CLIENT NOTE

SMC Sentencing Guidelines for Medical Disciplinary Tribunals

18 August 2020

Introduction

1. The Sentencing Guidelines Committee (the "**Committee**") was appointed by the Singapore Medical Council ("**SMC**") in January 2019, and tasked to develop a framework to guide SMC Disciplinary Tribunals ("**DT**") in meting out appropriate sanctions.

2. The Committee, chaired by Judge of Appeal Judith Prakash, completed its assignment with the publishing of the Sentencing Guidelines for Singapore Medical Disciplinary Tribunals (the "**Guidelines**") in July 2020.

3. The Guidelines build on the four-step sentencing framework and "harm-culpability matrix" set out by the Court of Three Judges in *Wong Meng Hang v SMC* [2018] SGHC 253 ("***Wong Meng Hang***"), and draw from the principles espoused in past SMC cases and criminal cases before the Courts.

4. This article will summarise the approach by which a DT arrives at an appropriate sentencing order as espoused in the Guidelines.

Overview on the Guidelines

5. While the Guidelines do not have the force of law, they serve as a guide to DTs in their sentencing decisions in order to promote fairness and consistency in DT determinations. Additionally, the Guidelines inform practising doctors on consequences that may ensue in proceedings before the DT.

6. In the application of the Guidelines, it is also emphasised that one must have regard to general sentencing objectives of deterrence, retribution and rehabilitation, as well as sentencing principles of proportionality and consistency in sentencing.

7. The Committee has also clarified that the framework to be applied in meting a sentence ("**Sentencing Framework**") as set out in the Guidelines is applicable to both clinical and non-clinical offences. This is an extension of the position in *Wong Meng Hang*, where the sentencing framework in that case was designed to only apply to clinical care offences wherein deficiencies in the doctor's clinical care caused harm to a patient.

For any queries relating to this article, please contact:

Matthew Saw
matthewsaw@leenlee.com.sg

Authors:
Matthew Saw
Kelyn Lee

Lee & Lee
50 Raffles Place
#06-00 Singapore Land Tower
Singapore 048623
Tel: +65 6220 0666

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Steps in the Sentencing Framework

Step 1: Evaluating the seriousness of the offence with reference to harm and culpability

The concept of "harm"

8. The harm caused by the doctor's breach is assessed in terms of the **type** of harm and **gravity** of the harm or injury caused to the patient and society.

9. Apart from the physical bodily harm to the patient in *Wong Meng Hang*, the "harm" envisaged by the Sentencing Framework includes other forms of harm, such as non-physical harm (e.g. psychological, emotional or economic). It was also explained that harm caused to society includes harm to public confidence in the medical profession, to public health and safety, and the public healthcare system.

10. In addition, the Guidelines recommend that the DT should also consider potential harm that could result from the doctor's breach, even if the harm may not have materialised. Potential harm is assessed with reference to the seriousness of the harm risked, and the likelihood of the harm arising (and should be considered only if there is sufficient likelihood of the harm materialising). One example would be the potential for harm occasioned from use of an unregistered health product.

11. A list of non-exhaustive factors for consideration is as follows: -

    a. In terms of the harm caused to the *patient*:

        i. The seriousness of the eventual harm suffered by the patient;

        ii. The permanence/reversibility of harm;

        iii. The extent to which the eventual harm was connected to the doctor's misconduct, for instance, whether the doctor's actions/omissions were the sole and direct causes of the harm and the extent to which patient autonomy was undermined in cases involving the taking of informed consent; and

        iv. The potential harm that could have been caused by the misconduct.

    b. In terms of the harm caused to *society*:

        i. The number of breaches and extent of the doctor's breach;

        ii. The severity of the consequences. There is a direct correlation between the actual or potential harm caused to the patient and the harm to public confidence in the medical profession. The rationale behind the guideline or rule infringed should also be considered;

        iii. The nature of the offence, which can include offences not related to the doctor's care of the patient, such as criminal offences of fraud, dishonesty, and occasioned by other improper acts of a doctor; and

iv. Circumstances in which the offence was committed, such as whether the offence was committed in the doctor's professional capacity.

