ALLIED HEALTH PROFESSIONS COUNCIL
DISCIPLINARY INQUIRY AGAINST
MOHAMAD FAIRUUZ BIN SALEH
HELD ON 11 JANUARY 2019 AND 29 JANUARY 2019

Disciplinary Tribunal:
Mr Chia Chor Leong (Chairman)
Mr Er Beng Siong
Ms Tan Bee Yee

Prosecution Counsel:
Ms Chang Man Phing
Mr Joel Tieh
(M/s WongPartnership LLP)

Defence Counsel:
Mr Dhanwant Singh
(M/s S K Kumar Law Practice LLP)

GROUNDS OF DECISION OF THE DISCIPLINARY TRIBUNAL

VERDICT

The Respondent

1. The Respondent is one Mohamad Fairuuz Bin Saleh (the "**Respondent**"), a 45-year old male Singapore Citizen, NRIC No. XXXXXXXXX. He is a registered Allied Health Professional (Registration No. A1301092H) under the Allied Health Professions Act (Cap 6B) (the "**Act**"), practising as a physiotherapist. His principal place of practice since 2015 is at Lifeskills and Physiotherapy Consultancy (Orchard), located at 150 Orchard Road #08-10, Orchard Plaza, Singapore 238841. His secondary place of practice since 1 January 2017 is at Physio@Novena Pte Ltd, located at 8 Sinaran Drive, #07-15, Oasia Hotel, Singapore 307470.

The Criminal Offence

2. On 30 May 2014, the Respondent was convicted in the State Courts of Singapore of the offence of assisting an unlicensed moneylender in carrying on the business of unlicensed moneylending in Singapore.

3. The Allied Health Professions Council ("**AHPC**") was of the view that the Respondent had been convicted in Singapore of an offence implying a defect in character which makes the Respondent unfit for his profession, and accordingly referred the matter to the Disciplinary Tribunal.

The Charge

4. By a Notice of Inquiry dated 5 October 2018, AHPC preferred the following charge against the Respondent (the "**Charge**"):

"*That you, MOHAMAD FAIRUUZ BIN SALEH, are charged that on 30 May 2014, whilst practising as a registered allied health professional, you were convicted of one charge of assisting an unlicensed moneylender punishable under section 14(1)(b)(i) read with section 14(1A)(a) of the Moneylenders Act (Cap 188, 2010 Rev Ed), which is an offence implying a defect in character which makes you unfit for your profession.*

Particulars

(a) On 30 May 2014, upon your conviction in the State Courts of Singapore of one charge in DAC/43017/2012 as set out below, you were sentenced to 3 months' imprisonment and a fine of $30,000 in default 1 month's imprisonment:

"You...are charged that you, between the period of 15 January 2012 and 27 July 2012, in Singapore, did assist an unlicensed moneylender known to you as "YYYYY", in carrying on the business of unlicensed moneylending in Singapore, to wit, by performing fund transfers, cash deposits and cash withdrawals on the instructions of "YYYYY" via Automated Teller Machines (ATM) using one UOB ATM Card bearing the serial number ZZZZZZZZ linked to UOB Account Number ppp-ppp-ppp-p, knowing that the said acts of

performing fund transfers, cash deposits and cash withdrawals would facilitate the carrying on of the business of moneylending by the said "YYYYY", and knowing that the said "YYYYY" was not authorized to carry on the business of moneylending in Singapore by a licence, and was neither an excluded moneylender nor an exempt moneylender, and you have thereby assisted in the contravention of section 5(1) of the Moneylenders Act (Cap 188, 2010 Rev Ed) and committed an offence punishable under section 14(1)(b)(i) read with section 14(1A)(a) of the said Act."

(b) On 6 November 2014, the High Court allowed your appeal and reduced the term of imprisonment from 3 months to 6 weeks, with the fine imposed to remain.

and that in relation to the facts alleged, you are thereby liable to be punished under section 53(2) read with section 53(1)(b) of the Allied Health Professions Act (Cap. 6B).

The Inquiry

5. Following a Pre-Inquiry Conference on 7 November 2018, the Inquiry was held on 11 January 2019 and 29 January 2019.

6. The solicitors for AHPC who prosecuted the Charge were Ms Chang Man Phing and Mr Joel Tieh of M/s WongPartnership LLP.

7. The solicitor for the Respondent was Mr Dhanwant Singh of M/s S K Kumar Law Practice LLP.

8. At the Inquiry, the Respondent pleaded "*Not Guilty*" to the Charge.

Preliminary Objections

9. The Respondent raised the following preliminary objections ("**Preliminary Objections**") before this Disciplinary Tribunal (the "**Tribunal**") in respect of the Charge (see the Respondent's Opening Statement at [5], [6] and [8], the Respondent's Affidavit of Evidence-in-Chief at [9] – [16], and the Respondent's Submissions dated 10 January 2019 at [1]):

   (a) It is unclear whether the "*alleged offence*" of assisting an unlicensed moneylender was committed during or in the course of his employment;

   (b) It is unclear, and the Charge does not state, how the conviction under the Moneylenders Act *per se* implies or amounts to a defect in character;

   (c) Even if there was a defect in character, it is unclear, and the Charge does not state, how or why that defect makes him unfit for his profession especially when the conviction has nothing to do with his profession;

   (d) By reason of the foregoing, the Charge lacks clarity, precision and particulars, such that the Respondent is "*embarrassed*" and unable to defend the Charge "*appropriately*".

10. With respect, the Tribunal is unable to accept any of the Preliminary Objections. This is explained below.

11. For a start, the Tribunal does not accept the Respondent's characterization of his offence of assisting an unlicensed moneylender as the "*alleged*" offence. In the Agreed Statement of Facts ("**ASOF**"), the Respondent admitted (at [17]) that he had been *convicted* of that offence. In the Respondent's Affidavit of Evidence-in-Chief ("**Respondent's AEIC**"), he admitted (at [9], [11] and [14]) that he had been *convicted* of the offence of assisting an unlicensed moneylender. Indeed, the Respondent was convicted of the offence pursuant to him having pleaded guilty to it – see Respondent's AEIC at [18]. This offence is therefore not merely an "*alleged*" offence, but an offence of which the Respondent had been convicted by the Court on his own guilty plea.

