OFFICIAL (CLOSED) \ SENSITIVE NORMAL

IN THE REPUBLIC OF SINGAPORE

SINGAPORE MEDICAL COUNCIL DISCIPLINARY TRIBUNAL

[2021] SMCDT 5

Between

Singapore Medical Council

And

Dr Chu Ben Wee

... Respondent

GROUNDS OF DECISION

Administrative Law – Disciplinary Tribunals

Medical Profession and Practice – Professional Conduct – Removal from Register of Medical Practitioners

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Singapore Medical Council
v
Dr Chu Ben Wee

[2021] SMCDT 5

Disciplinary Tribunal – DT Inquiry No. 5 of 2021
Dr Vaswani Chelaram Moti Hassaram (Chairman), A/Prof Ong Biauw Chi, Mr Lee Yeow Wee David (Legal Service Officer)
26 July 2021 and 17 December 2021

Administrative Law – Disciplinary Tribunals

Medical Profession and Practice – Professional Conduct – Removal from Register of Medical Practitioners

25 July 2022

GROUNDS OF DECISION

(Note: Certain information may be redacted or anonymised to protect the identity of the parties.)

Introduction

1. Dr Chu Ben Wee ("**the Respondent**") faced a charge brought by the Singapore Medical Council ("**SMC**") as follows –

> "That you, Dr Chu Ben Wee, a registered medical practitioner under the Medical Registration Act (Cap. 174, 2014 Rev Ed), are charged that on 11 December 2020, you were convicted in Singapore of four (4) counts of the offence of intruding upon the privacy of women with the intention to insult their modesty, an offence punishable under section 509 of the Penal Code (Cap. 224, 2008 Rev Ed) (the "Penal Code (S 509) Offence"):

Particulars

(a) On 18 January 2018, at or about 6.57pm, at Novena Square 2, located at Blk 10 Sinaran Drive, Singapore, you used a camera concealed in your shoe to record upskirt videos of a female victim;
(b) Following your arrest on 18 January 2018 and a search conducted at your residence on 19 January 2018, one silver iPhone, one red My Passport hard disk, and one black Toshiba hard disk were seized from you. These items contained at least 2,945 upskirt videos recorded by you. One pair of black Decathlon shoes with a small hole about 1.5cm wide on the vamp of the right shoe and one black full HD 1296P camera with 32GB MicroSD card were also seized from you;
(c) Between 2009 and 18 January 2018, you recorded at least 2,945 upskirt videos by purchasing a pair of black sports shoes, cutting a hole about 1.5cm wide near the front portion of the right shoe, and concealing a "GoPro" camera in the said shoe. You also downloaded either the "Rorocam" and/or the "GoPro" applications to your mobile phone, which allowed you to view a live feed of what was being captured by the "GoPro" camera and to control the camera's functions. You used this method of recording upskirt videos (the "**Modus Operandi**") to commit the offences set out below:
    (i) On no fewer than 48 occasions between September 2017 and December 2017, at Changi General Hospital, located at 2 Simei Street 3, Singapore, you intruded upon the privacy of a woman with intent to insult that woman's modesty, by using a "GoPro" camera concealed in your shoe to capture one or more upskirt videos of her; and
    (ii) On no fewer than 89 occasions between 1 January 2018 and 18 January 2018, at Tan Tock Seng Hospital, located at 11 Jalan Tan Tock Seng, Singapore, you intruded upon the privacy of a woman with intent to insult that woman's modesty, by using a "GoPro" camera concealed in your shoe to capture one or more upskirt videos of her;
(d) Whilst investigations into the above offences were ongoing, on 27 April 2019, at Plaza Singapura, located at No. 68 Orchard Road, Singapore, you used a "GoPro" camera concealed in your shoe to record upskirt videos of a female victim;
(e) Upon your arrest on 27 April 2019, one iPhone 6S Plus Rose Gold 32GB, one GoPro Hero Black 7 camera, one SanDisk Extreme 32 GB Card and one pair of black Newfeel shoes with a hole on the front portion of the right shoe were seized from you. 214 upskirt videos of 184 unknown women were extracted from the said SanDisk Extreme 32 GB Card. These items, and the Modus Operandi, were used to commit the offence set out below:
    (i) On no fewer than 184 occasions between 25 April 2019 and 27 April 2019, at various locations in Singapore, you intruded upon the privacy of a woman with intent to insult that woman's modesty, by using a "GoPro" camera concealed in your shoe to capture one or more upskirt videos of her;
(f) Whilst you were released on police bail, on 31 July 2019, at Victoria Junior College, located at 20 Marine Vista, Singapore, you used a "GoPro" camera concealed in your shoe to record upskirt videos of unknown female students;
(g) Upon your arrest on 31 July 2019, one pair of black Newfeel shoes, one black RuiGoPro camera pouch, one black 7 GoPro camera containing one SanDisk 64GB memory card, and one black Apple iPhone containing a Starhub SIM card were seized from you. The said SanDisk 64GB memory card contained 97 upskirt recordings of unknown female students on 309 distinct occasions. These items were used to commit the offence set out below:
    1. On 309 occasions on 31 July 2019, between 1.50pm and 4.30pm, at Victoria Junior College, located at 20 Marine Vista, Singapore, you intruded upon the privacy of a woman with intent to insult that woman's modesty, by using a "GoPro" camera concealed in your shoe to capture upskirt video recordings of her;