The concept of "culpability"

12. Culpability is a measure of the doctor's degree of blameworthiness.

13. In assessing a doctor's level of culpability, the Guidelines recommend consideration of the following non-exhaustive factors: -

a. The doctor's state of mind, taking into account the circumstances of the case including the doctor's motivation behind his actions. This ranges from a doctor's honest omission/inadvertence (lower culpability) to intentional and deliberate departure from standards/guidelines (higher culpability);

b. The extent of premeditation and planning involved, including the lengths to which the doctor went to cover up his misconduct;

c. Whether the doctor was motivated by financial gain, and the extent of profits gained by the doctor from his breach;

d. The extent of the doctor's departure from the reasonable standard of care or conduct;

e. The extent and manner of the doctor's involvement in causing the harm, where seniority of the doctor would, *ceteris paribus*, lead to an inference of greater culpability;

f. The appropriateness of the treatment and whether it was within the doctor's area of competence;

g. The extent to which the doctor failed to take prompt action when patient safety or dignity was compromised;

h. The urgency of the situation;

i. The duration of the offending behaviour, having regard to the circumstances underlying the continuance of the offending conduct such as whether the doctor's behaviour was intentional; and

j. The extent to which the doctor abused his position of trust and confidence.

<u>Step 2: Identifying the applicable indicative sentencing range</u>

14. For the second step of the Sentencing Framework, the sentencing matrix propounded in *Wong Meng Hang* was adopted in the Guidelines as follows: -

Harm / Culpability	Slight	Moderate	Severe
Low	Fine or other punishment not amounting to suspension.	Suspension of up to 1 year.	Suspension of 1 to 2 years.
Medium	Suspension of up 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

15. It was reiterated that the indicative ranges in the matrix merely serve as a guide for the DTs, which should nevertheless consciously determine the appropriate sentence having regard to the circumstances of each individual case. Where a DT decides to depart from the indicative ranges, it should state its reasons in its written decision.

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

16. This step entails identifying precise point within the range identified in Step 2, which the doctor's breach falls, having regard to the level of harm and culpability.

17. In this step, the DTs are also reminded to have regard to the principles of proportionality and consistency in sentencing (i.e. through consideration of sentencing precedents).

Step 4: Adjusting the starting point by taking into account offender-specific aggravating and mitigating factors

18. The Sentencing Framework guides consideration of both offence-specific factors (Steps 1 to 3) and offender-specific factors (Step 4).

19. The following are aggravating or mitigating factors, which should not be double-counted if they have already been taken into account in the harm/culpability analysis in the prior steps of the Sentencing Framework: -

    a. Aggravating factors include:

        i. Prior instances of professional misconduct, particularly if the doctor's antecedents are similar to the circumstances informing the charge at hand;

        ii. Seniority and/or eminence of the doctor, given that this relates to the trust and confidence in the doctor and medical profession;

        iii. The doctor's lack of remorse or insight, evident from conduct subsequent to the infringement such as shifting of blame and refusal to participate in disciplinary proceedings; and

        iv. Multiple charges against/breaches by the doctor.

b. Mitigating factors include:

i. A timely plea of guilt and co-operation with investigations, which show genuine remorse and contriteness;

ii. The doctor's long unblemished track record and good professional standing, indicating that the infringement was potentially one-off and out of character;

iii. Inordinate delay in prosecution not occasioned by and causing prejudice to the doctor; and

iv. Remorse and insight of the doctor, such as an apology to the patient and taking of steps to prevent recurrence of the infringement.

Conclusion

20. The Guidelines provide a comprehensive framework for the DTs to determine the appropriate sentence to be meted out in each individual case before the DT, and serve as a useful guide for medical practitioners in understanding the considerations/factors adopted in SMC disciplinary cases.

21. It is hoped that the Guidelines will promote greater fairness and consistency in sentencing in cases before the DTs, and that DTs will take heed to consistent reminders throughout the Guidelines against a mechanistic application of the factors, and of the need for a measured consideration of all the circumstances of each individual case.

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Tan Tee Jim, S.C. Intellectual Property tanteejim@leenlee.com.sg	Adrian Chan Corporate adrianchan@leenlee.com.sg	Louise Tan Banking louisetan@leenlee.com.sg