12. The Respondent objected to the Charge on the ground that it is unclear as to whether the offence of assisting an unlicensed moneylender was committed during or in the course of his employment. During the Pre-Inquiry Conference, the Respondent's counsel explained that the objection stems from the phrase "*whilst practising as a registered allied health professional*" appearing in the Charge. With respect, this objection is misconceived:

    (a) The phrase is used in the sentence "*That you, MOHAMAD FAIRUUZ BIN SALEH, are charged that on 30 May 2014, whilst practising as a registered allied health professional, you were convicted of one charge of assisting an unlicensed moneylender*...";

    (b) Clearly, the phrase relates to the time when the Respondent was *convicted* of the offence, and not to the time when the Respondent *committed* it. The Charge, therefore, simply states that the Respondent was *convicted* of the offence on 30 May 2014 whilst he was practising as a registered allied health professional, and the offence is one which implies a defect in character which makes the Respondent unfit for his profession. That is the substance of the Charge, and there is nothing unclear about it.

13. The Respondent also complained that the Charge is unclear because it does not state how the conviction under the Moneylenders Act *per se* implies or amounts to a defect in character, nor does it state how or why such a defect in character, if any, makes the Respondent unfit for his profession. The Respondent says that he is thus "*embarrassed*" and unable to defend the Charge "*appropriately*". With respect, the Tribunal does not accept these objections:

    (a) The Charge is made against the Respondent under Section 53(1)(b) of the Act and, if the Tribunal finds the Respondent guilty of the Charge, the Respondent is liable to be punished under Section 53(2);

    (b) Section 53(1)(b) of the Act provides as follows:

        > "Where a registered allied health professional is found by a Disciplinary Tribunal ... (b) to have been convicted in Singapore or

elsewhere of any offence implying a defect in character which makes him unfit for his profession ... the Disciplinary Tribunal may exercise one or more of the powers referred to in subsection (2)."

(c) The ingredients of a charge under Section 53(1)(b) are therefore all of the following:

(i) The respondent is a registered allied health professional;

(ii) The respondent has been convicted of an offence;

(iii) The offence implies a defect in character;

(iv) The defect in character makes the respondent unfit for his profession.

(d) The Charge states all of the above ingredients, and there is nothing unclear about the Charge. Questions as to how the offence implies a defect in character and how that defect in character makes the Respondent unfit for his profession are questions that go to the *proof* of the ingredients. The fact that the Charge does not explain how the Prosecution intends to prove the ingredients of the Charge does not make the Charge defective.

(e) Indeed, despite alleging that he is "*embarrassed*" and unable to defend the Charge "*appropriately*", the Respondent went on to mount a robust defence of the Charge by seeking to persuade the Tribunal that, in light of the circumstances under which he had committed the offence, the offence does not imply a defect in his character and, even if it does, the defect in his character does not make him unfit for his profession. The Tribunal is therefore of the view that the Respondent has not been prejudiced in any way by the manner in which the Charge is framed.

14. In the premises, the Tribunal rejects the Preliminary Objections.

15. The Tribunal will now address the substantive merits of the Charge.

Agreed Statement of Facts

16. The facts set out below are agreed between the parties and stated in the ASOF.

17. At all material times, the Respondent was a registered Allied Health Professional and was practising as a physiotherapist.

18. Sometime in mid-2011, the Respondent started to take loans from unlicensed moneylenders in order to service other loans taken from banks and financial institutions. The Respondent took loans amounting to S$23,000 from 9 different unlicensed moneylenders.

19. Sometime between December 2011 and January 2012, one of the unlicensed moneylenders, known to the Respondent as "YYYYY", contacted the Respondent to demand repayments. The Respondent informed "YYYYY" that he was unable to make the repayments in time. "YYYYY" then suggested that the Respondent worked for him to settle his debt. The Respondent's debt would be cleared if the Respondent assisted "YYYYY" in performing ATM transactions for his unlicensed moneylending business. The Respondent agreed to work for "YYYYY". When the Respondent so agreed, he knew that "YYYYY" was not authorized to carry on the business of moneylending in Singapore by a licence, nor was he an excluded or exempt moneylender.

20. "YYYYY" instructed the Respondent to obtain two accounts from two different banks and to await further instructions.

21. The Respondent had an existing account with UOB ("**UOB Account**"). The Respondent decided to use this account to assist "YYYYY" on 10 January 2012 and informed "YYYYY" of the existence of the UOB Account. On the same day, the Respondent, under the instructions of "YYYYY", started performing banking transactions, which included fund transfers, cash deposits and cash withdrawals using a UOB ATM card linked to the UOB Account ("**UOB ATM Card**").

22. The Respondent also opened a new bank account with POSB on 15 January 2012 ("**POSB Account**"). On the same day, the Respondent, under the instructions of "YYYYY", started performing banking transactions, which included fund transfers, cash deposits and cash withdrawals using a POSB ATM card linked to the POSB Account ("**POSB ATM Card**").

23. The Respondent continued to assist "YYYYY" until 27 July 2012. He closed the UOB Account and the POSB Account on 28 July 2012.

24. During the period of 10 January 2012 to 27 July 2012, the Respondent, on the instructions of "YYYYY", performed fund transfers, cash deposits and cash withdrawals using the UOB ATM Card linked to the UOB Account, knowing that the acts of performing fund transfers, cash deposits and cash withdrawals would facilitate the unlicensed moneylending business of "YYYYY". The Respondent was therefore assisting "YYYYY" in conducting the business of unlicensed moneylending.

25. Whilst the Respondent was performing the acts of assistance, he knew that "YYYYY" was not authorized to carry on the business of moneylending in Singapore by a licence, nor was he an excluded or exempt moneylender.

