

IN THE REPUBLIC OF SINGAPORE

SINGAPORE MEDICAL COUNCIL DISCIPLINARY TRIBUNAL

[2023] SMCDT 5

Between

Singapore Medical Council

And

Dr Queck Kian Kheng

... Respondent

GROUNDS OF DECISION

Administrative Law – Disciplinary Tribunals

Medical Profession and Practice – Professional Conduct – Fine

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Singapore Medical Council

v

Dr Queck Kian Kheng

[2023] SMCDT 5

Disciplinary Tribunal – DT Inquiry No. 5 of 2023

Dr Lim Cheok Peng (Chairman), Prof Chua Hong Choon, Mr Lim Wee Ming (Judicial Service Officer)

20 November 2023

Administrative Law – Disciplinary Tribunals

Medical Profession and Practice – Professional Conduct – Fine

23 November 2023

GROUNDINGS OF DECISION

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

Introduction

1. The Respondent is a registered medical practitioner. He pleaded guilty to a charge of improper act or conduct which in the opinion of the Disciplinary Tribunal, brings disrepute to the medical profession, arising out of his criminal conviction on three (3) charges of being a self-employed foreigner engaged as a doctor without a valid work pass.

Agreed Statement of Facts

2. The relevant extracts from the Agreed Statement of Facts are set out below.

3. The Complainant is the Singapore Medical Council (“SMC”).
4. The Respondent, Dr Queck Kian Kheng (“Dr Queck” or “Respondent”) has been a fully registered medical practitioner since 6 July 2014. He practises at KK Queck Neurology Centre at Mount Alvernia Hospital.
5. At the material time, the Respondent held an employment pass under the employment of Singapore Health Services Pte Ltd as an Associate Consultant. On or about 1 August 2016, he commenced employment on a full-time basis at the Institution A.
6. Pursuant to section 10(1) of the Employment of Foreign Manpower Act (Cap 91A, 2009 Rev Ed) (“EFMA”), no foreigner shall be a self-employed foreigner unless he has a valid work pass.
7. At all material times, the Respondent did not have a valid work pass to be engaged as a doctor at various medical clinics.
8. The Respondent knew or ought to have known that as a foreigner, he should not be self-employed unless he had a valid work pass.
9. However, over the period 9 November 2016 to 1 May 2019, the Respondent provided locum services at 25 different medical clinics on 511 separate occasions. He earned an additional income amounting to approximately S\$331,443.40 from his illegal self-employment over this 2 ½ year period.
10. On 24 June 2021, at Court No. 4B of the State Courts, the Respondent was convicted of and sentenced on three charges, of the offence of being a self-employed foreigner engaged as a doctor without a valid work pass on 511 separate occasions, which are offences punishable under section 10(2)(a) of the EFMA, the particulars of which are set out below:

- (a) On 178 occasions between 9 November 2016 and 8 November 2017, the Respondent was a self-employed foreigner without a valid work pass in Singapore; to wit, he was engaged as a doctor at 19 medical clinics without a valid work pass on 178 separate incidents in contravention of section 10(1) of the EFMA, which taken together amounted to a course of conduct, and which charge was amalgamated under the Criminal Procedure Code (“**1st EFMA Offence**”);
- (b) On 220 occasions between 9 November 2017 and 30 October 2018, the Respondent was a self-employed foreigner without a valid work pass in Singapore; to wit, he was engaged as a doctor at 16 medical clinics without a valid work pass on 220 separate incidents in contravention of section 10(1) of the EFMA, which taken together amounted to a course of conduct, and which charge was amalgamated under the Criminal Procedure Code (“**2nd EFMA Offence**”);
- (c) On 113 occasions between 31 October 2018 and 1 May 2019, the Respondent was a self-employed foreigner without a valid work pass in Singapore; to wit, he was engaged as a doctor at 15 medical clinics without a valid work pass on 113 separate incidents in contravention of section 10(1) of the EFMA, which taken together amounted to a course of conduct, and which charge was amalgamated under the Criminal Procedure Code, and for which the Respondent was liable for enhanced punishment under the Criminal Procedure Code (“**3rd EFMA Offence**”);
- (d) The Respondent was sentenced on 24 June 2021 to a fine of \$18,000 (in default two months’ imprisonment) for each of the 1st and 2nd EFMA Offences, and fined \$34,000 for the 3rd EFMA Offence (in default four months’ imprisonment), resulting in an aggregate fine of \$70,000.
- (e) The aforesaid convictions have not been set aside.

