

ALLIED HEALTH PROFESSIONS COUNCIL
DISCIPLINARY TRIBUNAL INQUIRY IN RESPECT OF
LUKE MANIMARAN DEGARAJOO

6 and 26 March 2019

Disciplinary Tribunal:

Mr. Andy Chiok (Chairman)
Mr. Er Beng Siong (Member)
Ms. Karen Koh Hui Ping (Member)

Counsel for Council (M/s Rajah & Tann Singapore LLP):

Ms Rebecca Chew
Ms Kim Koh

Counsel for Respondent (Hoh Law Corporation):

Mr. Michael Han

**DISCIPLINARY TRIBUNAL'S
GROUNDS OF DECISION**

1. In these proceedings, the abovenamed Respondent, Luke Manimaran Degarajoo, was charged as follows:

"That you, Mr Luke Manimaran Degarajoo (NRIC No. XXXX), are charged that, on 21 March 2018, whilst you were a registered allied health professional, you were convicted of one charge of assaulting or using criminal force on a woman with the intention to outrage her modesty under Section 354(1) of the Penal Code (Cap. 224), which is an offence implying a defect in character which makes you unfit for your profession, to wit:-

PARTICULARS

- a. *On 21 March 2018, you were charged in the State Courts of Singapore with one charge in MAC-908950-2017 as follows:-*

*"You, Luke Manimaran Degarajoo (NRIC No. XXXX) are charged that you on the 25th day of March 2017, between ... and..., inside the office of ..., located at ... Singapore, did use criminal force on one ... female 18 years old, intending to outrage her modesty, to wit, by touching the outer part of her vagina twice with your right index finger, and you have thereby committed an offence punishable under Section 354(1) of the Penal Code, Chapter 224 (2008 Rev. Ed.)" (the "**Charge**");*

b. On 21 March 2018, you pleaded guilty to and were convicted of the Charge, and were sentenced to eleven (11) months' imprisonment and three (3) strokes of the cane,

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. 68).

2. The Notice of Inquiry was duly served on the Respondent. At the hearing, he pleaded guilty to the Charge, and admitted to the facts set out in the Agreed Statement of Facts marked as ASOF.
3. Ms Rebecca Chew ("Ms Chew") conducted the inquiry on behalf of the Council. She tendered written submissions on sentencing with authorities, as well as tendered an Agreed Statement of Facts marked as ASOF.
4. The Respondent was represented by counsel, Mr Michael Han ("Mr Han"), who presented a written mitigation plea, and who also addressed this tribunal orally. We are mindful that Mr Han may not had the opportunity to see and address his mind to the authorities cited by Ms Chew since the written submissions / plea were exchanged simultaneously prior to the hearing. We accordingly allowed him the opportunity to address us on the authorities cited by Ms Chew, which Mr Han did so.
5. During the taking of the plea, Mr Han submitted that the Respondent's agreement to the ASOF cannot be taken as any admission that he has a defect in character which makes him unfit for his profession as a physiotherapist. We accept that while the Respondent had pleaded guilty to

the Charge, what Mr Han is really submitting is that such a plea does not amount to an estoppel against the Respondent seeking a sentence that would allow him to continue with his practice. It is every respondent's right to mitigate and to submit on what he perceives as the appropriate sentence, and in turn, it is also the Council's right to seek what it perceives as the appropriate sentence. Ultimately, the determination of the appropriate sentence is one for the Tribunal.

6. On the above note, the plea was taken and the Respondent's plea of guilt was recorded. Both counsel then addressed the tribunal on the appropriate sentence to be imposed.

Submissions and precedents on sentencing

7. Ms Chew urged this Tribunal to remove the registration of the Respondent from the Register of Allied Health Professionals with Full Registration ("the Register"). The approach submitted by her was one where the appropriate starting point is that of an order for the removal of the Respondent's registration in The Register, and then to consider mitigating circumstances to see if the sentence can then be reduced.
8. On the other hand, Mr Han presented various facts on which, the Respondent contends, are collectively of such a magnitude that he ought to be allowed to continue to practice, albeit with conditions imposed. The Respondent's domestic circumstances were emphasized, as well as the effect of his

criminal conviction on his previous practice. We were informed that the Respondent no longer helm his own practice, which is now being operated by his wife (who is also a registered physiotherapist). The Respondent now assists his wife at the said practice.

9. We have considered the sentencing precedents presented by Ms Chew during the sentencing hearing. The following decisions are notable for the following reasons:

(1) In *Re Hiraniyan Don Quarrie* [2018] AHPCDT¹, the respondent who was a physiotherapist, exposed himself to a schoolgirl at a void deck. After his criminal conviction, his registration in the Register was suspended by the Disciplinary Tribunal for 2 years.

(2) Ms Chew also cited the authority of *Re Dr Lee Siew Boon Winston* [2018] SMCDT 4, where the physician was struck off the appropriate Register for (the first charge of) molesting a patient twice between June 2011 to October 2011, and (in respect of a second charge) for making a false declaration.