26. The Respondent has thereby assisted in the contravention of Section 5(1) of the Moneylenders Act (Cap 188, 2010 Rev Ed) ("**Moneylenders Act**"), and committed an offence punishable under Section 14(1)(b)(i) read with Section 14(1A)(a) of the Moneylenders Act.

27. The Respondent admitted to the abovementioned offence, and was charged accordingly.

28. The Respondent was convicted of one charge of assisting an unlicensed moneylender punishable under Section 14(1)(b)(i) read with Section 14(1A)(a) of the Moneylenders Act.

29. The Respondent was initially sentenced to 3 months' imprisonment with effect from 30 May 2014 and a fine of S$30,000. On appeal, the term of imprisonment

was reduced from 3 months to 6 weeks, with the fine remaining unchanged. His term of imprisonment commenced on 15 December 2014.

Issues before the Tribunal

30. It is common ground between the parties that the Respondent was at all material times a registered Allied Health Professional.

31. It is also not disputed that:

(a) The Respondent has been convicted of the offence of assisting an unlicensed moneylender in carrying on the business of unlicensed moneylending in Singapore, which is punishable under Section 14(1)(b)(i) read with Section 14(1A)(a) of the Moneylenders Act (the "**Offence**");

(b) The Offence relates to the Respondent's UOB Account, and this is the offence to which the Charge relates (see paragraph (a) of the Particulars of the Charge, set out at [4] above); and

(c) The facts set out in the ASOF and narrated at [17] to [29] above, except those relating to the POSB Account, relate to the Offence.

32. The issues which are in dispute before the Tribunal are the following:

(a) Whether the Offence implies a defect in character; and

(b) If the Offence implies a defect in character, whether that defect makes the Respondent unfit for his profession.

Prosecution's Case

33. The Prosecution's case may be summarized as follows.

34. Unlicensed moneylending is a "*societal ill*" and a "*pernicious form of organised crime*", and the intention undergirding the Moneylenders Act was to protect

vulnerable individuals who, being unable to borrow money from banks and other financial institutions, "*have to turn to unscrupulous unlicensed moneylenders who prey on people like them*".

35. By assisting an unlicensed moneylender in his unlicensed moneylending business, the Respondent had played an active role in the unlicensed moneylending business and his active participation had allowed this "*pernicious form of organised crime*" to function and spread.

36. The Respondent's activities in assisting the unlicensed moneylender in his unlicensed moneylending business were systematic, deliberate and substantial. He embarked on these activities knowing that they were illegal, and with the selfish objective of "saving his own skin". However, he did this at the expense of other vulnerable members of society who had also fallen prey to these illegal moneylending syndicates, but he was indifferent to the harm he was perpetrating on them.

37. The Respondent's illegal activities in assisting an unlicensed moneylender in his unlicensed moneylending business therefore show a lack of integrity on the Respondent's part. A lack of integrity is a defect in character. The Offence therefore implies a defect in the Respondent's character.

38. As a registered Allied Health Professional, the Respondent is required to behave with integrity and maintain high standards of conduct and behaviour both in his personal and professional capacity.

39. As the Respondent lacks integrity, he lacks a character trait that is required by his profession. His lack of integrity therefore makes him unfit for his profession. The Offence therefore implies a defect in character which makes the Respondent unfit for his profession.

<u>Respondent's Case</u>

40. The Respondent's case may be summarized as follows.

41. The Offence is a "*technical*" offence because "*it is one where monies are loaned out with expectation of higher returns but for which a money lending license had not been obtained*".

42. The Offence "*was an isolated act wherein he had borrowed S$1000/- but which unfortunately spiralled out of control into a loan of S$23,000/- or thereabouts*". The Respondent had borrowed only S$1,000 to begin with, in order to settle his father's debts, but it had spiralled out of control because of the punitive interest on such loans.

43. Before the Respondent gave assistance to "YYYYY", he had "*sought the assistance of the police but to no avail*". He had given such assistance "*not for any gain but to ward off pressure and take time to pay*". He had stopped his illegal activities "*even before the Police were to interview him clarifying that the involvement was situational and was resorted to as a matter of last resort*".

44. The Respondent "*was not a money lender; he did not abet the offence of money lending; he merely assisted by [allowing "YYYYY" to operate his two bank accounts] in which admittedly there were numerous transactions but to which he was helpless*".

45. The High Court, comprising three Judges, had said that it could not ignore the Respondent's "*excellent prospects of rehabilitation*" and that the Respondent "*had been and could continue to be a useful and contributing member of society in his occupation*".

46. It was the Respondent who had informed the AHPC of his conviction of the Offence and sentence, and requested clarification as to whether he could continue to practise.

47. In light of the foregoing and the circumstances under which the Offence was committed, the Offence does not imply a defect in the Respondent's character, and even if there is a defect in character, it does not make him unfit for his profession.

Tribunal's Analysis and Decision

Whether the Offence implies a defect in character

48. The Respondent was _not_ convicted of the offence of borrowing monies from unlicensed moneylenders. The Respondent's submission (Respondent's Opening Statement at [3(iv)]) that the Offence "*was an isolated act wherein he had borrowed S$1000/- but which unfortunately spiralled out of control into a loan of S$23,000/- or thereabouts*", is therefore misconceived.

49. Neither was the Respondent convicted of the offence of actually carrying on the business of unlicensed moneylending. The Offence of which the Respondent was convicted was the offence of _*assisting*_ an unlicensed moneylender in carrying on the business of unlicensed moneylending. The Respondent's submission (Respondent's Opening Statement at [3(ii)] – [3(iii)]) that the Offence is a "*technical*" offence because "*it is one where monies are loaned out with expectation of higher returns but for which a money lending license had not been obtained*" is similarly misconceived.