11. Pursuant to section 53(3) of the Medical Registration Act 1997 (version as at 30 June 2022) (“MRA”), in any proceedings instituted under Part 7 of the MRA against a registered medical practitioner consequent upon his conviction for a criminal offence, a Disciplinary Tribunal is to accept his conviction as final and conclusive. As such, the Respondent’s conviction of the three EFMA Offences is to be accepted as final and conclusive in this Disciplinary Tribunal Inquiry.
12. Accordingly, in relation to the facts alleged, the Respondent is guilty of such improper act or conduct which, in the opinion of the Disciplinary Tribunal, brings disrepute to the medical profession under section 53(1)(c) of the MRA.

Submissions on sentencing

13. At the hearing, the Respondent’s Counsel initially submitted that there was a preliminary issue as to whether the improper act or conduct brought disrepute to the medical profession, in the opinion of the Disciplinary Tribunal. Counsel for the SMC objected to this and took the position that if the Respondent’s Counsel wished to raise this as a preliminary issue, effectively the Respondent was qualifying his plea, his guilty plea should not be accepted, and the matter should proceed for trial.
14. We informed the Respondent’s Counsel that we agreed with SMC on this point. The Respondent’s Counsel took his client’s instructions and thereafter informed us that they were not pursuing this point. The Respondent then proceeded to plead guilty and admitted to the Agreed Statement of Facts without qualification.
15. In their submissions on sentence, both parties submitted for a fine. SMC submitted for a fine of \$50,000, whereas the Respondent left the quantum to the Tribunal.

Prosecution’s Submissions on Sentence

16. SMC submitted that the sentencing framework set out in *Wong Meng Hang v SMC* [2019] 3 SLR 525 (“*Wong Meng Hang*”) is only applicable to cases where deficiencies in a doctor’s clinical care causes harm to a patient, or cases where the medical practitioner’s conduct is, or is at least comparable to, professional misconduct. SMC

relied on the recent decision of *Ho Tze Woon v Singapore Medical Council* [2023] SGHC 254 (“*Ho Tze Woon*”) in support of this submission.

17. Following *Ho Tze Woon*, SMC submitted that the appropriate sentence for the Respondent should be determined by comparing the facts of the Respondent’s case to those of other precedents.
18. SMC submitted that where there was no evidence of premeditation or intentional conduct, the Disciplinary Tribunals had merely imposed a fine on the respondents.¹ SMC submitted that as there was no direct evidence of premeditation or intentional conduct by the Respondent, the appropriate sentence should be a fine.²
19. The key points relied by SMC in support of a fine order were as follows:
 - (a) This was not a case involving fraud or dishonesty.
 - (b) There is no evidence of premeditation or intentional conduct.
 - (c) The Respondent’s state of mind was less culpable than the other precedents where the disciplinary tribunals had imposed a term of suspension.
 - (d) The Respondent has shown remorse, as evidenced by his early plea of guilt before the State Courts and this Disciplinary Tribunal (“DT”).
 - (e) The Respondent is a first-time offender with no SMC antecedents.
 - (f) A fine would serve as sufficient specific and general deterrence against any similar defaults in the future.
 - (g) A fine would adequately protect public confidence in the medical profession.³

¹ SMC’s Sentencing Submissions at [68].

² SMC’s Sentencing Submissions at [69], [70].

³ SMC’s Sentencing Submissions at [76].