(h) On or about 1 December 2020, you were charged in the State Courts with:
   (i) 14 counts of the Penal Code (S 509) Offence;
   (ii) One count of an offence for criminal trespass, an offence punishable under section 447 of the Penal Code (Cap. 224, 2008 Rev Ed) (the "Penal Code (S 447) Offence"); and
   (iii) One count of an offence for possession of films without a valid certificate, an offence punishable under section 21(1)(i) of the Films Act (Cap. 107, 1998 Rev Ed) and one count of an offence for possession of obscene films which you had reasonable cause to believe were obscene, an offence punishable under section 30(2)(a) of the Films Act (Cap. 107, 1998 Rev Ed) (the "Films Act Offences");

(i) On 11 December 2020, you were convicted in the State Courts by the learned District Judge Seah Chi-Ling of four (4) counts of the Penal Code (S 509) Offence (as set out in paragraphs (c), (e), and (g) above), with the other 10 counts of the Penal Code (S 509) Offence, one count of the Penal Code (S 447) Offence, and two counts of the Films Act Offences taken into consideration in sentencing, and were sentenced to serve 36 months' imprisonment; and

(j) The aforesaid convictions have not been set aside; and that in relation to the facts alleged, you have thereby been convicted of offences implying a defect in character which makes you unfit for your profession within the meaning of section 53(1)(b) of the Medical Registration Act (Cap. 174, 2014 Rev Ed)."

2. At the Pre-Inquiry Conference on 28 May 2021, the Respondent's Counsel indicated that the Respondent would be taking a certain course of action in relation to the Charge. At the Disciplinary Tribunal ("**the DT**") hearing on 26 July 2021, the Respondent pleaded guilty to the Charge without qualification. He also admitted to and confirmed the Agreement Statement of Facts ("**ASOF**") tendered.

Agreed Statement of Facts

3. The salient points from the ASOF are as follows.[1]

Incidents at Changi General Hospital ("**CGH**")

4. Between September 2017 and December 2017, the Respondent was employed as a medical officer at CGH. Whilst so employed, the Respondent recorded upskirt videos of female nurses, fellow doctors or staff members at CGH who were on duty at or about the same time as him, on no fewer than 48 occasions. On each of these occasions, the videos recorded by the Respondent captured the victim's inner thighs and/or underwear.

5. In order to record the aforementioned upskirt videos, the Respondent:

[1] Summarised from paragraphs 4 to 23 of the ASOF.