10. Ms Chew also cited various other decisions in respect of the removal of a respondent's registration from the Register. We will address them below when necessary to our decision.

¹ This decision is found at Tab 7 of the Council's Bundle of Authorities.

11. On the two decisions cited above, we are mindful that both cases are not on all fours with the present case. In the first place, the present case is the first time that a physiotherapist had committed the misconduct underlying the conviction in the course of his professional duties. We confirmed this with both counsel. In our view, where the misconduct had been committed in the course of professional duties, then this is an aggravating factor. This is because the relationship between a physiotherapist and his patient has elements of care and trust, unlike the situation between a respondent and members of the public. On this point, we turn to the following excerpts from the council's Code of Professional Conduct (2013)²:

"1.2. You must take responsibility for the safety and welfare of your patient and the public at all times.

...

2.1. You must not in any way exploit or abuse the relationship with your patient and the trust your patient has placed in you.

...

2.5. Where you may encroach upon your patient's privacy during therapy or in providing a service, you are to obtain consent from your patient prior to proceeding.

...

11.1. You must always behave with honesty and integrity.

11.2. You must not engage in any improper relationship or behaviour with your patient and the immediate members of your patient's family."

² See Tab 4 of the Council's Bundle of Authorities.

12. The consequence of the above requirements in the Code is that if the Tribunal in *Re Hiraniyan Don Quarrie* had deemed fit to impose a sentence of 2 years' suspension for a practitioner's misconduct that was not associated with professional duties or work in that case, then subject to other relevant factors, prima facie, to be consistent with the sentence in *Re Hiraniyan Don Quarrie*, this Tribunal cannot impose any sentence that is less than 2 years' suspension of the Respondent's registration in the Register.

13. We will add that even without the precedent decision of *Re Hiraniyan Don Quarrie*, we have no hesitation to impose a sentence that, at the very least, involved a lengthy period of suspension of the Respondent's registration from the Register. As we will explain below, invariably, for physiotherapists, the nature of their work involves physical contact with patients. It is therefore incumbent on the physiotherapists to ensure that the requirements as set out in the Code of Professional Conduct are not breached. This inquiry being the first known case where a physiotherapist is charged with misconduct underlying a criminal charge of molesting a patient, the sentence to be meted out in these proceedings must not only carry a general deterrent effect, it must serve the other functions of maintaining the confidence of the public in the profession as well as punish the Respondent. To this end, we will refer to the following extract from the Code of Professional Conduct on this requirement of an allied health professional:

“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.”

14. We now turn to the decision in *Re Dr Lee Siew Boon Winston* or Dr Lee’s case. Mr Han submitted that the said decision can be distinguished on the following grounds:

(1) In that case, the molestation by Dr Lee took place on 2 occasions over 4 months, as opposed to the present one. There was an element of premeditation.

(2) In contrast, in the present case, the misconduct arising from an error of judgment at a single occasion of treatment.

(3) The misconduct there also involved a second charge of false declaration, which is absent in the present case.

15. During deliberations, we are mindful to note the above, and agree that the misconduct of Dr Lee was more aggravated than that of the Respondent’s. We also noted that the Respondent had committed the misconduct on a single occasion. However, we had noted that the Respondent’s misconduct was not entirely committed on the spur of the moment. There were 2 instances during that massage session when the Respondent touched the victim’s vagina, and he had attempted to explain his exposure of the victim’s

pelvic (by rolling down her underwear) to her friend when that was seen, and questioned by her³.

16. Separately, we will mention that Ms Chew had submitted that the victim in the present case had suffered some harm. In fairness to the Respondent, unlike the victim in *Re Dr Lee Siew Boon Winston* who required professional help with PTSD for a year⁴, in the present case there was no such evidence before us. That is not to say that we find that the molestation by the Respondent did not have any effect on the victim⁵, but we are prepared to give the Respondent the benefit of doubt that the degree of harm is not the same or close to that suffered by Dr Lee's patient / victim.

17. It is also noteworthy that the tribunal in *Re Dr Lee Siew Boon Winston* had observed that for misconduct involving sexual offences, a suspension or a removal from the Register was ordered in all of these cases⁶. We thus have to examine whether in the present case, as an alternative to a suspension, an order for the Respondent's removal from the Register is warranted.

18. We note that at paragraph 51 of the decision in *Re Dr Lee Siew Boon Winston*, the case of *Medical Board of Australia v Duck* [2017] WASAT 28 was cited in respect of the considerations involved between sentences of

³ This account is in the ASOF at para. 16.

⁴ This is at paragraph 67 of *Re Dr Lee Siew Boon Winston*.

⁵ The victim in the present case was shocked by the inappropriate contact, and was angry and upset when she lodged the police report – see paras. 12 and 18 of the ASOF.

