for the medical profession.

PARTICULARS

- a. In MCN-901762-2016, you were charged that “you, on the 10th day of July 2016, at or about 1.15pm, on board Singapore Bus Service (SBS) number [redacted] bearing registration number [redacted] along [redacted] Road, Singapore, did intend to insult the modesty of one [redacted] (female, 56 years), to wit, you had unzipped your pants before the said [redacted] thereby exposing your undergarment and your groin, and you have thereby committed an offence punishable under Section 509 of the Penal Code, Chapter 224.”
- b. On 18 July 2017, you were convicted after a trial on the aforesaid charge, and were sentenced to 2 weeks’ imprisonment.

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

Background facts

- 2 On 18 July 2017, the Respondent was convicted after trial on one charge of insulting the modesty of a woman, by unzipping his pants before the woman, thereby exposing his undergarment and his groin, which was an offence punishable under section 509 of the Penal Code (Cap. 224). The Respondent was sentenced to two weeks imprisonment and he did not appeal against the conviction or sentence.
- 3 On 18 January 2018, the SMC informed the Respondent that he had been convicted of an offence in Singapore implying a defect in character which made him unfit to practise medicine and that the matter was referred to a disciplinary tribunal pursuant to section 39(4) of the MRA. On 11 July 2018, the Notice of Inquiry (“**NOI**”) was issued to the Respondent.
- 4 During the Pre-Inquiry Conference (“**PIC**”) held on 29 August 2018, the Respondent (who was then unrepresented by Counsel) informed the Disciplinary Tribunal (the “**DT**”) that he did not agree to the charge brought by the SMC and informed the DT that he intended to raise issues concerning matters which arose prior to his trial in the State Courts. At this hearing, the DT explained to the Respondent that the purpose of the inquiry by the DT was to determine if there was professional misconduct arising from his criminal conviction which warranted disciplinary action being taken under the MRA. It was not the role of DT to look behind his criminal conviction. The Respondent was also asked to consider obtaining legal advice for the purposes of the inquiry.

5 On 17 September 2018, the DT was informed that the Respondent had instructed a law firm to represent him and Counsel for the Respondent sought an extension of the timelines for exchange and submission of documents to the DT. On 2 October 2018, Counsel for the Respondent informed the DT that the Respondent, after having the benefit of legal advice for the first time in the proceedings, wished to express his sincere remorse for his actions and would be pleading guilty to the charge as stated in the NOI.

6 The Respondent formally entered the plea of guilt at the hearing on 11 October 2018. At the conclusion of that hearing, the DT referred the matter to a Health Committee (“**HC**”) to determine if the Respondent’s fitness to practise as a medical practitioner may be impaired by reason of his mental condition. The DT made the referral to the HC for the following reasons:

(a) The Respondent chose to escalate the matter by claiming trial when he was offered a choice of a warning by the attending police officer. He maintained his belief that he was justified in his actions due to the provocation of the 56 year-old victim. According to the Respondent, he believed that the victim (a non-Muslim Chinese woman) was a prostitute and he felt provoked by her attire as she was wearing a pair of shorts so revealing that she had exposed her underwear to the Respondent while sitting and facing him on the SBS bus. Therefore, in retaliation to the perceived provocation, he decided to expose his underwear to the victim. This reasoning was bizarre in the context of multi-ethnic and multi-religious Singapore and it was of concern to the DT if the Respondent would continue with similar reasoning when attending to patients.

(b) At the hearing on 11 October 2018, both Counsel took conscious steps to avoid making specific references to the facts of the case and they seemed to have conducted the proceedings in this manner to avoid upsetting the Respondent. The DT also noted that the Respondent appeared detached from the proceedings and was quiet. His demeanour was completely different from what the DT had observed during the PIC. It appeared to the DT that the Respondent had a rather sensitive and labile personality that may be subject to mood swings and the DT was concerned if this might affect his ability to function as an effective and safe doctor for his patients.