(a) Purchased a pair of black sports shoes, cut a hole about 1.5cm wide near the front portion of the right show and concealed a "GoPro" camera in the said shoe;

(b) Downloaded either the "Rorocam" and/or the "GoPro" applications to his mobile phone which allowed him to view a live feed of what was being captured by the "GoPro" camera and to control the camera's functions;

(c) Targeted women whom he found attractive or deemed suitable targets;

(d) Followed his victims closely and positioned his foot, with the "GoPro" camera, directly under the victim's skirt to record an upskirt video of her and did so with great accuracy given the control from the ability to manoeuvre the camera through the application, as the camera provided a live feed to his mobile phone;

(e) Recorded another video of the victim's face, where possible; and

(f) Tagged some of the upskirt videos with information such as the victim's name (if known), estimated age, race, colour and type of underwear, clothing at the material time, which was saved in the title of the video file.

Incidents at Tan Tock Seng Hospital ("**TTSH**")

6. Between 1 January 2018 and 18 January 2018, the Respondent was employed as a medical officer at TTSH. Whilst so employed, the Respondent, on no fewer than 89 occasions, recorded upskirt videos of female nurses, fellow doctors or staff members at TTSH who were on duty at or about the same time as him. Similar to the incidents at CGH, on each of these occasions, the videos recorded by the Respondent captured the victim's inner thighs and/or underwear. The respondent took the same steps set out in paragraph 5 above.

Arrest on 18 January 2018

7. The incidents at CGH and TTSH were undetected until his arrest on 18 January 2018. On that day, the Respondent was arrested for using a camera hidden in his shoe to record upskirt videos of a female victim at the Daiso store located at Novena Square 2.

8. The Respondent admitted to having recorded videos of several women at various stored at Novena Square 2 on 18 January 2018. Following a search at the Respondent's address on 19 January 2018, several items were seized including an iPhone, a red My Passport hard disk, a black Toshiba hard disk.

9. At least 2,945 upskirt videos using the same method set out in paragraph 5 above, recorded between 2009 up to the date of his arrest on 18 January 2018, were found in the seized items. While investigations were ongoing into the incidents at CGH and TTSH and the seized items were being reviewed, the Respondent re-offended.

<u>Incidents at various locations between 25 April 2019 and 27 April 2019</u>

10. On 27 April 2019, a female victim reported that the Respondent had recorded an upskirt video of her at a store at Plaza Singapura. After the female victim felt the Respondent bump into her from behind her and turned around to find the Respondent standing in close proximity to her, the Respondent did not say anything and walked away. The victim then observed the Respondent standing behind another woman who was wearing a skirt for a few seconds before he hurriedly left the store. The victim noticed that there was a hole in the Respondent's shoe, with the camera lens being visible and so she tried to grab the Respondent but he ran away. The victim's boyfriend gave chase but the Respondent managed to escape.

11. The victim reported to police officers who were patrolling Plaza Singapura and the Respondent was subsequently arrested by the police officers at Plaza Singapura. In order to record the upskirt videos between 25 April 2019 and 27 April 2019, the Respondent:

    (a) Purchased one iPhone 6S Plus Rose Gold 32GB, 1 GoPro Hero Black 7 camera, one SanDisk Extreme 32GB SD card ("**the SanDisk 32GB SD Card**") and one pair of black Newfeel shoes; and

    (b) Used the steps set out in paragraph 5 above.

12. The SanDisk 32GB SD Card contained 217 upskirt videos recorded by the Respondent between 25 April 2019 and 27 April 2019. Three of the videos related to the victim at Plaza Singapura while the 214 upskirt videos were of 184 unknown women.

13. The Respondent admitted to recording upskirt videos at various locations for a period of one to two weeks before he was arrested but he deleted the bulk of the videos after watching due to a lack of memory space in the SanDisk 32GB SD Card and difficulties with uploading these videos onto his computer. Following his arrest on 27 April 2019, the Respondent was released on police bail but unfortunately, he re-offended with similar offences on 31 July 2019.

