Record of Determinations –
Medical Practitioners Tribunal

PUBLIC RECORD

Dates: 25/07/2018 - 27/07/2018
05/09/2018 - 06/09/2018
15/04/2019 - 17/04/2019

Medical Practitioner’s name: Miss Susan LIM MEY LEE

GMC reference number: 3149027

Primary medical qualification: MB BS 1979 Monash University

Type of case
New - Misconduct
New - Determination by other regulator

Outcome on impairment
Not Impaired
Impaired

Summary of outcome
Voluntary erasure

Tribunal:

<table>
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<tr>
<th>Role</th>
<th>Name</th>
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<tbody>
<tr>
<td>Legally Qualified Chair</td>
<td>Mr Geoffrey Payne</td>
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<tr>
<td>Lay Tribunal Member:</td>
<td>Ms Lisa Smith</td>
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<tr>
<td>Medical Tribunal Member:</td>
<td>Dr Damian McDermott</td>
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<td>Tribunal Clerk:</td>
<td>Mr David Salad</td>
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Attendance and Representation:

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<tr>
<th>Role</th>
<th>Name</th>
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<tr>
<td>Medical Practitioner:</td>
<td>Not present and represented</td>
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<tr>
<td>Medical Practitioner’s Representative:</td>
<td>Mr Ian Winter, QC, instructed by Bindmans LLP</td>
</tr>
<tr>
<td>GMC Representative:</td>
<td>Mr Simon Jackson, QC</td>
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Record of Determinations –
Medical Practitioners Tribunal

Attendance of Press / Public

In accordance with Rule 41 of the General Medical Council (Fitness to Practise) Rules 2004 the hearing was held in public.

Overarching Objective

Throughout the decision making process the tribunal has borne in mind the statutory overarching objective as set out in s1 Medical Act 1983 (the 1983 Act) to protect, promote and maintain the health, safety and well-being of the public, to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of that profession.

Determination on Facts and impairment - 06/09/2018

Background

1. Miss Lim Mey Lee (henceforth ‘Miss Lim’) qualified at the University of Monash, Australia in 1979. At the time of the events set out in the Allegation, Miss Lim was practising in Singapore and from 2001 – 2007 she provided care in Singapore and Brunei to a patient who was a member of the royal family of Brunei. Following an investigation by the Singapore Medical Council (‘SMC’), it was alleged that she issued a significant number of invoices to the patient in which she overcharged for her services and those carried out by third-party doctors. In June 2012, the SMC determined that Miss Lim was guilty of 94 counts of professional misconduct. In July 2012 the SMC suspended Miss Lim from practice for three years, fined her $10,000 plus costs relating to the disciplinary proceedings and censured her in writing.

2. The SMC made the GMC aware of its findings in relation to Miss Lim by a letter dated 15 July 2013. Following a GMC investigation, the matter was referred to an MPTS fitness to practise Panel which commenced in June 2014 (‘the First Panel’). The First Panel adjourned proceedings following an application made by Miss Lim on the basis that her counsel could not attend.

3. A second fitness to practise Panel convened in January 2015 (‘the Second Panel’). This Panel considered preliminary issues raised by Miss Lim. These included an application with regard to the ‘Five Year Rule’ for concerns coming to the attention of the GMC, which she claimed precluded the Panel from considering the Allegation further, and a contention that no duty arose for Miss Lim to notify the GMC, based on its own guidance, prior to the High Court of Singapore’s judgment. The Second Panel determined against Miss Lim on both matters, and she appealed these decisions in the High Court via a judicial review. In a decision dated 28 January 2016, Haddon-Cave J dismissed Miss Lim’s claim and refused her permission to appeal.
Record of Determinations –
Medical Practitioners Tribunal

4. Miss Lim appealed the High Court decision to the Court of Appeal. In a judgment dated 6 February 2018, the Court of Appeal rejected this appeal on all grounds. The substantive matters have therefore been brought before a Medical Practitioners Tribunal convened for this hearing.

Deferral of application for Voluntary Erasure

5. Mr Winter QC raised before the Tribunal an application by Miss Lim for Voluntary Erasure. Mr Jackson QC, on behalf of the GMC, opposed the application. During the course of discussion between parties and the Tribunal, Mr Winter QC stated that he was content for the Tribunal to defer considering the application to a later stage, although he did return to it in submissions later before stating once again that he was content for it to be deferred.

6. The Tribunal noted that proper consideration of an application for Voluntary Erasure would inevitably involve argument on whether the Allegation against Miss Lim was capable of resulting in a finding of impaired fitness to practise. That was the very matter that the Tribunal had to consider in the present proceedings. Taking into account that fact and in the light of Mr Winter QC’s position that it was not imperative that the application be heard at the preliminary stage, it determined that the most appropriate and expeditious course would be to defer any consideration of the application for Voluntary Erasure until it had made a decision on whether or not Miss Lim’s fitness to practise is impaired.