50. In *Donald McArthy Trading Pte Ltd v. Pankaj s/o Dhirajlal (trading as TopBottom Impex)* [2007] 2 SLR(R) 321, Chan Sek Keong CJ said (at [6]):

> "... it is clear that Parliament intended the [Moneylenders Act] to be a social legislation designed to protect individuals who, being unable to borrow money from banks and other financial institutions, have to turn to unscrupulous unlicensed moneylenders _who prey on people like them_ ..." [Emphasis added]

51. When debating the Moneylenders (Amendment) Bill in 2010, Senior Minister of State for Home Affairs, Assoc Prof Ho Peng Kee, described the unlicensed moneylending business as a "*scourge*", and said (Singapore Parliamentary Debates, Official Report (12 January 2010), Vol 86, Columns 2054 – 2055):

> "In August, I said that we needed to shift our paradigm as to how we view loanshark syndicates, that is, from unscrupulous moneylenders charging

exorbitant interest rates to being a pernicious form of organised crime. Criminal acts perpetrated by organised criminal groups are a threat to society as they are tougher to eradicate and can create greater community impact ... Loansharking syndicates now exhibit characteristics of organised criminal groups and thrive on the profitability of the illicit business ..." [Emphasis added]

52. In *Ho Sheng Yu Garreth v. PP* [2012] 2 SLR 375, V K Rajah JA said (at [68]):

> "... the rising scourge of unlicensed moneylending has repeatedly prompted Parliament to toughen its stance against this particular criminal activity over the years. Plainly, Parliament has set its face implacably against this pernicious malaise." [Emphasis added]

53. In the debate on the Moneylenders (Amendment) Bill in 2010, Senior Minister of State for Home Affairs, Assoc Prof Ho Peng Kee, also said (Singapore Parliamentary Debates, Official Report (12 January 2010), Vol 86, Columns 2055, 2058-2059):

> "Now, loansharks have taken to outsourcing their "business functions" to debtors or youths, who appear easy targets for recruitment. These operatives carry out functions ranging from assisting the loansharks in the collection of money, to effecting transfers of money electronically, to carrying out acts of harassment. They add to the layers surrounding the loanshark syndicate, shielding the leaders from direct exposure ...
>
> ... To cripple the many layers of a loanshark syndicate, anyone who contributes to or facilitates a loansharking operation will attract the wrath of the law.
>
> Sir, anyone who participates in loansharking operations contributes to the existence and continuity of loansharking activities. Every perpetrator, in supporting the organisation, perpetuates its illegal activities. In essence, when a person assists or facilitates a loansharking operation, he becomes part of the many layers shielding the masterminds, allowing them to go

undetected. More importantly, when he replaces a person who has been arrested, his doing so enables a loanshark syndicate to reorganise its resources and continue to thrive." [Emphasis added]

54. Unlicensed moneylending is therefore ***not*** a "*technical offence*", as submitted by the Respondent. This submission in itself does him no credit. Unlicensed moneylending is a pernicious malaise and a pernicious form of organised crime which is a threat to society. Unlicensed moneylenders thrive on the profitability of their illicit business by unscrupulously preying on vulnerable individuals who have to turn to them because they were unable to borrow money from banks and other financial institutions. It is a scourge which Parliament has implacably set its face against.

55. Neither is the Offence itself a "*technical offence*", as suggested by the Respondent. By assisting an unlicensed moneylender in his unlicensed moneylending business, the Respondent became part of, and added to, the many layers surrounding the unlicensed moneylender, thereby shielding him from direct exposure. In committing the Offence, the Respondent contributed to the existence and continuity of this societal scourge which is a pernicious malaise and a pernicious form of organised crime. The Respondent perpetuated the illegal activities of the unlicensed moneylender which were a threat to society, and the Respondent thereby attracted the wrath of the law.

56. In the Respondent's Opening Statement (both orally and in writing) and in the Respondent's AEIC, he asserted that he had assisted "YYYYY" by merely giving him access to the Respondent's bank accounts and allowing "YYYYY" to operate those bank accounts, and that it was "YYYYY", and not the Respondent himself, who had operated the bank accounts. In the Respondent's Submissions dated 10 January 2019 ("**Respondent's Submissions**"), he asserted (at [14]) that he assisted "YYYYY" by "*permitting usage of his bank account*". The Tribunal does not accept these assertions:

(a) In the criminal proceedings in the State Courts, the Respondent had admitted to the Statement of Facts tendered in those proceedings, pursuant to which the Respondent had pleaded guilty to the Offence. In

the Respondent's AEIC, the Respondent said (at [18]) that he had admitted to that Statement of Facts "*without qualification*". In that Statement of Facts, the Respondent had admitted to the fact that he had *performed banking transactions* on the instructions of "YYYYY", and those transactions included fund transfers, cash deposits and cash withdrawals;

(b) The Offence itself, to which the Respondent had pleaded guilty, was the offence of assisting "YYYYY" by *performing* fund transfers, cash deposits and cash withdrawals;

(c) In the ASOF tendered in the present Inquiry, the Respondent had admitted to the fact that he had assisted "YYYYY" by *performing banking transactions* which included fund transfers, cash deposits and cash withdrawals;

(d) Therefore, on the Respondent's own admissions, he did not merely give "YYYYY" access to his bank accounts. The Respondent had assisted "YYYYY" by actively *performing* banking transactions which included fund transfers, cash deposits and cash withdrawals;

(e) Indeed, in the judgment delivered by the Court of first instance, the learned District Judge said (see *PP v. Mohamad Fairuuz Bin Saleh* [2014] SGDC 203 at [1]) that the Respondent was convicted on the charge of assisting an unlicensed moneylender by *personally performing* multiple fund transfers through his bank account;

(f) Under cross-examination at the hearing of this Inquiry, the Respondent admitted that these assertions were not made in either the District Court or the High Court, and he further agreed that these assertions are not substantiated.

57. Not only did the Respondent assist "YYYYY" by personally and actively performing banking transactions, those banking transactions were substantial and sustained (see *PP v. Mohamad Fairuuz Bin Saleh* [2014] SGDC 203 at [2]):

(a) The banking transactions were performed over the period of 7 months from early January 2012 till late July 2012;

(b) During that period, the Respondent performed 550 deposits and 344 withdrawals made in his POSB Account for a total sum of S$112,864;

(c) In the same period, the Respondent performed 427 deposits and 248 withdrawals made in his UOB Account for a total sum of S$124,009.