- 7 The HC conducted an inquiry on 16 July 2020 and found that the fitness of the Respondent to practise was not impaired by reason of his mental condition. The HC observed that the Respondent was able to explain his behaviour in a rational and cogent manner. Even though the Respondent held very strong religious views which may have affected the way he reacted, these values would not impair his ability to practise as a medical practitioner or to deal with his patients in an appropriate manner.
- 8 Following the release of the findings of the HC, a further hearing was convened before the DT on 16 November 2020. The parties were invited to provide further submissions to address the findings of the HC as well as the Sentencing Guidelines for Singapore Medical Disciplinary Tribunals published on 15 July 2020 (“**Sentencing Guidelines**”).

Submissions on sentencing

- 9 Both parties relied on the sentencing framework in *Wong Meng Hang v Singapore Medical Council* [2018] 3 SLR 526 (“**Wong Meng Hang**”) to submit on the appropriate sentence after taking into account the harm caused as well as the culpability of the Respondent. It was also not in dispute that the sentencing framework would apply to non-clinical care offences ([44] of the Sentencing Guidelines).

Prosecution’s Submissions on Sentence

- 10 Counsel for the SMC submitted that the Respondent’s professional misconduct falls within the “slight” harm and “medium” culpability section of the sentencing framework giving a suspension range of up to one year. While the act was intentional (and was an act of retaliation), there was no bodily contact by the Respondent with the victim. Counsel for the SMC submitted that an appropriate starting point would be six months suspension.
- 11 As the Respondent had demonstrated no insight into the objectionable nature of his conduct or any remorse and given he is a senior medical practitioner of more than 23 years standing, Counsel for the SMC submitted that there should be an upwards adjustment of the period of suspension from six months to nine months.

- 12 Counsel for the SMC also urged the DT to remove the Respondent from Part I of the Register of Medical Practitioners (the “**Register**”) and order that the Respondent be registered instead as a medical practitioner with conditional registration in Part II of the Register for one year after the end of the suspension period. Under the proposed conditional registration order, the Respondent can only engage in clinical practice under supervision. As the Respondent may encounter female patients in the course of his work who may be dressed in a manner that the Respondent would take offence to. For the safety of the public and the Respondent, a condition should be imposed that, save in emergency situations, the Respondent shall not undertake any consultations on female patients without a chaperone present. The Respondent would also have to maintain a log detailing every case where a chaperone was involved and the log must be submitted to SMC every two weeks.
- 13 Counsel for the SMC referred to the case of *Singapore Medical Council v Dr Lum Yang Wei* [2020] SMCDT 4, where the DT imposed a suspension period of four months on Dr Lum for using his handphone to record a video of a female nurse while she was easing herself in a toilet. Dr Lum pleaded guilty to a charge under section 509 of the Penal Code for insulting the modesty of the victim and was sentenced to six weeks imprisonment. The DT found that Dr Lum’s sexual misconduct was of a lower culpability as compared to the respondents in *Singapore Medical Council v Dr Lee Siew Boon Winston* [2018] SMCDT 4 (a case which involves outrage of modesty where there was significant skin contact with the victim’s breast and nipple) and *Singapore Medical Council v Dr Ong Teng Kiat* (DT’s Grounds of Decision dated 29 April 2015) (a case which involved unprotected sexual penetration of a minor) who were both struck off the medical register. The DT also held that there were strong mitigating factors as the Dr Lum was remorseful and had pleaded guilty at trial in the State Courts and before the DT. Dr Lum was found to be suffering from depression, which impaired his judgment at the material time. He demonstrated strong desire to turn over a new leaf and this was supported by strong testimonials. The DT was minded to give Dr Lum a second chance since he was a young medical practitioner and a period of suspension of four months was ordered.