The Allegation and the Doctor’s Response

7. The Allegation made against Dr Lim Mey Lee is as follows:

1. On 21 June 2012, Singapore Medical Council (‘SMC’) determined that you were guilty of 94 counts of professional misconduct described as:

   a. 83 charges relating to professional misconduct by overcharging;
      **Admitted and found proved**

   b. 11 charges relating to professional misconduct by falsely misrepresenting in your invoices that the invoices were for fees levied by third-party doctors whereas you had added a significant and undisclosed mark-up to the actual charges of the third-party doctors. **Admitted and found proved**

2. On 17 July 2012, SMC ordered that you:

   a. were suspended from practice for three years; **Admitted and found proved**
Record of Determinations –
Medical Practitioners Tribunal

b. must pay a financial penalty of $10,000; **Admitted and found proved**

c. would be censured in writing; **Admitted and found proved**

d. must undertake to charge your patients, on your return to practice, no more than a fair and reasonable fee for your medical expenses; **Admitted and found proved**

e. must pay to the SMC, including the first disciplinary committee, the costs and expenses of, and incidental to, the disciplinary proceedings. **Admitted and found proved**

3. You failed to inform the GMC of the SMC’s determination. **Admitted and found proved**

And that by reason of the matters set out above your fitness to practise is impaired because of:

a. the determination by an overseas body that your fitness to practise is impaired, in relation to paragraphs 1 and 2; **To be determined**

b. your misconduct, in relation to paragraph 3. **To be determined**

The Admitted Facts

8. At the outset of these proceedings, through her Counsel, Mr Winter QC, Miss Lim made admissions to the full Allegation, as set out above, in accordance with Rule 17(2)(d) of the General Medical Council (GMC) (Fitness to Practise) Rules 2004, as amended (‘the Rules’). In accordance with Rule 17(2)(e) of the Rules, the Tribunal announced these paragraphs and sub-paragraphs of the Allegation as admitted and found proved.

Impairment

9. With no facts remaining in dispute, the Tribunal has to decide in accordance with Rule 17(2)(l) of the Rules whether, on the basis of the facts which it has found proved, Miss Lim’s fitness to practise is impaired by reason of a determination by a regulatory body and/or by her misconduct.

Documentary Evidence

10. The Tribunal heard no oral evidence on behalf of either the GMC or Miss Lim. It had regard to the documentary evidence provided by both parties. This evidence included, but was not limited to:
Record of Determinations –
Medical Practitioners Tribunal

- witness statement of Mr A, GMC Investigation Officer, dated 29 October 2014;
- SMC Charges against Miss Lim including a schedule of invoices;
- SMC Disciplinary Committee decision dated 17 July 2012;
- decision by the Singapore High Court, dated 1 July 2013, to dismiss Miss Lim’s appeal against the SMC decision;
- SMC press release regarding this appeal;
- letter dated 15 July 2013 from the SMC to the GMC setting out the details of the Disciplinary Committee decision and Miss Lim’s appeal;
- email dated January 2015 from the SMC, confirming that it does not issue official certificates stating its conclusion on cases and confirming its findings against Miss Lim;
- High Court judgment, dated 28 January 2016, on a judicial review of the decision of the Second Panel;
- Court of Appeal Judgment dated 6 February 2018 on an appeal against the High Court judgment of January 2016;
- statement from Miss Lim, dated 25 July 2018.

Submissions

11. Mr Winter QC, on behalf of Miss Lim, referred the Tribunal to Section 35C(2)(e) of the Medical Act 1983 (as amended) (‘S35C(2)(e)’), which states as follows:

Section 35C(2)

(2) A person’s fitness to practise shall be regarded as “impaired” for the purposes of this Act by reason only of—

(a) misconduct;
(b) deficient professional performance;
(c) a conviction or caution in the British Islands for a criminal offence, or a conviction elsewhere for an offence which, if committed in England and Wales, would constitute a criminal offence;
(d) adverse physical or mental health; or

(e) a determination by a body in the United Kingdom responsible under any enactment for the regulation of a health or social care profession to the effect that his fitness to practise as a member of that profession is impaired, or a determination by a regulatory body elsewhere to the same effect. [Tribunal’s highlighting].

12. Mr Winter QC submitted that, on a proper construction of S35C(2)(e), it was not open to the Tribunal to reach a finding of impairment on the basis of this particular
Record of Determinations –
Medical Practitioners Tribunal

decision made by a foreign regulator. This was because the section, properly construed, required any finding by a foreign regulator to amount to a finding of impairment as at the date of the consideration by the Tribunal. In short what was needed was a finding by another regulatory body that the practitioner is currently, not was, impaired. He stated that as a matter of law, an historical determination of impairment of fitness to practise cannot, without more, give rise to a finding of current impairment.

13. Mr Winter QC reminded the Tribunal that the finding of impairment by the SMC was made in 2012. He contended that the 2012 finding was no longer relevant because it was historic and the period of suspension imposed thereafter had expired, as marked by the acceptance by the SMC of Miss Lim’s application for Voluntary Erasure. He repeated that impairment must exist at the time of the Tribunal’s decision, and it was not currently present in Miss Lim’s case. He submitted that, as a result of the wording of S35C(2)(e), the Tribunal was precluded from reaching a finding of current impairment on that basis.