<u>Incident at Victoria Junior College ("**VJC**") on 31 July 2019</u>

14. On 31 July 2019, between 1:50pm and 4:30pm, on no fewer than 309 occasions, the Respondent recorded 97 upskirt videos of female students at VJC. As with the earlier incidents, the videos captured the victims' inner thighs and/or underwear.

15. Sometime in July 2019, the Respondent perused the VJC website and noticed that the school was scheduled to have a career fair on 31 July 2019. Having formed the intention to record upskirt videos of female students during the said career fair and in order to accomplish that goal, the Respondent purchased:

 (a) One pair of black Newfeel shoes;

 (b) A yellow and white VJC PE round collar T-shirt and a pair of ~~white~~ long pants that were part of the VJC uniform ("**the VJC Attire**");

 (c) The following equipment with camera function and accessories:

  (i) Two black pouches containing a pair of modified black framed spectacles with a built-in camera function ('**the Modified Spectacles**");

  2. One black 7 GoPro Camera ("**the 7 GoPro Camera**") containing one SanDisk 64GB memory card and one black RuiGoPro camera pouch;

  3. One modified black pen containing a built-in camera function; and

  4. One black Apple iPhone ("**the Black iPhone**").

16. As with the earlier incidents, the Respondent cut a small hole in the front portion of his right black Newfeel shoes and concealed the 7 GoPro Camera in it.

17. On 31 July 2019, the Respondent followed closely behind a lady who appeared to be a teacher at VJC and managed to walk past the school's main gate without being stopped by the security guards. After entering VJC, the Respondent changed into the VJC Attire to blend in and not arouse the suspicions of teachers, security guards and other students. The Respondent noticed that the bulk of the students were walking towards the school hall and so he began recording upskirt videos of female students as he followed them to the school hall.

18. While at the school hall, over the course of two hours, the Respondent targeted any female student wearing a skirt by standing behind her and placing his right shoe under her skirt to record an upskirt video. Each recording lasted about five seconds before he moved onto the next target. As the school hall was crowded and in order to ensure that he would be able to record upskirt videos of multiple victims in quick succession, the Respondent did not stop the recording mode on the 7 GoPro Camera after each victim.

19. Eventually, two female VJC students alerted a VJC teacher to the Respondent and a group of VJC teachers located the Respondent at a toilet behind the school hall. Upon confrontation by a VJC teacher, the Respondent, having changed out of the VJC Attire and in his regular attire, initially claimed that he was from the Ministry of Defence and that he was manning one of the booths at the career fair but upon being questioned further, he said he was just a visitor. A VJC teacher called for police assistance and upon questioning by the police, the Respondent claimed that he was simply there to attend the career fair and donned the VJC Attire so that he would not stand out.

20. Upon the police officers conducting checks on the Respondent's belongings:

    (a) The Respondent initially claimed that he did not have a GoPro camera with him (even though the police found GoPro accessories in his belongings);

(b) Subsequently, a further search was conducted and a black pouch containing the 7 GoPro Camera was found at the gym alley behind the school hall; and

(c) The SD card in the 7 GoPro Camera was then found to contain 97 upskirt videos recorded by the Respondent and the Respondent was then placed under arrest.

21. On or about 1 December 2020, the Respondent was charged in the State Courts with the following offences:

(a) 14 counts of the offence of intruding upon the privacy of a woman with the intention to insult that woman's modesty[2] ("**the Insulting Modesty Offences**");

(b) One count of an offence for criminal trespass[3] ("**the Criminal Trespass Offence**"); and

(c) One count of an offence for possession of films without a valid certificate[4] and one count of an offence for possession of obscene films which he had reasonable cause to believe were obscene ("**the Films Act Offences**").

22. On 11 December 2020, the Respondent was convicted of four counts of the Insulting Modesty Offences. These four counts related to the Respondent's intrusion upon the privacy of women with intent to insult their modesty at CGH, TTSH, VJC and at various other locations. The Respondent consented to the remaining 10 counts of the Insulting Modesty Offences, one count of Criminal Trespass Offence and two counts of the Films Act Offences being taken into consideration for the purposes of sentencing.