14 In contrast, there were no similar mitigating factors in the Respondent's favour. He had shown a lack of remorse by his conduct during the criminal trial and before the DT. The following points were highlighted as aggravating factors:

- (a) The Respondent's act of unzipping his pants to expose his undergarment and his groin to the victim was a deliberate and calculated move, not a momentary lapse of judgment. The Respondent admitted that he acted in retaliation to what he had perceived as the victim's provocation.
- (b) The Respondent also brazenly refused to zip up his pants after being asked to do so by the victim as well as the bus driver.
- (c) The offence was committed on a public bus, where maximum erosion of public trust and confidence in the profession could be caused.
- (d) During the trial, the Respondent was belligerent and he cast baseless aspersions on the victim as he attempted to portray himself as the victim instead by claiming that he was provoked by the victim's indecent attire which insulted his modesty.
- (e) In his response to the NOI, the Respondent remained recalcitrant even after serving the two weeks' imprisonment term as he maintained that his actions were justified.

15 Counsel for the SMC submitted that the appropriate suspension for the Respondent ought to be substantially higher than the four months suspension meted out to Dr Lum. The DT was asked to consider ordering suspension of six to nine months.

Respondent's Submissions on Sentence

16 Counsel for the Respondent submitted that the harm caused was "slight" since there was no actual harm caused to the victim (whether in the form of personal injury, psychological or emotional harm) and the offence did not undermine public confidence in the medical profession. It was submitted that the Respondent's culpability is low

because there was not a premeditated act and was a one-off offence. Moreover, there was no abuse of trust and confidence by the Respondent.

- 17 Counsel further contended that there was no necessity to adjust the starting point of the sentence after taking into account the mitigating factors and the absence of aggravating factors. He highlighted that the Respondent had a long unblemished track record. There were no specific aggravating factors because the Respondent pleaded guilty once he had the benefit of legal advice and he could not be considered to be a senior and/or eminent medical practitioner. Therefore, an appropriate sentence would be a censure and a written undertaking to abstain from the behaviour complained of.
- 18 Counsel for the Respondent also confirmed at the oral hearing that he would not be contending that there was delay in the proceedings which would warrant any discount on the sentence.

DT's Decision on the Appropriate Sentence

- 19 There was no dispute before the DT that the Respondent had been convicted of an offence which implied a defect in character which makes him unfit for his profession. Counsel for the SMC referred to *Law Society of Singapore v Wong Sin Yee* [2003] 3 SLR 209 (“*Wong Sin Yee*”) for guidance on the general principles on when a conviction of a criminal offence would imply a defect of character which made a person unfit for his profession. In *Wong Sin Yee*, the court suspended the respondent from legal practice for two years following his conviction on two criminal charges for causing alarm by uttering insulting words under the Miscellaneous Offences (Public Order and Nuisance) Amended Act and for voluntarily causing hurt under the Penal Code. It was held at [12] and [13] of *Wong Sin Yee* that one would need to take into account the nature of the offence, the circumstances under which it was committed, and in turn the punishment imposed. An offence need not be committed by the person in his professional capacity before it may imply a defect in character which makes him unfit for his profession. While the concept of defect of character is often associated with dishonesty or fraudulent acts, it is not a necessary requirement as the concept of “character” is broad enough to encompass the total quality of a person’s behaviour. The court held that his

behaviour had affected the standing and reputation of the legal profession and an appropriate sanction was needed to signal the disapproval of the court.