58. In the judgment delivered by the Court of first instance, the learned District Judge said (see *PP v. Mohamad Fairuuz Bin Saleh* [2014] SGDC 203 at [10]):

> "I also found the assistance he rendered to the unlicensed moneylender to be substantial. There were several hundred separate transactions carried out over that 7 month period. In total, $236,873/- of the loan shark's funds went through his hands. He was working closely with the loan shark, receiving instructions and carrying them out on a regular basis. It would not be too much to say that he had furthered the latter's illicit business substantially. No doubt, in so doing, the cycle of debt and harassment had been extended to countless others. Just because they remain unnamed, it would be naïve for Mr Fairuuz to think that his actions had no harmful consequences. In effect, he was helping to perpetuate on others the very same ordeal which he sought to avoid for himself ..." [Emphasis added]

59. The Tribunal is mindful of the fact that the Offence relates only to the Respondent's UOB Account, but the learned District Judge had, in sentencing the Respondent for the Offence, considered also the banking transactions that the Respondent had performed on his POSB Account. This is because of the following:

(a) In addition to the charge for the Offence that relates to the UOB Account, the Respondent was also charged with the offence of assisting "YYYYY" by performing banking transactions on his POSB Account (the "**POSB Charge**");

(b) The Prosecution did not proceed with the POSB Charge, but the Respondent agreed that the Court may, in sentencing the Respondent for the Offence, take into consideration the POSB Charge;

(c) The Court was therefore entitled to, and did, take into account the banking transactions that the Respondent had performed on his POSB Account, when sentencing the Respondent for the Offence relating to the UOB Account.

60. In our present case, the Charge relates only to the Offence which in turn relates only to the UOB Account, and the Respondent had not agreed that the Tribunal may take into consideration the POSB Charge. Accordingly, in determining whether the Offence implies a defect in the Respondent's character, the Tribunal should *not*, and the Tribunal did *not*, take into account the banking transactions that the Respondent had performed on the POSB Account.

61. However, even without considering the banking transactions performed on the POSB Account, and considering only the banking transactions performed on the UOB Account, the Tribunal is of the view that the banking transactions performed by the Respondent on the UOB Account (the "**UOB Transactions**") were nonetheless substantial and sustained:

(a) They were performed over the period of 7 months from 10 January 2012 till 27 July 2012 (see ASOF at [8], [9] and [13]);

(b) In that period, the Respondent performed 427 deposits and 248 withdrawals made in his UOB Account for a total sum of S$124,009.

62. The Tribunal therefore thinks that the learned District Judge's remarks, quoted at [58] above, are pertinent even if one considers just the UOB Transactions alone, and the Tribunal respectfully adopts the same - it would not be too much to say that the Respondent had furthered the unlicensed moneylender's illicit business substantially. No doubt, in so doing, the cycle of debt and harassment had been extended to countless others. It would be naïve for the Respondent to think that

his actions had no harmful consequences. In effect, he was helping to perpetrate on others the very same ordeal which he sought to avoid for himself.

63. At the Inquiry, the Respondent testified that when he could not repay his debts to the unlicensed moneylenders, he began to be harassed by them sometime in September or October 2011. He then made two police reports and sought the assistance of the Police to stop the harassment, but "*to no avail*" as the harassment continued. It was only after he had unsuccessfully sought the assistance of the Police to stop the harassment that he began to assist "YYYYY". He had given such assistance "*not for any gain but to ward off pressure and take time to pay*", and his illegal activities were "*resorted to as a matter of last resort*".

64. The Tribunal's views in respect of the aforesaid assertions are as follows.

65. Even if it is true that the Respondent had sought the help of the Police to stop the harassment but to no avail, the Respondent could have stopped the harassment himself by repaying his debts. There is no evidence before the Tribunal that the Respondent had exhausted all avenues and options available to him to repay his debts (or to procure funds to repay them), and hence there is no evidence before the Tribunal on the basis of which the Respondent can say that he had assisted "YYYYY" as "*a matter of last resort*".

66. In the Statement of Facts tendered in the criminal proceedings in the State Courts and which the Respondent had admitted to "*without qualification*" (see Respondent's AEIC at [18]), the Respondent had admitted to the following facts:

> "6. Sometime between December 2011 and January 2012, one of the unlicensed moneylenders, known to the accused as "YYYYY", contacted the accused to demand repayments. The accused informed "YYYYY" that he was unable to make the repayments in time. "YYYYY" then suggested that the accused work for him <u>to settle his debt</u>. The accused's debts <u>would be cleared</u> if the accused assisted "YYYYY" in performing ATM transactions for his unlicensed moneylending business. The accused agreed to work for "YYYYY". [Emphasis added]

67. In the ASOF tendered in this Inquiry, the Respondent admitted to the same fact:

> "5. Sometime between December 2011 and January 2012, one of the unlicensed moneylenders, known to the Respondent as "YYYYY", contacted the Respondent to demand repayments. The Respondent informed "YYYYY" that he was unable to make the repayments in time. "YYYYY" then suggested that the Respondent work for him to settle his debt. The Respondent's debt would be cleared if the Respondent assisted "YYYYY" in performing ATM transactions for his unlicensed moneylending business. The Respondent agreed to work for "YYYYY". [Emphasis added]

68. In the judgment delivered by the Court of first instance, the learned District Judge said (see *PP v. Mohamad Fairuuz Bin Saleh* [2014] SGDC 203 at [2]):

> "... When Mr Fairuuz could not repay the loan he took from YYYYY, he agreed to work for YYYYY to pay off his debt ..." [Emphasis added]

69. During cross-examination at the hearing of this Inquiry, the Respondent confirmed that his debts were indeed settled and paid off by the time he ended his assistance to "YYYYY" in July 2012.