14. With regard to the matter of misconduct, Mr Winter QC submitted that Miss Lim’s failure to inform the GMC of the determination of the SMC was an oversight on her part. He told the Tribunal that Miss Lim had no ‘sinister intention’ for withholding the information from the GMC, as she had never practised in the UK and had no intention of doing so. He stated that this failure was not capable of amounting to serious professional misconduct. He referred to Miss Lim’s statement in which she said she was ‘very sorry.’

15. Mr Jackson QC, on behalf of the GMC, submitted that Miss Lim’s fitness to practise is impaired by reason of determination by a regulatory body. He said that Mr Winter QC’s point with regard to S35C(2)(e) was misconceived, submitting that there is nothing in the legislation to the effect that if a sanction made by an overseas regulatory body is spent, the GMC are unable to pursue a finding of current impairment on the strength of the overseas finding. He told the Tribunal that the proper construction of the wording of S35C(2)(e) simply requires a finding of impairment by a foreign regulator at some point. He submitted that Miss Lim had shown no measure of contrition for and acceptance of her actions.

16. Mr Jackson QC stated that it was a matter for the Tribunal to determine whether Miss Lim’s failure to report the determination of the SMC to the GMC was capable of amounting to misconduct.

The Relevant Legal Principles

17. The Tribunal reminded itself that at this stage of proceedings, there is no burden or standard of proof and the decision of impairment is a matter for the Tribunal’s judgment alone.
Record of Determinations – Medical Practitioners Tribunal

18. In approaching the decision, the Tribunal was mindful of the two stage process to be adopted with regard to the allegation of misconduct: first whether the facts as found proved amounted to misconduct, and then whether that misconduct lead to a finding of impairment.

19. The Tribunal must separately decide whether Miss Lim’s fitness to practise is impaired by reason of a determination by a regulatory body.

20. The Tribunal must determine whether Miss Lim’s fitness to practise is impaired today, taking into account the decision of the SMC and any finding of misconduct made by the Tribunal. It must also take into account any relevant factors such as whether the matters leading to the SMC determination and/or a finding of misconduct are remediable, have been remedied and the likelihood of any repetition.

21. The Tribunal’s specific consideration of the legal arguments advanced by Counsel are set out below, along with reference to the relevant case law.

The Tribunal’s Determination on Impairment

Misconduct

22. With regard to its consideration of misconduct, the Tribunal took into account only paragraph 3 of the Allegation, an approach endorsed by both Counsel. This paragraph, admitted by Miss Lim, set out that she had failed to inform the GMC of the SMC’s determination.

23. The Tribunal took into account Mr Winter QC’s contention that Miss Lim had made an oversight in failing to inform the GMC of the SMC’s decisions. However, it did not accept that such an oversight detracted from the duty incumbent on Miss Lim to report what was a serious finding made against her by a professional body. This duty is clearly established in paragraph 58 of Good Medical Practice (2006 Edition) (‘GMP’):

58 You must inform the GMC without delay if, anywhere in the world, you have accepted a caution, been charged with or found guilty of a criminal offence, or if another professional body has made a finding against your registration as a result of fitness to practise procedures.

24. At this time, Miss Lim was a senior clinician with decades of experience and should have been more than aware of her obligations to the GMC, to whom she was paying a retention fee on an annual basis. The Tribunal was satisfied that setting a poor example to other practitioners through her failure to report the findings of the SMC to the GMC was a serious failing, regardless of motive. The Tribunal was also satisfied that it would have been obvious to Miss Lim how serious the SMC decision
was as she spent a considerable amount of time thereafter litigating matters arising out of it. That was entirely her right, but it does demonstrates that the proceedings were very much on her mind and in the judgment of the Tribunal clearly should have been reported to the GMC.

25. The Tribunal therefore concluded that Miss Lim’s conduct fell so far short of the standards of conduct reasonably to be expected of a doctor as to amount to misconduct.

**Impairment**

**Impairment by reason of misconduct**

26. Having found that the facts found proved with regard to paragraph 3 amounted to misconduct, The Tribunal went on to consider whether Miss Lim’s fitness to practise is currently impaired by reason of that misconduct.

27. In so doing, it took into account that the misconduct occurred some six years ago and, although serious, was not so serious that it could not be remediated in the intervening period. The Tribunal accepted that Miss Lim has, in her statement provided to the Tribunal, apologised for her actions and said that her failure to inform the GMC was not because she intended to practise in the UK: she had no such intention. It took into account that Miss Lim has not attended this hearing and that the contents of her statement have therefore not been tested through cross examination or questions from the Tribunal. Nevertheless, the Tribunal was satisfied that it could place sufficient weight on her statement to find that she has demonstrated the necessary insight into her actions such that she has remediated them to the extent that any risk of repetition is negligible.

28. In these circumstances, the Tribunal was satisfied that, with regard to misconduct, a finding of impairment was not necessary to promote and maintain public confidence in the medical profession, or to promote and maintain proper professional standards and conduct for members of the profession. It therefore determined that Miss Lim’s fitness to practise is not impaired by reason of misconduct.

