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ADSAN LAW

SENTENCING CONSIDERATIONS IN DISCIPLINARY PROCEEDINGS AGAINST MEDICAL PROFESSIONALS

1. This article examines the sentencing considerations articulated in case law in respect of disciplinary proceedings against medical professionals.
2. After a medical professional is convicted by a Disciplinary Tribunal (“**DT**”), the DT would have to determine the appropriate sentence to be meted.
3. The landmark decision of the Court of Three Judges in *Wong Meng Hang v Singapore Medical Council* [2019] 3 SLR 526 (“**Wong Meng Hang**”) has set out a 4-step sentencing framework, including a “harm-culpability matrix”, when sentencing professionals. This framework provides guidance to DTs when deliberating on sentencing.
4. In line with the sentencing framework, the DT would have to be cognisant of the relevant sentencing objectives and sentencing principles. In the context of disciplinary proceedings, sentencing objectives such as broader public interest considerations are paramount, given the need to uphold the standing and reputation of the profession, and to prevent an erosion of public confidence in the trustworthiness and competence of its members.¹ Key sentencing principles

¹ *Wong Meng Hang*, at [23]

should also be borne in mind by the DT, including the interests of general and specific deterrence.²

5. The 4-step sentencing framework is elaborated below.

Step 1: Identify the level of harm and the level of culpability

6. The first step is to evaluate the seriousness of the offence in relation to parameters of *harm* and *culpability*.³

7. **Harm** refers to the type and gravity of the harm or injury which was caused to the patient and to society through the commission of the offence:

- (1) Harm to the patient includes bodily injury, emotional or psychological distress, serious economic harm, increased predisposition to certain illnesses, loss of chance of recuperation or survival, and even death. The more direct the connection between the specific type of harm that has been occasioned and the misconduct, the weightier this consideration would be.⁴

- (2) Harm may also include *potential* harm that may have resulted from the dangerous acts of the misconduct, even if actual harm was not occasioned.⁵ Potential harm should only be considered in the event there was a *sufficient likelihood* of the harm arising.⁶

8. **Culpability** refers to the degree of blameworthiness. Relevant factors when assessing the level of culpability would include the following:⁷

- (1) The state of mind of the offender (e.g. negligent or careless acts, grossly negligent acts, knowing incompetence and recklessness, or intentional acts)

- (2) The extent and manner of the offender's involvement in causing the harm

² *Wong Meng Hang*, at [25]

³ *Wong Meng Hang*, at [30]

⁴ *Wong Meng Hang*, at [30(a)]

⁵ *Wong Meng Hang*, at [30(a)]

⁶ *Neo Ah Luan v PP* [2018] 5 SLR 1153 at [67]

⁷ *Wong Meng Hang*, at [30(b)]

- (3) The extent that the offender’s conduct departed from standards reasonably expected of a medical practitioner
- (4) All surrounding circumstances to the commission of the offence.

Step 2: Identify the applicable sentencing range

- 9. The second step is to identify the applicable indicative sentencing range, having regard to the level of harm and culpability identified above.⁸
- 10. The indicative sentencing range or matrix is set out in the following table:⁹

Harm Culpability	Slight	Moderate	Severe
Low	Fine or other punishment not amounting to suspension	Suspension of 3 months to 1 year	Suspension of 1 to 2 years
Medium	Suspension of 3 months to 1 year	Suspension of 1 to 2 years	Suspension of 2 to 3 years
High	Suspension of 1 to 2 years	Suspension of 2 to 3 years	Suspension of 3 years or striking off

- 11. The aforesaid range is a guide only and does not displace the duty which each DT has to discharge to consciously seek, determine and impose the sentence which

⁸ *Wong Meng Hang*, at [33]

⁹ *Wong Meng Hang*, at [33]

is appropriate in all the circumstances. A DT may depart from the matrix under the appropriate scenario.¹⁰

Step 3: Identify the appropriate starting point within the indicative sentencing range

12. Under the third step of the framework, a DT is to identify the appropriate starting point *within* that range.
13. The DT is to consider the level of harm caused by the misconduct and the practitioner's level of culpability, and analogise or distinguish the case from other sentencing precedents which feature broadly similar circumstances.¹¹ The DT would take into account past sentencing precedents to endeavour to maintain consistency in sentencing.
14. In this regard, *Wong Meng Hang* has also cautioned that several of the past medical disciplinary precedents were unduly lenient. As such, *Wong Meng Hang* has since recalibrated sentencing benchmarks in the medical context.¹²

Step 4: Make adjustments to the starting point to take into account offender-specific factors

15. The final step of the analysis involves an assessment of the offender-specific sentencing factors that do not relate directly to the offender's commission of a particular offence.¹³ Aggravating or mitigating factors may warrant an adjustment to the starting point (identified in step 3).
16. Potential **mitigating factors** may include (among other things) a timely plea of guilt in circumstances which show remorse on the offender's part, an undue delay in the prosecution of the proceedings, as well as having an unblemished track record and good professional standing.¹⁴

¹⁰ *Wong Meng Hang*, at [33]

¹¹ *Wong Meng Hang*, at [42]

¹² *Wong Meng Hang*, at [38]

¹³ *Wong Meng Hang*, at [43]

¹⁴ *Wong Meng Hang*, at [43]

17. On the other hand, **aggravating factors** include prior antecedents of professional misconduct, especially when such instances are similar to the conduct that the professional is charged with, which could show the offender's recalcitrance and unwillingness to comply with the values of the profession.¹⁵ Other aggravating factors may include the offender's seniority and eminence, since an offender's seniority attracts a heightened sense of trust and confidence in the practitioner and the profession,¹⁶ or when an offender is unremorseful and seeks to pin the blame on the patient or others for his improper conduct.¹⁷
18. Apart from the above sentencing framework being applicable to medical professionals, the sentencing framework has also been applied in disciplinary proceedings involving other errant professionals including dentists. In *Singapore Dental Council Disciplinary Committee Inquiry for Dr Campbell Matthew Angus Christopher* (Grounds of Decision dated 17 March 2021), the Disciplinary Committee accepted the Prosecution Counsel's submission that the sentencing principles and framework in *Wong Meng Hang* applied similarly to dentists.
19. Our **Kenny Chooi** and **Joel Yap** acted successfully for the *Singapore Dental Council* in its disciplinary proceedings against *Dr Campbell Matthew Angus Christopher*.

Sources / References:

Wong Meng Hang v Singapore Medical Council [2019] 3 SLR 526

Neo Ah Luan v PP [2018] 5 SLR 1153

Ang Peng Tiam v Singapore Medical Council [2017] 5 SLR 356

Singapore Medical Council v Wong Him Choon [2016] 4 SLR 1086

Sentencing Guidelines for Singapore Medical Disciplinary Tribunals

Singapore Dental Council Disciplinary Committee Inquiry for Dr Campbell Matthew Angus Christopher (Grounds of Decision dated 17 March 2021)

¹⁵ *Wong Meng Hang*, at [43]

¹⁶ *Ang Peng Tiam v Singapore Medical Council* [2017] 5 SLR 356 at [93]

¹⁷ *Singapore Medical Council v Wong Him Choon* [2016] 4 SLR 1086 at [108]



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