70. In light of the foregoing, the Tribunal does not accept the Respondent's assertion that he had given assistance to the unlicensed moneylender "*not for any gain but to ward off pressure and take time to pay*". By his own admissions, the Respondent had given assistance to "YYYYY" to settle and pay off his debts, and not merely to "*take time to pay*". He had therefore given his assistance with the expectation, and in return for the promise, that it would extinguish the debts altogether and not merely defer their repayment. Given the Respondent's own assertion that his debts had ballooned to $23,000 and given his admission that those debts had indeed been extinguished by his assistance, the Respondent had clearly gained substantially in return for his assistance rendered to "YYYYY".

71. The Respondent asserted that he had stopped his illegal activities "*even before the Police were to interview him clarifying that the involvement was situational and was resorted to as a matter of last resort*". However, the Respondent's own testimony at the Inquiry was as follows:

(a) The agreement that the Respondent had with "YYYYY" was that he would assist "YYYYY" only for a period of six months to clear his debts;

(b) However, after assisting "YYYYY" for a period of six months, "YYYYY" insisted that the Respondent had to continue assisting "YYYYY" for a further month until the end of June 2012 in order to clear outstanding interest payments;

(c) The Respondent continued assisting "YYYYY" until the end of June 2012. However, at the end of June 2012, "YYYYY" again insisted that the Respondent had to continue assisting "YYYYY" because the Respondent still owed outstanding interest;

(d) At that point, the Respondent felt that "YYYYY" was breaking their agreement, and therefore decided to close his bank accounts and stop assisting "YYYYY".

72. Given the Respondent's own testimony as aforesaid, it is evident that the Respondent did not stop his illegal activities because of remorse or because he knew that what he was doing was wrong and he wanted to stop doing it. Instead, he stopped his illegal activities because he thought that "YYYYY" was not keeping to their bargain.

73. The Tribunal therefore rejects the Respondent's assertion that he had assisted "YYYYY" as a matter of last resort, and that he had done so "*not for any gain but to ward off pressure and take time to pay*". On the contrary, it is clear from the foregoing that the Respondent had assisted "YYYYY" in order to extinguish his debts altogether. Given that the Respondent's debts had ballooned from $1,000 to $23,000 and would have continued to "*spiral out of control*" because of the "*punitive interest on such loans*" (see the Respondent's Opening Statement at

[9]), the extinguishment of those debts represented a very real and substantial gain indeed to the Respondent.

74. However, whilst the Respondent extracted himself from his own predicament and gained substantially from the assistance he gave to "YYYYY", he had extended the cycle of debt and harassment to countless others. He had helped to perpetrate on others the very same ordeal which he avoided for himself. More critically, the Respondent was aware of the harmful consequences of his illegal activities, but was indifferent to them:

(a) It was the Respondent's own experience, and the Respondent therefore knew, that a small loan of $1,000 could, in his own words, "*spiral out of control*" because of the "*punitive interest*" and "*punitive terms*" exacted by illegal moneylenders on such loans;

(b) The Respondent himself had experienced, and was therefore aware of, the harassment tactics employed by illegal moneylenders. During cross-examination at the Inquiry, he testified that the illegal moneylenders' harassment tactics included splashing paint on the premises, padlocking the front door, phone calls to his sister, mother and neighbours, and even to the hospital where he worked;

(c) During cross-examination, the Respondent also admitted that it was a "*known fact*" that loan sharks carry out these harassment activities, and he was aware that other borrowers who could not pay would "*face the same consequences*". However, he was not thinking of other borrowers when he agreed to assist "YYYYY" in order to settle his own debts.

75. The Respondent, therefore, committed the Offence for his own selfish gain and to save himself from harassment by illegal moneylenders, while at the same time being aware of, but indifferent to, the fact that his assistance in the illegal moneylending business of "YYYYY" might result in other vulnerable borrowers falling into the same predicament that the Respondent was extricating himself from, and suffering the same harassment from illegal moneylenders that the Respondent did. In short, the Respondent committed the Offence to save himself

at the expense of others. In light of the foregoing, the Tribunal is of the view that the commission of the Offence by the Respondent reflects a lack of personal integrity on his part.

76. The Tribunal agrees with the Prosecution's submission that a lack of personal integrity on the Respondent's part is a defect in his character. The Tribunal therefore finds that the Offence implies a defect in the Respondent's character.

Whether the defect in character makes the Respondent unfit for his profession

77. As a registered Allied Health Professional, the Respondent is required to observe and adhere to the Allied Health Professions Council Code of Professional Conduct ("**AHPC Code**"). In the Preamble of the AHPC Code, it is stated, *inter alia*, as follows:

> "The Allied Health Professions Council was established on 8 April 2013 to regulate the Allied Health Professions in Singapore. As part of its mandate to protect the public, the Code of Professional Conduct ("the Code") was developed to set the standards of conduct and behaviour expected of registered allied health professionals.
> ...
> As a registered professional, you are expected to be familiar with and adhere to the Code at all times.
> ...
> As a registered Allied Health Professional, you are expected to always: ...
> 12. Abide by all laws and regulations governing your practice and the code of ethics of your profession and the Council." [Emphasis added]

78. The Preamble of the AHPC Code also states, *inter alia*, as follows:

> "The Code was developed based on a health professional's obligation to act in the best interests of patients and the public (fiduciary duty) and ethical principles of: ... (f) Personal integrity." [Emphasis added]

79. Article 11.1 of the AHPC Code provides as follows:

> "11.1 You must always behave with honesty and integrity." [Emphasis added]

80. The Respondent's profession, therefore, requires him to act in accordance with the ethical principles of personal integrity and to always behave with integrity. Personal integrity on the Respondent's part is therefore a character trait that is required by his profession.

81. The Tribunal has found (at [76] above) that the Offence implies a defect in the Respondent's character. That defect in character is the lack of personal integrity on the part of the Respondent. As personal integrity on the Respondent's part is a character trait that is *required* by his profession, the *lack* of that character trait makes the Respondent unfit for his profession. The Tribunal therefore further finds that the Offence implies a defect in character which makes the Respondent unfit for his profession.