20. SMC further submitted that taking into consideration that there were 511 separate breaches that were committed by the Respondent over two and a half years, and the additional income earned by the Respondent amounting to about \$331,443.40, a fine of \$50,000 should be imposed.⁴

Mitigation Plea and Respondent's Sentencing Submissions

21. The following key points were raised in mitigation:
- (a) The Respondent's plea of guilt and genuine remorse.⁵
 - (b) The Respondent's cooperation with the investigations, including voluntarily disclosing all his locum engagements, beyond the one locum session under the complaint that was made.⁶
 - (c) The Respondent's commission of the offences was not primarily profit-motivated, but was more to improve his clinical skills and broaden his medical knowledge during his free-time.⁷
 - (d) There was no dishonesty, deception or deliberate flouting of the law. The offences were committed due to his honest omission and inadvertence to check whether he could engage in locum practice as a self-employed foreigner without a valid work pass, that accounted for the duration of the offences and the number of locum sessions involved.⁸
 - (e) The Respondent took remedial steps once he knew of his error following the Ministry of Manpower ("MOM") investigations, by ceasing locum practice immediately and taking steps to apply for permanent residence.⁹

⁴ SMC's Sentencing Submissions at [80]-[84].

⁵ Mitigation Plea and Respondent's Sentencing Submissions at [3], [4].

⁶ Mitigation Plea and Respondent's Sentencing Submissions at [7].

⁷ Mitigation Plea and Respondent's Sentencing Submissions at [10].

⁸ Mitigation Plea and Respondent's Sentencing Submissions at [15].

⁹ Mitigation Plea and Respondent's Sentencing Submissions at [16], [17].

- (f) The Respondent further relied on:
- i. good character testimonials from his peers,¹⁰ letters of support from his former supervisors,¹¹ positive feedback and praises from patients or their next of kin,¹² and
 - ii. his contributions to the medical and wider community.¹³

22. In contrast to SMC, the Respondent in his written submissions initially relied on the *Wong Meng Hang* framework. However, at the hearing, after having sight of SMC's submissions, the Respondent's Counsel informed the DT that he agreed that the *Wong Meng Hang* framework was inapplicable. The Respondent submitted that irrespective of whether the *Wong Meng Hang* framework applied, the appropriate sentence was a fine, although the quantum was left to the DT.

23. In the Respondent's written submissions applying the *Wong Meng Hang* framework, the Respondent submitted as follows:

- (a) There was no harm or at most very slight harm in this case, as the offence deals with the employment status of an individual owing to his nationality and has nothing to do with his professional competence or standards in the practice of medicine or healthcare services delivery.¹⁴
- (b) The Respondent's culpability was at the lower end of the spectrum as the offences were committed due to honest omission and inadvertence and the locum sessions were mainly to broaden his medical knowledge and occupy his free time.¹⁵

¹⁰ Mitigation Plea and Respondent's Sentencing Submissions at [19].

¹¹ Mitigation Plea and Respondent's Sentencing Submissions at [21].

¹² Mitigation Plea and Respondent's Sentencing Submissions at [22].

¹³ Mitigation Plea and Respondent's Sentencing Submissions at [23]-[26].

¹⁴ Mitigation Plea and Respondent's Sentencing Submissions at [36]-[37].

¹⁵ Mitigation Plea and Respondent's Sentencing Submissions at [41]-42].

- (c) Flowing from the low level of harm and culpability submitted, the indicative sentencing range should be a fine.¹⁶ The Respondent submitted that in view of the mitigating factors raised, there was no need for specific deterrence.¹⁷
- (d) General deterrence could be served by an appropriate financial penalty, taking into consideration the mitigating factors raised and the slight harm and low culpability in this case.¹⁸
- (e) The quantum of the fine was left to the DT.¹⁹

24. In his oral submissions, Counsel for the Respondent informed the DT that he had no instructions in relation to the fine of \$50,000 proposed by SMC.

