

# Dishonesty and the medical profession - finding a punishment to fit the 'crime'

October 2015

## Introduction

The Court of Three Judges in a recent decision in Singapore raised the bar for the sentencing of doctors who are convicted of dishonest conduct in professional disciplinary proceedings.

This commentary highlights the possibility of increased penalties against medical professionals found guilty of dishonest behaviour and the potential for uncertainty in sentencing for these doctors going forward.

## The Court's decision

The recent Court of Three Judges decision in *Singapore Medical Council v Kwan Kah Yee* [2015] SGC3J 01 raises the bar for sentencing of doctors who are charged with dishonest conduct in professional disciplinary proceedings.

In *Kwan Kah Yee*, the Singapore Medical Council ("SMC") - which regulates the professional conduct of doctors - took the unusual step of appealing to the Court of Three Judges against a sentence imposed by its own Disciplinary Tribunal ("DT") on an errant doctor ("Dr K") who falsely certified the deaths of two patients.

The DT had ordered that Dr K, a general practitioner, be suspended from practice for three months for each of the two charges of professional misconduct against him (i.e. a total suspension period of three months), with each term of suspension running concurrently. (The other penalties meted out to Dr K in addition to the suspension were a censure, an undertaking not to repeat the offence and to pay off half the SMC's prosecution costs.) The SMC, deeming the punishment meted out by the DT against Dr K to be insufficient given that his dishonest behaviour involved perversion of justice and falsification of evidence, argued for Dr K to be suspended for 12 months for each charge, with the sentences to run consecutively (i.e. a total of 24 months' suspension).

The Court of Three Judges, in allowing the SMC's appeal, concluded that the DT's sentence had been "manifestly inadequate" and proceeded to suspend Dr K for 18 months for each charge, with the sentences to run consecutively, making a total of 36 months' suspension. Dr K was also ordered to pay the SMC the full cost of the DT proceedings and S\$6,000 as costs of the appeal. The other orders by the DT were undisturbed.

## Sentences were "inexplicably lenient"

The Court of Three Judges took the opportunity to review existing SMC sentencing precedents relating to improper death certification and found them "inexplicably lenient", as the most severe sanction was a 3-month suspension with a fine, a censure and an order to pay the SMC's prosecution costs. It also drew comparisons with similar cases in

England and highlighted that the penalties meted out by the English equivalent of the SMC, the General Medical Council's ("GMC") Fitness for Practice Panel ("FPP"), for the same offence are significantly heavier.

The Court also observed that in England:-

- The GMC views "honesty and integrity as an indispensable characteristic of a doctor" (quoting from the GMC's "Good Medical Practice" 25 March 2013).
- Erasure from the medical register may be appropriate where a doctor acts dishonestly, particularly where the dishonesty is persistent and/or attempts are made to conceal it.
- Dishonesty is viewed very seriously by the English medical profession.

The Court concluded that Dr K's acts of issuing false death certificates based on medical records that did not exist was a serious breach of professional standards and of the SMC's Ethical Code and Ethical Guidelines. Although the Court chose not to strike Dr K from the medical register, it sent a strong signal that striking off a doctor for dishonesty would certainly be an issue that the Court would consider should an appropriate case arise in future.

## Where will the Court's decision lead us?

Now that the Court of Three Judges has set a fresh sentencing benchmark for offences by doctors involving dishonest conduct and new guidelines for sentencing, future DTs will have to treat past sentencing precedents on dishonesty offences with some caution. Going forward DTs will play a key role in developing new sentencing precedents for dishonesty cases and as a result, there is likely to be a period of uncertainty for defendant doctors and their defence teams as to how much guidance the DTs will draw from the English authorities and how they are to be adapted to the local sentencing framework.

The Court has also suggested that the punishment of dishonesty offences by medical practitioners should be brought in line with the stance adopted by the English medical profession and Singapore's legal profession, where striking off is the norm. When an appropriate case comes before the Court, it will be interesting to see what arguments are raised in favour of preserving the prevailing general approach in Singapore of not striking off dishonest doctors.

## The divergence between the England and Singapore approaches to dishonesty

Finally, two interesting questions arise from the divergent sentencing approaches adopted by the GMC's FPP and Singapore's DTs.

1. How is dishonesty perceived by the local medical profession?
2. When do DTs consider a doctor's behaviour so blameworthy that he should be struck off?

A quick survey of the SMC's published Press Releases and Grounds of Decision from 2014 to mid-2015<sup>1</sup> revealed three cases (excluding Dr K's case) in which doctors had been found guilty by DTs of dishonesty offences. These ranged from falsifying medical records, amending a consent form and for being convicted of a criminal offence involving fraud or dishonesty, namely abetting another person in furnishing false information to the police concerning a

speeding offence. Of the three cases, the most lenient punishment imposed by a DT was a fine of S\$10,000 and a censure for falsifying medical records and other offences, while the most severe punishment was for falsifying a patient's consent form and other charges of misconduct, for which the doctor was censured, suspended for 12 months and fined S\$10,000. The doctor who was convicted of abetment was censured and suspended for four months.

During the same period, DTs struck two doctors from the medical register – the first for engaging in sexual relations with a minor patient and the second for having been convicted of a criminal offence implying a defect of character that made him unfit for his profession, namely sale of large quantities of cough syrup without a license. In the first case, it appears that the main factor that convinced the DT to strike the doctor from the register was the callous and egregious way in which he carried out his crime rather than his dishonesty in trying to cover up his arrest. In the second case, the DT noted that the doctor sold the cough syrup knowing that they were meant for uncontrolled resale at a substantial profit, and that harm could be caused to the public by his acts. He had also been convicted in a criminal court for selling the cough mixture without a wholesale dealer's license.

What the DT decisions above suggest is that the local DTs view offences of a calculated nature causing or potentially causing physical harm and which destroy a patient's or the public's trust and confidence in the medical profession as worthy of the most severe punishment of erasure. By contrast, dishonesty offences such as falsification of documents or evidence appear to be 'victimless' in the sense that no patient is *physically hurt* by the doctor's lack of integrity. Of course, it can be argued that no offence is ever victimless – falsification of medical records where a case is being investigated or litigated can be construed as a form of interference in the administration of justice, and in that scenario, the victim is not only the individual patient but society as a whole.

In short, the divergence between the English and the Singapore approaches to dishonesty based on a survey of the most recent DT cases in Singapore can perhaps be attributed to a difference in how the concept of harm is defined and perceived. In that way, a dishonest act which is confined purely to altering what is written on a piece of paper can be seen as a lesser evil than a calculated act causing actual or potential physical harm to either a patient or the public.

## Conclusion

To sum up, Dr K's case is likely to have a significant impact on the calibration of sentencing for professional conduct involving dishonesty under the Medical Registration Act. It would be prudent for defence lawyers to advise their doctor clients who are charged with such misconduct that erasure from the medical register, or a very lengthy suspension are very real possibilities following the decision in Dr K's case.

<sup>1</sup> As a detailed study of all DT decisions to date is beyond the scope of this short article, my commentary is limited to the more recent decisions, which are more likely to reflect the current trends and attitudes of the DTs.

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