⁶ See paragraph 51 of *Re Dr Lee Siew Boon Winston*.

suspension and erasure from the register. In respect of the punishment of a suspension, the following was stated:

“The proper use of suspension is in cases where the practitioner has fallen below the high standards to be expected of such a practitioner, but not in such a way as to indicate that the practitioner lacks the qualities of character which are the necessary attributes of a person entrusted with the responsibilities of a practitioner.” (underlining added)

19. In the present case, we have to consider the above together with the purpose of the sentencing regime in disciplinary proceedings. In examining the principles for the removal of a medical practitioner from the register, the Court of Three Judges in *Wong Meng Hang v SMC and other matters* [2018] SGHC 253⁷ stated (after examining the principles of law in other jurisdictions) at [54]:

“54 Notwithstanding these differences, we think it remains appropriate and useful for us to have regard to the positions taken in these jurisdictions when identifying the broad principles governing the imposition of a striking off order. This is especially true in view of the common sentencing objectives that underlie the approach adopted in all of these jurisdictions, namely, **general and specific deterrence, the protection of the public, and the maintenance of public confidence** in the profession: see *Bawa-Garba v General Medical Council* [2018] EWCA Civ 1879 (“*Bawa-Garba*”) at [25]; *Re Dr Parajuli* [2010] NSWMT 3 at [32]; *College of Physicians and Surgeons of Ontario v Peirovy* [2018] ONCA 420 at [64].

...

57 Based on the Sanctions Guidance, the overarching inquiry as to whether erasure would be warranted involves asking **whether the misconduct is “fundamentally incompatible with continued registration as a doctor” and whether erasure is necessary to protect the public or to maintain public confidence in the medical profession.**” (emphasis added)

⁷ This decision is at Tab 10 of the Council’s Bundle of Authorities.

20. We noted that in the Dr Lee's case, these considerations equally weighed in the decision of the tribunal⁸. While Dr Lee's misconduct was more aggravated than that of the Respondent's, his mitigating factors are of greater weight than those of the Respondent's. Dr Lee has a much longer period of unblemished record, and his domestic factors included him being a sole breadwinner at an advanced age, with a wife that was debilitated by stroke and a low-IQ child incapable of employment. Even though the Respondent's practice had effectively ceased when it was taken over by his wife, and he also had an unblemished record prior to the misconduct, his mitigating factors on an overall basis carry less weight than those of Dr. Lee's.
21. 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.

⁸ See paragraphs 86 and 87 of *Re Dr Lee Siew Boon Winston*.

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]."

22. More pertinently, in their summary 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)

23. Applying the above, we reiterate that in our view, misconduct involving the molestation of patients by physiotherapists, whose work entails extensive physical contact with patients, will result in the "*erosion of public confidence in the trustworthiness and competence of its members*". The necessity to address the matter of public confidence, as well as to adequately punish an errant physiotherapist, can only be served by either a lengthy period of suspension or the removal of registration.

Our decision

24. After considering all of the above points, the submissions of both counsel, and in particular, the mitigation plea of the Respondent through his counsel, we have deliberated at length, and determined that the appropriate sentence is the ultimate sanction of the removal of the Respondent's registration in the Register.
25. The reasons for this severe punishment, as opposed to that of a lengthy suspension, are:
- (1) Foremost, we are of the view that given the relevant sentencing principles, it is necessary to uphold public confidence for the profession of physiotherapists, whose work involved physical contact with their patients. A strong message of general deterrence must be sent to the members of the profession that any such misconduct will invariably attract a severe punishment in the form of a lengthy suspension in the best mitigating circumstances; or a removal from the Register in most cases.
 - (2) While the Respondent is a first-time offender, we note from the reported decisions that this is not a bar to a punishment of removal from the Register if the other considerations justify that sanction.

- (3) The Respondent did not have strong mitigating factors which would tilt the balance towards a lengthy suspension of 3 years or such other period, which was the other option that was under consideration by this tribunal.
- (4) The manner by which the misconduct happened had sealed the decision to remove the Respondent's registration from the Register. While his counsel Mr Han had advanced the position that the Respondent's offending act may be described as an impulsive one, the fact that the outrages took place twice in a single session, with an attempt to explain it away i.e. to conceal the commission, convinced this tribunal that the act was more likely than not a deliberate one, and through his misconduct, the Respondent had demonstrated that he does not possess the necessary attributes required of him by the profession. This also accords with the views held in the decision of *Medical Board of Australia v Duck*, which was observed by the local decisions that we have cited.
26. While Ms Chew had sought that the Respondent be fined \$5,000, we are of the view that, like the case in Dr Lee, such a punishment is not necessary given that we had imposed the ultimate sanction. At the same time, we have also taken the Respondent's mitigating circumstances into account and those were relevant factors to our decision to not impose a fine.

27. 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 shall be removed; and
 - (2) that the Respondent pays the costs and expenses of and incidental to these proceedings, including the costs of the solicitor to the Council.
28. We also order that the Grounds of Decision be published, so that the effect of general deterrence can be achieved.
29. These proceedings are hereby concluded.

Dated this 26th day of March 2019.