82. On appeal to the High Court against the sentence imposed by the District Court in the first instance, the High Court, comprising three Judges, had said (*Mohamad Fairuuz bin Saleh v. Public Prosecutor* [2014] SGHC 264 at [83]) as follows:

> "83 ... we could not ignore the [Respondent's] excellent prospects of rehabilitation. ... The [Respondent] had been and could continue to be a useful and contributing member of society in his occupation..."

83. On the basis of the above passage, the Respondent submitted that the Offence does not imply a defect in the Respondent's character, and even if there is a defect in character, it does not make him unfit for his profession. With respect, the short answer to this submission is that the High Court was not addressed on, and was not addressing, the question of whether the Offence implied a defect in character which makes the Respondent unfit for his profession, within the meaning of Section 53(1)(b) of the Act.

84. The Respondent further submitted that it was he who had informed the AHPC of his conviction of the Offence and sentence, and requested clarification as to whether he could continue to practise. With respect, the fact that the Respondent had sought clarification from AHPC as to whether he could continue to practise after his conviction and sentence does not lend any support at all to the submission that the Offence does not imply a defect in the Respondent's character, and even if there is a defect in character, it does not make him unfit for his profession.

Tribunal's Decision

85. In the premises, the Tribunal is satisfied that the Prosecution has proven its case beyond a reasonable doubt. Accordingly, the Tribunal finds the Respondent guilty of the Charge and convicts him of the same.

SENTENCE

86. The Tribunal turns now to consider the appropriate sentence to be imposed on the Respondent. In this respect, the Tribunal has duly considered the respective parties' written and oral submissions on sentencing, including the sentencing precedents cited by them.

Respondent's Submissions

87. The Respondent submitted that he should only be censured, and nothing more. The Respondent's submissions in support of this may be summarized as follows:

(a) On appeal to the High Court against the sentence imposed by the District Court in the first instance, the High Court, comprising three Judges, had said (*Mohamad Fairuuz bin Saleh v. Public Prosecutor* [2014] SGHC 264 at [83]) as follows:

> "83 ... we could not ignore the [Respondent's] excellent prospects of rehabilitation. ... The [Respondent] had been and could

continue to be a useful and contributing member of society in his occupation..."

(b) Although there was a "*massive*" number of transactions on his bank accounts (see the Respondent's Submissions on Sentencing at [3]), Section 308(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("**CPC**") allows only one sentence to be imposed and the Respondent is therefore liable to only one punishment.

(c) The Respondent was merely a "*remote assister*" of "YYYYY's" illegal moneylending business, but he was not directly engaged in it (see the Respondent's Submissions on Sentencing at [7]).

(d) The Respondent reluctantly assisted "YYYYY" only after he had unsuccessfully "solicited" the assistance of the Police to stop the harassment (see the Respondent's Submissions on Sentencing at [9] and [11]).

(e) It was the Respondent himself who had the "*courage*" to voluntarily inform the AHPC of his conviction of the Offence and sentence, and requested clarification as to whether he could continue to practise. Thereafter, he waited for two months before resuming his practice. This "*speaks volumes*" of the Respondent's "*repair of character, displaying honesty and above all maintaining the hallmark of a true professional*" (see the Respondent's Submissions on Sentencing at [14] and [15]).

(f) The Respondent's personal and professional conduct had been "sterling" from May 2015 to date (see the Respondent's Submissions on Sentencing at [15]).

88. The Respondent also produced commendations by his employer at Physio@Novena Pte Ltd and two of his patients, as well as a Singapore Health Quality Service Silver Award.

<u>Prosecution's Submissions</u>

89. The Prosecution sought a suspension of 9 months, citing the following as aggravating factors:

    (a) The Respondent made a conscious and considered decision to carry out the illegal acts;

    (b) The Respondent played a substantial role in the illegal moneylending business;

    (c) The Respondent carried out a large number of transactions over a sustained period of time;

    (d) The Respondent was aware that his actions would cause harm to others;

    (e) The offence displayed a shocking lack of personal integrity that renders the Respondent unfit for the profession;

    (f) The Respondent is a long-serving allied health professional and should therefore have been expected to maintain a high level of personal integrity as required by the Code.

<u>Tribunal's Views</u>

90. The Respondent placed great reliance on the fact that the High Court had said that the Respondent had "*excellent prospects of rehabilitation*" and that he "*could continue to be a useful and contributing member of society in his occupation*". However, the High Court's remarks were clearly made only in the context of the Respondent's rehabilitation, which in turn relates only to the punishment for the offence of assisting an unlicensed moneylender in carrying on the business of unlicensed moneylending. Those remarks were not made in the context of either Section 53(1)(b) or Section 53(2) of the Act, nor in the context of the Code. The High Court was not addressed on, and was not addressing, the question of whether the Respondent was unfit for his profession within the meaning of Section 53(1)(b) of the Act, nor the powers exercisable by a disciplinary tribunal

under Section 53(2). Neither was the High Court addressed on, and it is clear that the High Court was not directing its mind to, the requirements imposed by the Code on allied health professionals.

91. Furthermore, in making those remarks relied upon by the Respondent, the High Court had taken in consideration the following factors (see *Mohamad Fairuuz bin Saleh v. Public Prosecutor* [2014] SGHC 264 at [79] – [82]):

    (a) The Respondent had submitted two medical reports that opined that he was unfit for prison ("**Factor 1**");

    (b) The Respondent had stopped his illegal activities sometime before he was apprehended. The Respondent said he had managed to get out of the vicious cycle he had been in and stopped his activities sometime in July 2012 ("**Factor 2**");

    (c) The Respondent had testified that he had sought help from the police when his problems in dealing with the moneylenders had arisen, but to no avail ("**Factor 3**"); and

    (d) The Respondent is a postgraduate degree holder who held a relatively senior position working as a physiotherapist in a respectable hospital, and he had no related antecedents ("**Factor 4**").

