

ALLIED HEALTH PROFESSIONS COUNCIL DISCIPLINARY TRIBUNAL INQUIRY IN
RESPECT OF DANIAL ATAN

12 April 2023 and 4 July 2023

Disciplinary Tribunal:

Mr. Andy Chiok (Chairman)

Mr. Vincent Tan (Member)

Ms. Tan Chek Wee (Member)

Counsel for Council (M/s Harry Elias Partnership LLP):

Mr Sui Yi Siong

Ms Nicole Thong

Respondent-in-person

Mr. Danial Atan

**DISCIPLINARY TRIBUNAL'S
GROUNDS OF DECISION**

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

1. In these proceedings, the abovenamed Respondent, Danial Atan, who is a radiation therapist by occupation, was charged as follows:

CHARGE

That you, Danial Atan, an allied health professional with full registration under the Allied Health Professions Act 2011, are charged that on 18 January 2022, you were convicted in Singapore of one (1) count of intentionally causing harassment, alarm or distress, an offence punishable under section 3(2) of the Protection from Harassment Act 2014 ("POHA") and one (1) count of putting into circulation an obscene video clip, an offence punishable under section 292(1) of the Penal Code ("PC"),:

Particulars

(a) On 3 January 2019 from 8.19 pm to 8.41 pm, at an unknown location in Singapore, you made threatening communications to a 27 year-old male victim ("V") with the intention to cause alarm to him, by sending him messages through Facebook Messenger threatening to leak obscene videos of him, thereby causing V alarm (the "POHA Offence");

(b) On 24 April 2019 at about 6:30 am in Singapore, you knowingly caused a computer, namely the server hosting the Instagram system, to perform a function for the purpose of securing access without authority to certain programs and data held in the said computer by using an Iphone to access V's Instagram account when you had no authority to do so, an offence punishable under section 3(1) of the Computer Misuse Act 1993 (the "CMA Offence");

(c) On 24 April 2019 at about 6.30 am in Singapore, you put obscene material into circulation by posting one obscene video clip on V's Instagram account (the "PC Offence");

(d) On or before 9 May 2019, you had in your possession 44 video files containing 44 films which are obscene and which you knew were obscene, an offence punishable under section 30(2)(a) of the Films Act 1981 ("the FA Offence");

(e) In relation to the offences detailed at particulars (a) – (d) above, you also did the following:

- i. You and V were polytechnic classmates in 2014 and had gone for an overseas immersion program together sometime in September 2017. You were roommates during your overseas immersion program. During this period, you became physically intimate with V and took several videos of your sexual activities.
- ii. Upon your return from the overseas immersion program, you and V continued to be physically intimate. This persisted even after your graduation in 2018, when you and V became colleagues at the same workplace. You continued to take videos of your sexual activities.
- iii. On 3 January 2019 from 8.19 pm to 8.41 pm, V communicated to you via the Facebook Messenger Platform that he wanted to end your relationship. You were enraged after learning that V wanted to end your relationship and sent multiple messages via Facebook Messenger to V threatening to leak obscene videos of V with intent to cause him alarm. V felt alarmed and distressed by your threatening messages.
- iv. On 24 April 2019 at about 6:30 am, you posted one obscene video clip of V and you engaging in sexual intercourse on V's Instagram account. At the material time, the Instagram account was a private account with about 80 followers. You did so as you were angry at V for avoiding you as well as ignoring your calls and text messages over the past few days.
- v. You then confronted V at work and warned him that this was V's last chance to change his mind about ending the relationship. V was working and ignored you.
- vi. Sometime at about 9.43 am on the same day, V's friend came across the said obscene video clip on V's Instagram. She informed V that his Instagram account appeared to have been hacked. V told his friend that he had been logged out of his Instagram account and was unable to access it. He also told her to unfollow his Instagram account.
- vii. V then called his father and younger brother immediately after and told them about his situation. V's younger brother then checked on V's Instagram account shortly after 9.43 am on 24 April 2019 and saw the obscene video clip.
- viii. You had obtained access to V's Instagram account through one of V's email accounts. Thereafter, you had linked your own email account and mobile number to the Instagram account and changed the password to the Instagram account without informing V. You did so to delay V from accessing

his Instagram account and to prevent him from deleting the obscene video clip.

- ix. You took down the video clip once you saw that V's brother had seen it, sometime before 12.22 pm on 24 April 2019.