**Impairment by determination by a regulatory body**

29. The Tribunal next considered as a separate matter whether Miss Lim’s fitness to practise is impaired by determination by a regulatory body.

*Statutory construction of Section 35C(2)(e) of the Medical Act*

30. As set out above, Mr Winter QC submitted on behalf of Miss Lim that the wording of S35C(2)(e) was such that a finding of current impairment by the Tribunal could only
Record of Determinations –
Medical Practitioners Tribunal

be reached when the finding of a foreign regulatory body amounted to a finding of impairment as at the date of the Tribunal hearing. A finding of past impairment by a foreign regulator would not suffice unless it could also be said to be current. In Mr Winter QC’s submission, the SMC’s decision was one of past impairment because it was in 2012, the period of suspension had elapsed and the SMC had accepted Miss Lim’s application for Voluntary Erasure which involved a further finding that she was not impaired any longer.

31. The Tribunal rejected that submission. It determined that the circumstances set out in Section 35C(2) were triggers that, when activated, enabled and required a Tribunal to consider whether a practitioner was currently impaired as a result of them. In the case of S35C(2)(e), the trigger was a finding by a foreign regulatory body that a practitioner is impaired at some point. It did not have to amount to a finding that the practitioner is impaired at the time the Tribunal considers the question. As and when such a finding is reached and proceedings are taken by the GMC, it then falls to the Tribunal to exercise its independent judgment as to whether there is current impairment.

32. A Tribunal may reach a finding of current impairment on the strength of S35C(2)(e), but it is not required to. As Cranston J set out in Cheatle v General Medical Council [2009] EWHC 645 (Admin):

> Whatever the meaning of impairment of fitness to practise, it is clear from the design of section 35C that a panel must engage in a two-step process. First, it must decide whether there has been misconduct, deficient professional performance or whether the other circumstances set out in the section are present. Then it must go on to determine whether, as a result, fitness to practise is impaired. Thus it may be that despite a doctor having been guilty of misconduct, for example, a Fitness to Practise Panel may decide that his or her fitness to practise is not impaired.

33. The Tribunal was satisfied that the meaning of the two-step process as described by Cranston J is clear; it must first decide whether a determination of impaired fitness to practise has been made by another regulatory body, then it must go on to determine whether, as a result, fitness to practise is currently impaired.

34. That process is entirely consistent with the approach adopted by Cox J in CHRE v NMC & Paula Grant [2011] EWHC 927 (Admin), which was to determine impairment in the following way:

> ‘Do our findings of fact in respect of the doctor’s misconduct...show that his/her fitness to practise is impaired in the sense that s/he:

a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or
b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or

c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or...'

35. In the judgment of the Tribunal, applying Mr Winter QC’s approach to the decision making process undermines the second step described in *Cheatle*, leaving the Tribunal effectively bound by the decisions of a foreign regulator, and rendering it unable to exercise its own independent judgment on the present circumstances.

36. It would mean, in cases where there had been a delay between the finding of the foreign regulator and the Tribunal hearing such that it could no longer be said that the foreign determination amounted to one of current impairment, the Tribunal would effectively be precluded from finding current impairment itself. Under those circumstances, an impaired doctor would be entitled to pursue appeal routes in a foreign jurisdiction and allow significant time periods to elapse and thereby defeat the domestic regulatory regime. In the judgment of the Tribunal that cannot be right.

37. Mr Winter QC sought to meet that argument by submitting that a finding of current impairment by a foreign regulator could be taken to last as long as the sanction imposed as a result. The Tribunal rejected that submission. It would mean, for example, that where a fine was imposed by a foreign regulator and paid immediately there could be no finding of current impairment by the Tribunal. Furthermore the Tribunal notes that the expiry of a sanction initially imposed does not necessarily bring to an end the fact of impairment, for example in cases of adverse health or language skills. The date that a sanction expires can depend on factors other than impairment of the doctor. In this case, for example, the suspension imposed by the SMC was stayed on account of an appeal such that it ended later than it would otherwise had done. In the judgment of the Tribunal, determining the lapsing of impairment by reference to factors such as how quickly an appeal can be launched is misconceived.

38. The approach commended by Mr Winter QC may even in some cases cause injustice to a doctor. For example, if a foreign regulator were to find a doctor impaired by reason of conviction of an offence not known to law in the UK and were to erase that doctor, a Tribunal would be bound to find current impairment on the strength of it. That cannot be right. In response to that difficulty, Mr Winter QC advocated what was, in the judgment of the Tribunal, an artificial safety valve, in order to achieve fairness to the doctor, that appears nowhere on the face of the Medical Act. Injustice may also be caused if a doctor was erased by a foreign regulator but, years later, displayed insight and effective remediation and sought to practise in the UK. It would be wrong to require a doctor to be restored in the
Record of Determinations –
Medical Practitioners Tribunal

foreign jurisdiction before the matter could be considered by a Tribunal. The Tribunal therefore determines that the Medical Act requires it to undertake the two-stage process set out in *Cheatle*. That involves, at the second stage, the Tribunal exercising its independent judgment as to current impairment unfettered by the decisions of a foreign regulator as to impairment and sanction.