DT's Decision on the Appropriate Sentence

- 25. The DT agrees with SMC that the *Wong Meng Hang* framework is inapplicable to this case.
- 26. In *Ho Tze Woon*, the Court of Three Judges (“C3J”) held that “*there will be certain cases under s 53(1) where the Wong Meng Hang framework is not applicable. The Wong Meng Hang framework was developed to deal with instances of professional misconduct. ... Before the Wong Meng Hang framework is applied to any case under s 53(1), care must be taken to analyse the facts and determine if the medical practitioner’s conduct is, or is at least comparable to, professional misconduct*” (at [70]). The C3J concluded that it was not appropriate to use the *Wong Meng Hang* framework in that case, as it was common ground that the wrongdoing did not amount to professional misconduct (at [71], [(72)].

¹⁶ Mitigation Plea and Respondent’s Sentencing Submissions at [47].

¹⁷ Mitigation Plea and Respondent’s Sentencing Submissions at [51]-[52].

¹⁸ Mitigation Plea and Respondent’s Sentencing Submissions at [53].

¹⁹ Mitigation Plea and Respondent’s Sentencing Submissions at [60].

27. In the present case, SMC has submitted that “there is insufficient evidence to prove that Dr Queck’s conduct is, or is at least comparable to, professional misconduct”.²⁰ The Respondent has submitted that the offences committed “have nothing at all to do with the doctor’s professional competence or standards in the practice of medicine or in the context of healthcare services delivery.”²¹ In the premises, the Tribunal agrees with SMC that following *Ho Tze Woon*, the *Wong Meng Hang* framework is inapplicable to this case.
28. In *Ho Tze Woon*, the C3J after deciding that the *Wong Meng Hang* framework was inapplicable to that case, determined the appropriate sentence by comparing the facts of that case with two precedent cases (at [72]).
29. In the present case, the Tribunal is of the view that the following summary provided by SMC of two precedents where fines were imposed,²² provide a useful comparison:

S/N	Case	Conviction and sentence in the Subordinate Courts	Provision of MRA charged under	Sentence by DT
1.	<i>SMC Disciplinary Tribunal Inquiry for Dr Chio Han Sin Roy</i> [2015] SMCDT 5	1 charge under section 62(a) of the MRA for procuring a practising certificate by knowingly making a fraudulent declaration that he was not involved in any active clinical practice since 1 November 2011. Sentence: \$4,000 fine	Section 53(1)(a) (Fraud or dishonesty)	\$10,000 fine
2.	<i>SMC Disciplinary Tribunal Inquiry for Dr Wong Mei Ling Gladys</i> [2015] SMCDT 6	1 charge under section 62(a) of the MRA for procuring a practising certificate by knowingly making a fraudulent declaration that she was not involved in any active clinical practice since 1 January 2012. Sentence: \$4,000 fine	Section 53(1)(a) (Fraud or dishonesty)	\$10,000 fine

²⁰ SMC’s Sentencing Submissions at [29].

²¹ Mitigation Plea and Respondent’s Sentencing Submissions at [36].

²² SMC’s Sentencing Submissions at [37.1] and [37.2].

30. Both the aforesaid precedents involve fraudulent declarations, whereas there is no element of fraud in the present case. Nevertheless, the present case does involve 511 breaches by the Respondent over a period of two and a half years, whereas the aforesaid two precedent cases were one-off offences. A significant fine should be imposed that is much higher than those two cases.
31. The Respondent raised in mitigation that his inadvertence to check whether he could engage in locum practice as a self-employed foreigner without a valid work pass, accounted for the duration of the offences.²³ In his Counsel's oral arguments, it was submitted that the Respondent did not have actual knowledge of the restriction, he did not conceal that he was an employment pass holder and that the clinics that engaged him only asked if he was fully registered.
32. We are of the view that the fact that the breaches took place over such a prolonged period, pushes the Respondent's conduct beyond mere inadvertence and more towards indifference towards ensuring that he was aware of and complied with the necessary statutory requirements. It cannot be a mitigating factor for a foreign professional who holds an employment pass, to claim that he was unaware of the limited scope under which he could work in Singapore. There was no allegation by the Respondent that the employment pass documentation that he received lacked clarity on the restrictions on his employment. At the hearing, the Respondent accepted that he should have sought further clarification on the restrictions imposed on an employment pass holder and that he should have checked whether he could work for other employers other than that stated in his employment pass.
33. As for the mitigating factor raised that the Respondent was eligible to apply for permanent residence ("PR") status in 2010 and if he had obtained PR status,²⁴ he would not have committed the offences, this submission is neither here nor there and can hardly be considered a mitigating factor. Having chosen not to apply for permanent residence, the Respondent had to comply with the restrictions imposed on an employment pass holder and should have ascertained the limited scope under which he

²³ Mitigation Plea and Respondent's Sentencing Submissions at [15].