(f) On 18 January 2022, having consented to the FA Offence and the CMA offence to be taken into consideration for the purposes of sentencing, you were sentenced by the learned Magistrate Hairul Hakkim to eight (8) weeks' imprisonment for the POHA Offence and to ten (10) weeks' imprisonment for the PC Offence with the imprisonment term for both ordered to run consecutively, resulting in an aggregate sentence of eighteen (18) weeks' imprisonment with effect from 28 January 2022;

(g) The aforesaid convictions have not been set aside;

and that in relation to the alleged facts you have been guilty of such improper act or conduct which brings disrepute to your profession under section 53(1)(c) of the Allied Health Professions Act 2011.

2. For completeness, the above is an alternative charge in the Notice of Inquiry, but given the acceptance of the above charge by the Respondent, we need not consider the primary charge further.
3. The Notice of Inquiry dated 12 September 2022 was duly served on the Respondent who pleaded guilty to the Charge, and admitted to the facts set out in the Agreed Statement of Facts marked as "ASOF", which were duly recorded.
4. At all times, we were mindful that the Respondent was not represented by counsel, and took care to ensure that at every stage, the Respondent understood the proceedings, had ample time to consider documents, as well as to prepare to address us at the inquiry.
5. Mr Sui Yi Siong ("Mr Sui") conducted the inquiry on behalf of the Council. Written submissions on sentencing with authorities, as well as the ASOF which were tendered by him. These documents were also served on the Respondent who had time to consider and respond to them.

6. At the inquiry on 12 April 2023, the sentencing of the Respondent was adjourned primarily to allow the Council and the Respondent to address in detail the Respondent's request that the victim's name and his name be redacted from the grounds of decision to be published. It was also adjourned for verification of the testimonials that were tendered by the Respondent.

The parties' positions on sentencing

7. The Council recommends a sentence of the suspension of the Respondent's registration for 2 years, together with a censure and the payment of the Council's costs. Written submissions were tendered by Mr Sui.
8. The Respondent contended, in a statement addressed to this Tribunal dated 15 March 2023, that he be punished with a stern warning with conditions to never repeat or commit other misdeeds. The Respondent also stated that he is willing to "*undergo psychiatric counselling to monitor my progress/rehabilitation back to the radiation therapy profession*". He also relied on a report by Dr U ("Dr U"), a psychiatrist on the high potential for rehabilitation.

The conviction of the Respondent

9. We will first address the matter of the conviction under the charge. The relevant facts are:

- (1) The Respondent was charged and convicted in the Magistrates' Courts for 2 offences. From the decision of Magistrate Hairul Hakkim reported at [2022] SGMC 9, these offences are:
- (a) first, for the offence of causing alarm to a victim by threatening to disseminate obscene materials involving the victim, where such materials had been procured by the accused without the consent of the victim, this would ordinarily be regarded as an aggravating factor; and
 - (b) second, for the offence of putting into circulation obscene material, the accused's subsequent voluntary removal of the material from circulation would generally be a relevant mitigating factor.
- (2) On 25 January 2022, the Respondent was sentenced to a global term of 18 weeks' imprisonment, which he served.

Relevant factors for consideration

10. In its submissions, the Council made the point that guidance on acts or conduct that brings disrepute to a profession can be taken from cases interpreting s.53(1)(c) of the Medical Registration Act, which is on identical terms of the 53(1)(c) of the Allied Health Professions Act 2011. We agree with this, although we must be mindful that the work environments of a medical practitioner and an allied health practitioner can have differences, and these differences may be material.

11. The Respondent also did not dispute that his actions were improper acts or conduct which brings disrepute to his profession. He described his action as a “*misdeed*” in his written statement. To the above, we also note the following extracts from the Allied Health Professions Council Code of Professional Conduct (2013) (the “Code”):

- (1) The preamble to the Code stated “personal integrity” as one of the 6 ethical principles.
- (2) Practitioners were also cautioned in the Code’s preamble that “... Persistent failure and disregard for these standards can compromise patient safety and wellbeing, and/or bring disrepute to the profession.”
- (3) At [11] of the Code, in particular at [11.1], it is emphasised that a practitioner “... *must always behave with honesty and integrity*”.

12. Moving to the test for such conduct, we accept that as submitted by Mr Sui, the test is that in *Ong Kian Peng Julian v Singapore Medical Council*, where the Court of 3 Judges had stated that “... *Practically, such an inquiry would be aided by asking whether the reasonable person, on hearing about what the professional concerned had done, would have said without hesitation that he should not have done it.*” In a sense, this test had been embodied in the Code by [11.3] that states

11.3. You must ensure that your behaviour, whether in your personal or professional capacity, does not damage the public confidence in you or your profession, or bring disrepute to your profession.