The Tribunal’s decision on impairment by determination of a regulatory body

39. Applying the two-stage process, the Tribunal went on to consider firstly whether there had been a determination by a foreign regulator that Miss Lim was impaired and secondly whether, as a result, her fitness to practise is currently impaired.

40. As to the first matter, the Tribunal noted that in 2012 the SMC, an overseas regulatory body, made a determination to the effect that Miss Lim’s fitness to practise as a member of the profession is impaired. This satisfies the first step of the *Cheatle* process.

41. The Tribunal therefore proceeded to determine whether or not Miss Lim’s fitness to practise is currently impaired by the matters set out in that determination.

42. The Tribunal was satisfied that Miss Lim’s actions in adding hidden markups to prices leading to a terminally ill patient being overcharged by the equivalent of £8 million were serious and demonstrated a significant lack of probity on Miss Lim’s part. It was of the view that such actions departed from the principles of *GMP*, particularly paragraph 72 which deals with financial and commercial dealings:

72 You must be honest and open in any financial arrangements with patients. In particular:

(a) you must inform patients about your fees and charges, wherever possible before asking for their consent to treatment

(b) you must not exploit patients’ vulnerability or lack of medical knowledge when making charges for treatment or services

(c) ...

(d) ...

(e) ...

(f) if you charge fees, you must tell patients if any part of the fee goes to another healthcare professional.
Record of Determinations –
Medical Practitioners Tribunal

43. Having established that Miss Lim’s actions leading to the SMC’s determination were serious, the Tribunal referred to the remarks of Sales J in Yeong v The General Medical Council [2009] EWHC 1923 (Admin):

*It is a corollary of the test to be applied and of the principle that a [Fitness to Practise Panel] is required to look forward rather than backward that a finding of misconduct in the past does not necessarily mean that there is impairment of fitness to practise... In looking forward, the [Fitness to Practise Panel] is required to take account of such matters as the insight of the practitioner into the source of his misconduct, any remedial steps which have been taken and the risk of recurrence of such misconduct. It is required to have regard to evidence about these matters which has arisen since the alleged misconduct occurred...*

44. Although Sales J refers specifically to misconduct, the Tribunal was satisfied that it was appropriate for it to apply the same approach in addressing the matter of the SMC’s determination. Since the SMC determination in 2012, the Tribunal has seen no evidence that Miss Lim has ever accepted fault for, or remediated the actions which led to the findings against her. It acknowledged that Miss Lim has the right to challenge any allegation made against her, and to launch appeal proceedings against decisions made regarding her fitness to practise. However, the Tribunal noted that her decision to pursue such a route by consistently challenging the decisions of authorities in Singapore and the UK means that it has no real evidence before it as to whether there is insight and remediation on her part in relation to the SMC matters.

45. Miss Lim has decided not to attend this hearing and give evidence. That is her right but, again, it leaves the Tribunal in a position where it has no evidence from Miss Lim in relation to those findings and the steps she has taken to remediate them.

46. Mr Winter QC informed the Tribunal that Miss Lim is no longer practising in Singapore and has made an undertaking not to return to practise in the future. He submitted that this demonstrates that Miss Lim has insight into her actions and has agreed to be bound by the judgments made against her, in that she has taken the ultimate step of terminating her medical practice. However, the Tribunal has been provided with no documentary evidence of these undertakings on Miss Lim’s part not to practise again. Even if it had, it does not accept that such undertakings would necessarily demonstrate insight into and acceptance of the improper actions which led to the determination of the SMC. She may continue to deny them and her decision not to practise could have been taken for many different reasons. It does not follow as a natural consequence that this decision was made due to her now accepting the findings against her by the relevant authorities in Singapore.
47. Taking into account the lack of evidence of both insight and the reasons for undertaking to leave the medical profession, the Tribunal could not be satisfied that there was little or no risk of Miss Lim undertaking activities in the future that amounted to the overcharging of vulnerable patients and which indicated a lack of probity.

48. Whilst the Tribunal determined that there are no issues relating to the health and safety of the public arising in this case, the wellbeing of the public is capable of being damaged by doctors who overcharge vulnerable patients. In order to protect against damage to the wellbeing of the public on account of overcharging, a finding of impairment is required. Furthermore, in the light of the determination made by the SMC, a finding of impairment is necessary to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of the profession. It is essential that public confidence is maintained in the medical profession and in the judgment of the Tribunal the matters that culminated in the determination by the SMC had the effect of damaging public confidence in the profession as they involved the overcharging of a vulnerable patient. The conduct also constituted a serious breach of the proper standards for members of the profession.

49. The Tribunal has therefore determined that Dr Lim’s fitness to practice is impaired by reason of a determination by another regulator.

50. The Tribunal has deliberated on this matter and now hands down this determination in the absence of Miss Lim and her representative. That is done with the express consent of Mr Winter QC given on behalf of Miss Lim. A copy of this determination will be provided to him forthwith.