²⁴ Mitigation Plea and Respondent's Sentencing Submissions at [17].

could work in Singapore as an employment pass holder. The Respondent's argument that he has since obtained PR status and that "*The MOM investigations in a way catalysed Dr Queck's decision to commit his future here and continue his medical practice in Singapore*",²⁵ appears self-serving, as it suggests that the Respondent would continue to have his cake and eat it, if not for the MOM investigations.

34. We recognise the praise received by the Respondent from his peers, supervisors and patients.²⁶ His supervisors have described that he "pays meticulous attention to details and is extremely capable of delivering the best care for his patients",²⁷ and that he was "a caring doctor, who always responsibly discharged his duties in a timely manner".²⁸ He won awards during his residency training, as well as awards for service and research.²⁹ Notwithstanding his professional achievements and the favourable character references, we must weigh this against the need for deterrence, particularly in a case like this, where the Respondent received substantial financial benefits from his illegal employment.
35. Furthermore, the Sentencing Guidelines for Singapore Medical Disciplinary Tribunals (June 2020 Edition) ("**Sentencing Guidelines**") (at [70b]) provide that "a doctor's general good character and past contributions to society (e.g., volunteer work and contributions to charities)":
- (a) "in and of itself will not be regarded as a mitigating factor", and
 - (b) "has no relevance to the doctor's culpability or the harm he has caused by the commission of the offence, and may be perceived as unfairly favouring more privileged offenders who have more opportunities to make such societal contributions".

²⁵ Mitigation Plea and Respondent's Sentencing Submissions at [17].

²⁶ Mitigation Plea and Respondent's Sentencing Submissions at [19]-[22].

²⁷ Mitigation Plea and Respondent's Sentencing Submissions at page 49.

²⁸ Mitigation Plea and Respondent's Sentencing Submissions at page 51.

²⁹ Mitigation Plea and Respondent's Sentencing Submissions at page 47.

36. We also note the Respondent's contributions to the community by way of volunteering free medical services.³⁰ However, this contrasts with the additional income earned by the Respondent from his illegal employment of about \$331,443.40.³¹ The Respondent has raised in mitigation that his locum practice was to "further develop his diagnostic and treatments skills which could also in turn benefit patients that he saw in the hospital", that this was "his "main and primary motivation to undertake locum practice",³² and that "the additional income was not his main or primary motivation to undertake locum practice."³³
37. Again, this assertion appears to be self-serving, as it raises the concern as to why the Respondent did not volunteer his medical services rather than work as a locum at the material time, if his focus was to develop his diagnostic and treatment skills to benefit patients, rather than earn additional income. We note that in an exchange of emails between the Respondent and the Institution B in November 2019 after he started working at Institution C, the Respondent suggested volunteering once a month first, rather than twice a month, as he would "be doing quite a number of calls initially".³⁴ This was after the Respondent had stopped working illegally as a locum.³⁵ In raising this point, we are not denigrating the Respondent's contributions as a volunteer, but are merely pointing out that his assertion that his locum work was more to develop his diagnostic and treatment skills to benefit patients rather than earn additional income, is overstated. Little weight could be put on this assertion as a mitigating factor.
38. Furthermore, we are of the view that SMC's proposed fine of \$50,000 is reasonable and not disproportionate to the wrongdoing of the Respondent, taking into consideration:
- (a) The total fine of \$70,000 imposed on the Respondent upon his conviction for the three charges in the State Courts.³⁶

³⁰ Mitigation Plea and Respondent's Sentencing Submissions at [24]-[26].