13. We also reminded ourselves of the objectives of sentencing in disciplinary proceedings as enunciated in the *Wong Meng Hang* case:

“Objectives of sentencing

23 We begin with the main objectives of sentencing in this context. **Disciplinary proceedings enable the profession to enforce its standards and to underscore to its members the values and ethos which undergird its work. In such proceedings, broader public interest considerations are paramount and will commonly be at the forefront when determining the appropriate sentence that should be imposed in each case. Vital public interest considerations include the need to uphold the standing and reputation of the profession, as well as to prevent an erosion of public confidence in the trustworthiness and competence of its members. This is undoubtedly true for medical practitioners, in whom the public and, in particular, patients repose utmost trust and reliance in matters relating to personal health, including matters of life and death.** As we observed in *Low Cze Hong* at [88], the hallowed status of the medical profession is “founded upon a bedrock of unequivocal trust and a presumption of unremitting professional competence”, and failures by practitioners in the discharge of their duties must be visited with sanctions of appropriate gravity.

24 The primacy of these public interest considerations in the sentencing inquiry in disciplinary cases means that other considerations that might ordinarily be relevant to sentencing, such as the offender’s personal mitigating circumstances and the principle of fairness to the offender, do not carry as much weight as they typically would in criminal cases; and, as we later explain, these considerations might even have to give way entirely if this is necessary in order to ensure that the interests of the public are sufficiently met: *Ang Peng Tiam v Singapore Medical Council and another matter* [2017] 5 SLR 356 (“Ang Peng Tiam”) at [118].”

14. It is also important to note that on the aspect of the principles on sentencing in disciplinary cases, the Court also stated at [75]:

“75(a) In disciplinary cases involving medical misconduct, the key sentencing objectives are to uphold confidence in the medical profession; to protect the public who are dependent on doctors for medical care; to deter the errant doctor and others who might be similarly disposed from committing similar offences; and to punish the errant doctor for his misconduct. **The interest of the public is paramount and will prevail over other considerations such as fairness to the errant doctor.**” (emphasis added)

15. In the present case, the Respondent’s conduct involved threatening his partner to leak explicit recordings of their intimate acts. It is clear that when the threats were made, the

intent of the Respondent was to cause alarm and/or distress to the victim. It is also clear to us that the nature of the conduct was such that disrepute had been brought to the Respondent's profession, and the charge was validly brought, as is the Respondent's agreement to that by his plea of guilt.

Our decision on the appropriate sentence

16. On the matter of the appropriate sentence, the Council had recommended a suspension of the Respondent's registration for a period of 2 years. Against that, we have the Respondent seeking a stern warning.
17. At the outset, we are of the view that the appropriate sentence must involve a period of suspension of the Respondent's registration. This is because, looking at the decision of the criminal proceedings, there were findings by the Magistrate that the Respondent had "*... had maliciously weaponised recordings of intimate moments he had shared with the Victim when their relationship turned sour.*" The relevant actions of the Respondent took place over a period of months, and was targeted at his ex-partner. The conduct underlying the conviction are serious infractions which brings serious consequences.
18. The facts of the case call for a deterrent sentence to be meted to the Respondent. The stern warning that is being sought by the Respondent will not have that effect, and quite conversely, may send a wrong signal to the profession and the public.
19. It is also relevant is that the Respondent, being a radiation therapist, is employed in a position where trust of patients is important, and where therapists work in close proximity with patients, sometimes over a period of time. In that setting, it is important that patients

and the public have confidence in the profession. For this reason, nothing short of a deterrent sentence is suitable, and in turn such a sentence must involve a period of suspension. We note that deterrence was also a key deciding factor in the sentencing of the Respondent in the criminal matter.

20. We will also add that the at [63(a)] of the *Julian Ong* decision, the Court of 3 Judges had stated "... In this regard, harm encompasses bodily harm, emotional and psychological harm, economic harm, *harm to society including harm to public confidence in the medical profession, as well as potential harm that could have resulted but did not materialise.*" Clearly, the harm that may be caused are not limited to patients but also the public's perception of the profession concerned.
21. We next come to the period of suspension that is appropriate in the present case. The Council had recommended a period of 2 years. Mr Sui had impressed in his submissions that this was because, *inter alia*, the harm was "*at the highest end of moderate*".
22. Mr Sui also drew on what he termed as "*the most relevant sentencing precedent*" of *Hiraniyan Don Quarrie*, where the respondent there exposed himself to, and also masturbated to a 16 year-old girl at a void deck. The punishment there was a 2-year period of suspension.
23. With respect, we see a distinction between the *Hiraniyan* decision and the present case. In the *Hiraniyan* decision, the fact that the victim, who was young and vulnerable, had suffered emotional and psychological harm is not disputed. In the present case, we note that the nature of the harm was of 2 types, the actual harm and distress that the victim endured from the threats to him on 3 January 2019, as well as the actual knowledge

when he learnt of the posting on 24 April 2019, and the potential harm that may have been caused by the posting of the recordings by the Respondent on 24 April 2019.