Determination on Application for Voluntary Erasure - 17/04/2019

Background to the application

1. At an earlier stage in this hearing, and before the Tribunal considered the question of impairment of fitness to practise, Mr Winter QC raised an application on Miss Lim’s behalf for Voluntary Erasure from the Medical Register in accordance with paragraph 3(8) of the GMC (Voluntary Erasure and Restoration following Voluntary Erasure) Regulations 2004, as amended (‘the Regulations’).

2. Regulation 3(8) of the Regulations reads as follows:

Where, on the date the Registrar receives an erasure application, an allegation against the practitioner has been referred to the MPTS for them to arrange for it to be considered by a Medical Practitioners Tribunal under the Fitness to Practise Rules and the hearing before the Medical Practitioners Tribunal has commenced, the Registrar shall refer the application to the MPTS for them to arrange for it to
Record of Determinations –
Medical Practitioners Tribunal

be determined by the Medical Practitioners Tribunal, and the application shall be
determined by the Medical Practitioners Tribunal accordingly.

3. At that stage, the GMC was opposed to the granting of Voluntary Erasure. Mr Jackson QC submitted to the Tribunal that the application was incomplete.

4. The defence, through Mr Winter QC, responded by serving a written statement from Miss Lim and a Certificate of Professional Status from the Singapore Medical Council (‘the SMC’). The Registrar thereafter referred the matter to be determined by the Tribunal. The GMC opposed any consideration of the application before the question of impairment was determined.

5. For the reasons set out in paragraph 2 of its facts and impairment determination, the Tribunal determined to defer any consideration of the application for Voluntary Erasure until it had resolved the question of Miss Lim’s current fitness to practise. That determination was reached with the agreement of all parties, such agreement being re-stated in oral submissions at the sanction stage. The Tribunal went on to determine that Miss Lim’s fitness to practise is impaired by reason of a determination by another regulator.

6. The matter therefore moved on to the sanction stage. It was at this point that Mr Winter QC renewed the application for Voluntary Erasure. In the light of difficulties with the availability of defence counsel, the Tribunal received written and oral submissions from Mr Winter QC on Miss Lim’s behalf and from Mr Jackson QC, in relation to both the application for Voluntary Erasure and on sanction. The Tribunal determined to hear submissions on all relevant matters relating to Voluntary Erasure and sanction together so that the case could be considered in the round.

7. The parties agreed, and the Tribunal determined, that the most appropriate approach in terms of its deliberations was for the Tribunal to resolve the application for Voluntary Erasure first. If that application was to be granted, there would be no need for the Tribunal to reach a determination in relation to sanction. If, however, the application was to be refused, a determination on sanction would be required.

Documentary Evidence

8. The Tribunal received a bundle of testimonials written by Miss Lim’s colleagues all dated 2012, which had been prepared for the purposes of proceedings before the SMC.

Submissions

9. Mr Jackson QC, on behalf of the GMC, told the Tribunal that, in the light of the Tribunal’s findings at facts and impairment, the GMC was neutral on the application for Voluntary Erasure. He stated that, should the application be refused,
Record of Determinations – Medical Practitioners Tribunal

the GMC’s position was that the appropriate sanction was one of suspension. He said that this position was based on the seriousness and repetition of Miss Lim’s misconduct. He said that she had demonstrated no insight into her actions and had not remediated them.

10. Mr Jackson QC stated that Mr Winter QC’s written submission that Miss Lim had never practised in the UK and never intended to do so in the future was irrelevant in terms of her responsibilities as a registered doctor. He said that all doctors who are registered in the UK must abide by the provisions of Good Medical Practice; they derive benefit from registration in the UK and must accept the burden of compliance. He said that Miss Lim had never really recognised she had done anything wrong, reminding the Tribunal that it had not heard any evidence from her.

11. Mr Winter QC, on behalf of Miss Lim, submitted that the Tribunal should grant Miss Lim’s application for Voluntary Erasure. He reminded the Tribunal that the GMC was now taking a neutral position on the application for Voluntary Erasure. He stated that Miss Lim was retired, had never practised in the UK, had no intention of doing so in the future or of applying for restoration should Voluntary Erasure be granted. He reminded the Tribunal that the Singapore Medical Council (SMC) had, amongst other sanctions, suspended Miss Lim for three years, which was the maximum period of suspension available to it. He submitted that for the Tribunal to proceed to sanction stage and suspend Miss Lim’s registration would, in effect, be ‘double punishment’ for her misconduct, which occurred almost 12 years ago. He told the Tribunal that its decision that Miss Lim’s fitness to practise was impaired was a finding of the ‘utmost seriousness’.

12. Mr Winter QC, told the Tribunal that when Miss Lim was challenged by the Bruneian authorities with regard to the invoices, she immediately reduced the overall charge by approximately 50%. He said this, along with Miss Lim’s apology which was referred to in the SMC papers, demonstrated immediate insight and remediation on her part. He concluded by submitting that Miss Lim had behaved badly, committed misconduct and had paid for it both professionally and financially. The findings in Singapore and the UK had resulted in her ‘glittering career’ being brought to an end in disgrace. He said that there comes a time where it is unfair for the matter to be revisited time and again and asked the Tribunal to grant Miss Lim the Voluntary Erasure she seeks.