92. Factor 1 is irrelevant for the purposes of this Inquiry, as the Tribunal has no power under Section 53(2) of the Act to impose any custodial sentence on the Respondent.

93. As for Factor 2, the Respondent has admitted under cross-examination in this Inquiry that his agreement with "YYYYY" was that he would only assist "YYYYY" for six months, at the expiry of which his debts would be settled and cleared. However, "YYYYY" had reneged on this agreement at the expiry of six months, and it was for that reason that the Respondent closed his bank accounts and stopped assisting "YYYYY". It is evident, therefore, that the Respondent had stopped his illegal activities only because he thought that "YYYYY" was not

keeping to their bargain, and not because of remorse or because he knew that what he was doing was wrong and he wanted to stop doing it – see [71] – [72] above. It is apparent that the High Court did not have the benefit of these admissions that the Respondent has made to the Tribunal in this Inquiry.

94. As for Factor 3 (which is relied on by the Respondent as a mitigating factor), it is apparent that the High Court did not consider the question of whether, even if the Respondent had sought help from the Police but to no avail, the Respondent had in fact exhausted all avenues and options available to him to repay his debts (or to procure funds to repay them), before making a bargain with "YYYYY" to assist the latter in his illegal moneylending business in return for the discharge of the Respondent's debts. As the Tribunal has pointed out at [65] above, there is no evidence before the Tribunal that the Respondent had exhausted all avenues and options available to him to repay his debts (or to procure funds to repay them), and hence there is no evidence before the Tribunal on the basis of which the Respondent can say that he had assisted "YYYYY" as "*a matter of last resort*".

95. As for Factor 4, the High Court was not addressed on, and it is clear that the High Court was not directing its mind to, the requirements imposed by the Code on allied health professionals. It is also apparent that the High Court did not take into account that for the very reason that the Respondent is a postgraduate degree holder who held a relatively senior position in a respectable hospital, the Respondent should and would have been aware of the requirements imposed by the Code upon him, in particular the requirement that he must act in accordance with the ethical principles of personal integrity and to always behave with integrity (see [78] – [80] above).

96. In light of the foregoing, the Tribunal is of the view that the Respondent's reliance on the High Court's remarks to support his mitigation plea is misplaced. For the purposes of this Inquiry, the High Court's remarks do not assist the Respondent.

97. On the other hand, the Tribunal considers it to be an aggravating factor that the number of banking transactions performed by the Respondent to assist "YYYYY" in his illegal moneylending business was substantial ("*massive*", to use the

Respondent's own expression), and they were performed over a sustained period of time (see [62] above):

(a) The banking transactions were performed over the period of 7 months from 10 January 2012 till 27 July 2012; and

(b) In that period, the Respondent performed 427 deposits and 248 withdrawals on his UOB Account for a total sum of S$124,009.

98. The number of banking transactions performed by the Respondent and the length of the period during which they were performed reflects the substantial extent of the assistance that the Respondent had rendered to "YYYYY" and thus the substantial extent to which the Respondent had furthered the unlicensed moneylender's illicit business. This belies the magnitude of the harm that the Respondent had helped to perpetrate on other vulnerable individuals who, like the Respondent, had turned to "YYYYY" for illegal loans with punitive interest and terms. This, in turn, reflects the magnitude of the harm that was caused by the defect in the Respondent's character which undergirds the commission of the Offence.

99. The Tribunal does not accept the Respondent's submission that he was merely a "*remote assister*" of "YYYYY's" illegal moneylending business but was not directly engaged in it. As the Tribunal has pointed out at [60] – [61] read with [56] – [57] above, the Respondent had personally and actively performed numerous and substantial banking transactions over a substantial period of time to assist "YYYYY" in the latter's illegal moneylending business.

100. Even if it can be said that the Respondent had merely assisted in "YYYYY's" illegal moneylending business, the Tribunal does not consider that to be a mitigating factor. As pointed out at [55] above, by assisting an unlicensed moneylender in his unlicensed moneylending business, the Respondent became part of, and added to, the many layers surrounding the unlicensed moneylender, thereby shielding him from direct exposure. In assisting "YYYYY" in his illegal moneylending business, the Respondent contributed to the existence and continuity of this societal scourge which is a pernicious malaise and a pernicious

form of organised crime. The Respondent perpetuated the illegal activities of the unlicensed moneylender which were a threat to society and, by his own admission (see [74] above), he was aware of the harmful consequences of his illegal activities but was indifferent to them.

101. The Respondent's reliance on Section 308(1) of the CPC is, with respect, misconceived. That provision has nothing to do with the exercise of the Tribunal's power under Section 53(2) of the Act. In any event, the Respondent is not being punished for the individual banking transactions that he had performed for "YYYYY", and hence Section 308(1) of the CPC is not applicable.

102. The Tribunal has, however, taken into consideration the fact that he had voluntarily informed the AHPC of his conviction of the Offence and sentence, and requested clarification as to whether he could continue to practise. The Tribunal also took into consideration the fact that the Respondent did not practise for two months while waiting for AHPC's clarification.

103. The Tribunal took into consideration the fact that the Prosecution did not dispute the Respondent's submission that his personal and professional conduct had been "sterling" from May 2015 to date, nor did the Prosecution dispute the commendations by the Respondent's employer and patients.

Tribunal's Decision

104. Having duly considered all of the submissions tendered by the parties, including the sentencing precedents cited by them, and having taken into account all of the circumstances of the case, the Tribunal now orders as follows:

(a) That the registration of the Respondent in the Register of Allied Health Professionals shall be suspended for a period of 6 months;

(b) That the Respondent be censured;

(c) That the Respondent shall give a written undertaking to the Allied Health Professions Council that he will not engage in the conduct complained of or any similar conduct; and

(d) That the Respondent shall pay the full costs and expenses of and incidental to these proceedings, including the full costs of the solicitor to the Allied Health Professions Council (on the basis of one counsel).

CONCLUSION

105. The Tribunal hereby orders that the Grounds of Decision herein be published.

106. This Inquiry is hereby concluded.

Dated this 29th day of January 2019