24. All in all, this Tribunal takes the view that the totality of the harm in the present case is not of the same extent as that in the *Hiraniyan* decision. While the breakdown of the relationship between the victim and the Respondent affords no justification of his conduct, it is relevant context to the commission of the offences. The respondent in the *Hiraniyan* decision had preyed on victims who were members of the public and had committed the offences in a public place. In the present case, the circumstances of the breakdown were the motivations for the Respondent's conduct, and while the scope for potential harm was higher than that in the *Hiraniyan* decision, the actual harm to the victim was in our view more limited, given the factual context that it arose from the breakdown of a relationship between the Respondent and the victim.
25. While we accept that the degree of harm was in the moderate range, we disagree that it is at the higher end of this range.
26. Another factor that we take into consideration is that the Respondent had ceased practice from 10 January 2022 until now. While we note that this date is close to the conviction date of 25 January 2022 in the criminal courts, we are prepared to take this as some evidence of the Respondent's remorse.
27. We also take into account the fact that the Respondent will be saddled with the costs of these proceedings, when he had just started work and embarked on his career. We also noted that he had served a lengthy custodial sentence of 18 weeks.

28. As for the testimonials and evidence of good character tendered by the Respondent, we are of the view that this has minimal mitigating impact.
29. However, on the subject of the Respondent's self-professed remorse in his written statement, we do not think that the contents of the written statement reflect true remorse. The contents in fact seeks to justify the Respondent's conduct that is under scrutiny here. While reference is made by him to a report by one psychiatrist Dr U, the report was prepared on 5 April 2021, and seemingly for the criminal proceedings. No mention was made of it in the law report relating to the criminal proceedings. What is more relevant is that Dr U did not opine on the Respondent's remorse save for a record that this was expressed by the Respondent when he was interviewed by Dr U. There was no independent finding by Dr U that supports this view. The said report does not really assist the Respondent in his mitigation.
30. For the above reasons, and taking into account all of the circumstances, we determine that the appropriate sentence is a period of suspension from practice for 18 months. The Respondent shall also be censured and shall also pay the costs of the Council for this inquiry. It is our hope that the Respondent will take this time for reflection, and will then return to his career in radiation therapy.

Redacting of the identities

31. We turn to a final matter. The Respondent sought an order that the victim's and his identities are redacted in any decision that may be published by Council.

32. The starting point is Regulation 19 of the Allied Health Professions (Professional Conduct and Discipline) Regulations 2013:

Publication of outcome of inquiry

19. The Disciplinary Tribunal may, in its discretion, publish an account of the inquiry and its findings and may cause the dean, the secretary or any other proper officer of any institution of higher learning from which the registered allied health professional had received his qualification to be informed of any removal of his name from any register.

33. The reasons for the publication of decisions by the Disciplinary Tribunal of professional bodies are:

- (1) It is a method of informing the profession of the professional standards that is expected of them.
- (2) Publication of decisions also goes towards the deterrent effect.
- (3) It upholds the confidence of the public who are informed of these decisions.

34. At the hearing on 12 April 2023, the Respondent orally sought an order that the names of the victim and himself be redacted, He expressed a concern that the victim can be identified if his name is published, as his ex-colleagues from his previous place of employment would be able to identify the victim even if the Respondent was named.

35. We do not grant the order for any redacting of the decision to be published for the following reasons:

- (1) We note that in the reported decision of the criminal proceedings, the names of the Respondent and the victim were not redacted.
- (2) Redacting the names of respondents from published decision will negate the deterrent effect that is intended by the publication of decisions.
- (3) In the present case, the Respondent's plea for the victim to be protected is inappropriate as he does not have the locus standi to make this application. In any case, our decision to be published will not carry the name of the victim.

Orders of this Tribunal

36. Pursuant to Section 53(2) of the Act, we hereby order:

- (1) The Respondent's registration in the Register of Allied Health Professionals with Full Registration is suspended for a period of 18 months.
- (2) That the Respondent be censured and ordered to give an undertaking to abstain in future from the conduct complained of.

(3) The Respondent pays the costs and expenses of and incidental to these proceedings, including the costs of the solicitor to the Council.

37. We also order that the Grounds of Decision be published, so that the effect of general deterrence can be achieved.

38. These proceedings are hereby concluded.

Dated this 4th day of July 2023.



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Andy Chiok



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Vincent Tan



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Tan Chek Wee