The Tribunal’s approach

13. The Tribunal adopted the approach to its deliberations as agreed by the parties. The decision as to whether to accede to the application for Voluntary Erasure or not is a matter for the Tribunal alone to determine, exercising its judgment. In reaching a decision on this matter, the Tribunal had regard to the Regulations, the relevant guidance, including Guidance on making decisions on voluntary erasure applications (‘the Guidance’) and the submissions made by both
Record of Determinations –
Medical Practitioners Tribunal

counsel. In addition, it had regard to all the documentary evidence provided to it on behalf of the GMC and on Miss Lim’s behalf, including her ‘UD5’ application form for Voluntary Erasure and the bundle of testimonial letters provided to it by Mr Winter QC at this part of the proceedings.

14. The Legally Qualified Chair reminded the Tribunal that the question to consider is whether granting the application would be right in all the circumstances. In resolving that question, it must exercise its judgement in two particular areas: the likelihood of Miss Lim ever returning to practise; and the public interest, which is defined in the Guidance. The public interest incorporates three discrete elements:

- The protection of patients and the public generally from doctors whose fitness to practise is impaired.
- The maintenance and promotion of public confidence in the medical profession.
- The maintenance and promotion of public confidence in the GMC’s performance of its statutory functions.

15. The Legally Qualified Chair reminded the Tribunal that it must also approach the application in line with the overarching objective set out in section 1 of the Medical Act 1983.

16. The Legally Qualified Chair further advised the Tribunal in relation to sanction, should that stage arise. The Tribunal was advised that the main reason for imposing sanctions is to protect the public and that sanctions are not imposed to punish or discipline doctors, but they may have a punitive effect. The Tribunal must apply the principle of proportionality, balancing Miss Lim’s interests with the public interest. It must take into account its findings in relation to the facts and impairment. It must also consider any aggravating and mitigating factors disclosed in the case and then consider each sanction separately and in line with the Sanctions Guidance, in ascending order of severity, starting with the least restrictive.

The Tribunal’s decision in relation to Voluntary Erasure

17. The first question for the Tribunal was whether there was any likelihood of Miss Lim seeking to practice in the UK. The Tribunal was satisfied that Miss Lim had no such intention. The Tribunal noted that the Guidance sets out that the factors to be considered in this regard include the doctor’s career stage, the length of time since practice ceased and the genuineness of her desire to cease to be registered.

18. The evidence is clear that Miss Lim’s medical career effectively ended in 2013, when the three year suspension imposed by the SMC commenced. Although there was a short period following this suspension, during which she was entitled to
practise in Singapore, the Tribunal noted that there is no evidence that she did so. Instead she submitted an application to the SMC for voluntary erasure in Singapore. This application was acceded to in August 2016. The evidence is that she has not practised anywhere since then. The Tribunal took into account that Miss Lim relinquished her licence to practise in the UK in August 2014 having never, in fact, practised here. On the evidence before the Tribunal, she has retired and has no intention of resuming practice. Those factors all militate strongly in favour of allowing Voluntary Erasure in her case.

19. The question of Miss Lim’s intention also gives rise to a second question, namely whether any application for restoration is likely to succeed if made. The Tribunal noted that restoration following Voluntary Erasure is not granted as of right. The doctor must demonstrate that he or she is fit to practice at the time it is made. The Tribunal reminded itself of its previous determination that Miss Lim’s fitness to practice was impaired on the basis of findings by an overseas regulator. On those findings, Miss Lim had engaged in conduct, such that,

- It amounted to a serious breach of the proper standards required by members of the profession,
- There remained a risk that, if permitted to practise, Miss Lim would repeat behaviour which, in the judgment of the Tribunal and in accordance with the findings of the SMC, would amount to a lack of integrity, probity and trustworthiness in connection with charging for medical services.

20. The Tribunal has already set out the seriousness with which it regards Miss Lim’s lack of probity. It agrees with Mr Winter QC that it has reached a determination of the utmost seriousness. The Tribunal harbours continued reservations as to Miss Lim’s insight into her actions and any remediation of them. The Tribunal has seen reference to a written apology provided by Miss Lim to the Brunei authorities and referred to in the course of the SMC proceedings. It is, however, of note that Miss Lim has not at any stage provided any oral evidence but has instead relied on letters and the submissions of leading counsel. Mr Winter QC submitted that Miss Lim had demonstrated immediate insight and remediation by waiving her latest tranche of fees in good time. The Tribunal observes that such a waiver may have been done for one of a range of reasons, not all of which involve insight and/or demonstrate remediation. Only Miss Lim knows the reasons for her actions but not once has she ever subjected herself to cross-examination either here or before the SMC. Whilst the Tribunal makes no adverse inference arising from Miss Lim’s absence, that absence does deprive the Tribunal of an opportunity to give her credit for any insight that she may have demonstrated in the course of her evidence.