- 20 Counsel for the SMC highlighted that the circumstances surrounding Respondent's conviction in this case was considered more aggravating than the usual case because he was sentenced to two weeks' imprisonment instead of the usual fine of \$1,000 to \$2,000 based on the sentencing trend set out in *The Sentencing Practice in the Subordinate Courts* (LexisNexis, 2013, Third Edition) for such offences.
- 21 The DT was satisfied that the Respondent's criminal conviction implied a defect in character which makes him unfit for his profession had pleaded guilty to. We agreed with the SMC that the Respondent's behaviour which led to the commission of the offence as well as the manner in which he had contested the criminal charge were incompatible with the standards of moral integrity expected from members of the medical profession.
- 22 Applying the harm / culpability sentencing framework laid down in *Wong Meng Hang*, the DT was of the view that:
- (a) The harm to the victim was "slight" since there was no physical contact with the victim and no evidence of permanent harm caused even though the act had caused some emotional distress to the victim. While the Respondent's conduct had fallen short of what the public would expect of a medical practitioner, we note that it was not contended by the SMC that public confidence in the medical profession was undermined in this case.
 - (b) There was "medium" culpability on the Respondent's part in terms of blameworthiness. We took into account that the Respondent's state of mind when he committed the offence. It was a calculated and deliberate act. What the Respondent did was a wilful disregard of the norms of proper behaviour in the community. There was no medical evidence before the DT to suggest that the Respondent was suffering from any mental condition which would reduce his culpability. He knew what he was doing and he fully intended his action to upset the victim as an act of retaliation.

- 23 We did not agree with the submission from the SMC that the appropriate starting point would be six months suspension after taking into account the case of *Lum Yang Wei*. The sexual offence committed by Dr Lum was far more serious and egregious in nature compared to the offence committed by the Respondent. Not only was Dr Lum's act premeditated, the act of taking of such videos was highly intrusive. Moreover, the victim was a co-worker and the video was taken at the toilet in the victim's place of work. Dr Lum also admitted that he had taken similar videos in the past. Therefore, we did not agree that this case warranted a longer period of suspension compared to what was meted out in *Lum Yang Wei*.
- 24 Based on our assessment under the harm / culpability sentencing framework, our starting point would be a suspension period of three months, which is the minimum period of suspension under section 52(3)(b) of the MRA. Even though the Respondent pleaded guilty to the charge after receiving legal advice, the DT was of the view that the Respondent was not truly remorseful for his past deed. To make matters worse, he maintained that he was justified in his actions and that was reflected in the manner in which he conducted his defence in the criminal trial and also his response during the early stages of this inquiry. His conduct before the DT showed that he did not agree with the conviction even though he did not appeal against the decision. Taking into account the circumstances of this case as well as his seniority in the medical practice, the DT was of the view that a suspension period of four months would be appropriate to reflect the gravity of the misconduct and to uphold the reputation of and confidence in the medical profession.
- 25 On the issue of conditional registration, given the HC's findings that the Respondent was capable of dealing with patients in an appropriate manner notwithstanding his personal beliefs about how a woman should be attired, it would not be appropriate for the DT to impose a further penalty of conditional registration. This is especially so when the SMC had not adduced any medical evidence to support the need for such an order in the light of the observations made by the HC.
- 26 For completeness, the DT also considered if a fine would be appropriate. Having considered the Sentencing Guidelines, the DT was of the view that an additional financial penalty would not be necessary. Under the Sentencing Guidelines, it may be

appropriate to impose such a sanction on top of a suspension order if (a) there is evidence that the doctor had profited or had intended to profit from the misconduct; or (b) the sentence of suspension may have no direct effect or impact on the doctor because he is not on the Register or does not practice in Singapore. This was not the case here.

Conclusion

27 Accordingly, this DT orders that:

- (a) That the Respondent be suspended for a period of **four (4) months**;
- (b) That the Respondent be censured;
- (c) That the Respondent give a written undertaking to SMC that he will not engage in the conduct complained of or any similar conduct in the future; and
- (d) That the Respondent pay the costs and expenses of and incidental to these proceedings, including the costs of the solicitors to the SMC.

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

29 The hearing is hereby concluded.

A/Prof Siow Jin Keat
Chairman

Dr Wong Sen Chow

Ms Chong Chin Chin
Legal Service Officer

Mr Burton Chen (M/s Burton Chen Legal LLC) and Mr Jeremy Marc Sia (M/s Tan
Rajah & Cheah LLC)
for Singapore Medical Council; and

Mr Noor Mohamed Marican (M/s Marican & Associates)
For Dr Azman Bin Osman