³¹ Agreed Statement of Facts ("ASOF") at [7].

³² Mitigation Plea and Respondent's Sentencing Submissions at [10].

³³ Mitigation Plea and Respondent's Sentencing Submissions at [13].

³⁴ Mitigation Plea and Respondent's Sentencing Submissions at pages 76-77.

³⁵ ASOF at [8(3)].

³⁶ ASOF at [8(4)].

- (b) The fine imposed on the Respondent for each of the three charges that he was convicted for in the State Courts, was more than 80% of the maximum fine that could be imposed for each charge.³⁷ In contrast, a fine of \$50,000 in these disciplinary proceedings is well below the maximum fine of \$100,000 that may be imposed.
- (c) The additional income of about \$331,443.40 earned by the Respondent from his illegal self-employment.³⁸
39. In the Sentencing Guidelines, retribution is one of the sentencing considerations and it is provided that “The essence of retribution is that the offender must pay for what he has done”, and “the sanction meted out should reflect the severity of the misconduct” (at [10.e]). In the light of this, the fine must be sufficiently high, to take into consideration the substantial amount earned by the Respondent from his illegal employment. The need for retribution which “justifies punishment by looking at past conduct rather than its prospective usefulness in preventing the errant conduct” (see Sentencing Guidelines at [10.e]), further addresses the Respondent’s argument that the Respondent cannot commit the same offence in the future, as he is now a permanent resident.
40. In his oral submissions, Counsel for the Respondent submitted that the Respondent’s payment of fines in the criminal proceedings and tax on his additional income, should be taken into consideration in sentencing. We are unable to agree with this argument, as the purpose of the disciplinary proceedings is distinct and separate from the criminal proceedings and the tax which the Respondent was legally required to pay. The Sentencing Guidelines (at [9]), draw a distinction between criminal and disciplinary proceedings, with the explanation that “Medical disciplinary proceedings enforce professional standards which keep the public safe, uphold the standing and reputation of the profession, and prevent an erosion of public confidence in the trustworthiness and competence of its members.” In any event, even if we were to take into

³⁷ ASOF at [8(4)] and pages 6-8.

³⁸ ASOF at [7].

consideration the fines in the criminal proceedings and the tax paid, the balance thereafter would still be much more than SMC's proposed fine of \$50,000.

41. In the light of the aforesaid reasons, we agree with SMC that a fine of \$50,000 is appropriate in the present case.
42. At the hearing, we raised to SMC whether the undertaking that it was seeking was necessary, in view of the Respondent's position that he is now a permanent resident and cannot commit the same offence. Counsel for the SMC submitted that the undertaking was still necessary, as he was not prepared to rely on the Respondent's assertion that he is now a permanent resident. Furthermore, he submitted that if the Respondent was in fact a permanent resident, then there should be no issue with the undertaking being given, as the Respondent would then not be in a position to breach the undertaking. The Respondent's Counsel confirmed that his client had no issue with the undertaking sought.

Conclusion

43. Accordingly, this Tribunal orders that:
 - (a) The Respondent be fined \$50,000.
 - (b) The Respondent be censured.
 - (c) The Respondent to submit a written undertaking to SMC that he will not engage in the conduct complained of, or any similar conduct.
 - (d) The Respondent pay the costs and expenses of and incidental to these proceedings, including the costs of counsel of SMC.
44. We further order that the Grounds of Decision be published with the necessary redaction of identities and personal particulars of persons involved.

45. The hearing is hereby concluded.

Dr Lim Cheok Peng
Chairman

Prof Chua Hong Choon

Mr Lim Wee Ming
Judicial Service Officer

Mr Kenny Chooi and Mr Joel Yap (M/s Adsan Law LLC)
for Singapore Medical Council; and

Dr Alex Cheng Wei Ray and Mr Eric Tin Keng Seng (M/s Donaldson & Burkinshaw LLP)
for Dr Queck Kian Kheng