21. The Tribunal is not in a position, and does not seek, to tie the hands of the Case Examiners or any future Tribunal in relation to any question of restoration. It
Record of Determinations –
Medical Practitioners Tribunal

does note, however, that its findings on impairment are likely to amount to a formidable obstacle in the way of Miss Lim’s restoration should she ever seek it. That said, the Tribunal determined that it is not necessary in the context of this case to reach any firm view on the matter because it was satisfied, on the evidence before it, that an application for restoration was highly unlikely ever to be made. The Tribunal was satisfied that Miss Lim’s desire to cease to be registered is genuine and that she has no intention to practise in the UK or elsewhere in the future.

22. The Tribunal next considered the question of the public interest. It noted that Voluntary Erasure can protect the public by removing any question of a doctor practising but real caution must be exercised where a restoration application may be made in due course. In this case, the Tribunal has determined that a restoration application is highly unlikely to be made because Miss Lim’s intention not to commence practice in the UK is, on the evidence, genuine. There is therefore no public protection reason to refuse Voluntary Erasure.

23. The Tribunal had close regard to its duty to promote and maintain public confidence in the medical profession, and to promote and maintain proper professional standards and conduct for members of the profession. The Tribunal acknowledges the possibility of a doctor seeking to use the Voluntary Erasure procedure as a means of avoiding regulatory proceedings and observes that this is a possibility to be closely guarded against. There will be many cases where the public interest lies squarely in the pursuit of proceedings by the GMC and the resolution of such by a Tribunal. The Tribunal carefully considered whether the public interest demanded that a sanction be imposed on Miss Lim as opposed to Voluntary Erasure being granted in respect of her. The Tribunal noted that Miss Lim had already been the subject of proceedings before the SMC. Those proceedings were now of some antiquity. She had been suspended by the SMC for the maximum period it could have imposed. She has ceased to practise in Singapore and has never practised in the UK. However, Miss Lim has since been found to be impaired by a Medical Practitioners Tribunal in the UK in the course of a series of determinations that will remain in the public domain. That finding of impairment is recent.

24. The Tribunal considered the nature of the sanction that might be imposed in this case. Given the seriousness of the SMC findings, it is most unlikely that the Tribunal would have been persuaded to take the exceptional course of taking no action in respect of them. Given that Miss Lim had never practised in the UK and had no intention so to do, it would be impossible to impose any conditions that were workable, proportionate and appropriate. The question for the Tribunal on sanction therefore would be whether to impose an order for suspension or, if that was not appropriate to meet the overarching objective, erasure. The Tribunal did not consider which of those sanctions would be appropriate. However, it noted that any period of suspension would be for a maximum of 12 months and amount merely to an adjournment of the application for Voluntary Erasure. On the other hand, the imposition of erasure would be to impose that which Miss Lim seeks in any event.
25. In the very particular circumstances of this case, the Tribunal determined that it was not necessary to impose a sanction on Miss Lim to maintain public confidence in the medical profession and/or to maintain proper standards amongst practitioners. A period of suspension would only postpone consideration of the application for Voluntary Erasure; an application which would be inevitable given that Miss Lim had no intention of practising in the UK. It would also further lengthen the already very lengthy period of time since the findings of the SMC. The Tribunal also determined that public confidence did not demand that erasure be imposed on Miss Lim as opposed to being granted to her by consent.

26. The Tribunal therefore determined that the finding of impairment that it had already made was sufficient to maintain public confidence in the medical profession and to uphold proper professional standards.

27. The Tribunal further noted the need to maintain and promote public confidence in the regulator’s performance of its statutory functions. The Tribunal was of the view that the GMC had undertaken its function as regulator diligently. It had pursued this case to its full extent and a finding of impaired fitness to practise had been reached. The Tribunal determined that the fact of the finding was sufficient to maintain public confidence in the medical regulator. It also observed that the GMC itself did not oppose voluntary erasure in this case.

28. Therefore, in the very particular circumstances of this case, the Tribunal determined to allow the application for Voluntary Erasure. The public finding of impairment is such that this is not a case where Voluntary Erasure was a means of avoiding regulatory proceedings and no doctor should take it as such. As set out by Mr Winter QC, Miss Lim’s previously impressive career has ended in a degree of disgrace with findings of the utmost seriousness. This is a consequence of the lack of probity found by the SMC which provided the basis for the finding of impairment by the Tribunal. The Tribunal is satisfied that those findings sufficiently mark the seriousness of Miss Lim’s conduct, given that she has for some years now been retired. With the Tribunal having accepted that Miss Lim is very unlikely ever to practise medicine again either in the UK or internationally, it concluded that granting the application for Voluntary Erasure at this stage would be appropriate and proportionate and satisfy the public interest.

29. In all the circumstances, the Tribunal determined to accede to Miss Lim’s application for Voluntary Erasure. Accordingly, Miss Lim’s name will be erased from the Medical Register. The Registrar will notify Miss Lim of this outcome as soon as is reasonably practicable, in accordance with Regulation 3(9) of the Regulations.
Record of Determinations – Medical Practitioners Tribunal

30. That concludes this case.

Confirmed
Date 17 April 2019

Mr Geoffrey Payne, Chair