23. The Respondent was sentenced to serve an aggregate of 36 months' imprisonment, comprising:

(a) Seven (7) months' imprisonment for the Insulting Modesty Offences at CGH;

(b) Eight (8) months' imprisonment for the Insulting Modesty Offences at TTSH;

[2] An offence punishable under section 509 of the Penal Code (Cap. 224, 2008 Rev Ed).
[3] An offence punishable under section 447 of the Penal Code (Cap. 224, 2008 Rev Ed).
[4] An offence punishable under section 21(1)(i) of the Films Act (Cap. 107, 1998 Rev Ed).

(c) 14 months' imprisonment for the Insulting Modesty Offences at various locations; and

(d) 15 months' imprisonment for the Insulting Modesty Offences at VJC.

Finding of Guilt

24. In view of the criminal convictions and sentence, as well as the Respondent's plea of guilt to the Charge, the DT found the Respondent guilty as charged.

Submissions on Sentencing

25. Before we set out the submissions of the parties, we will first set out a brief chronology of why the parties were asked to assist the DT with two further rounds of written submissions after the hearing.

26. The parties first filed their written submissions on 16 July 2021, ahead of the hearing on 26 July 2021. At the end of the hearing, the DT made two observations. First, the parties' attention was brought to the decision of the Court of Three Judges in *Singapore Medical Council v Chua Shunjie* [2020] SGHC 239 ("***Chua Shunjie***"). In particular, the DT pointed out that at [55] of *Chua Shunjie*, the Court held:

> "At the outset, it should be noted that the four-step sentencing framework set out in Wong Meng Hang [...] does not apply to the charges brought against Dr Chua because they do not involve situations where his clinical care had caused harm to a patient."

27. As the present matter also involved charges in a non-clinical setting and, more importantly, because parties' submissions did not make reference to the *Chua Shunjie* decision (which was a recent decision of the Court of Three Judges delivered on 4 November 2020), we gave parties an opportunity to file supplementary submissions on the *Chua Shunjie* decision if they wished to do so.

28. Second, in the course of oral submissions, Counsel for the SMC relied on the decision in *Singapore Medical Counsel v Dr Yeo Eng Hui Damian* [2019] SCMDT 6 ("***Yeo Eng Hui Damian***") (referred to in paragraph 40 of the decision in *Singapore Medical Council v Lum Yang Wei* [2020] SMCDT 4 ("***Lum Yang Wei***")) to make the submission

that the Respondent in the present matter is not suitable for rehabilitation through a medical supervision framework. While *Lum Yang Wei* was referred to by Counsel for the SMC in their written submissions (and included in the Prosecution's Bundle of Authorities), we pointed out to both parties that *Yeo Eng Hui Damian* itself was not included in the Bundle of Authorities. Consequently, we gave opportunity to both parties to file and serve supplementary submissions on both *Chua Shunjie* and *Yeo Eng Hui Damian*. We then adjourned the hearing to 14 September 2021.

29. In the further submissions, both parties took the position that despite the decision in *Chua Shunjie*, the *Sentencing Guidelines for Singapore Medical Disciplinary Tribunals* published on 15 July 2020 ("**the Sentencing Guidelines**") applied to the Respondent's offences. For reasons which we elaborate below at paragraph 63, we took the view that for the avoidance of doubt and for completeness, parties should be invited to state their positions on what the appropriate sentence should be *if* the Sentencing Guidelines did not apply. Parties filed their further supplementary submissions on 26 October 2021 on this issue. In the paragraphs that follow, we will first set out a summary of the parties' respective positions before we provide our decision and the reasoning behind our decision. We have found it necessary to do so because, as will become apparent in the course of these Grounds of Decision, the Respondent's submissions on the appropriate sentence had changed in the course of the supplementary submissions.

30. In summary, Counsel for the SMC submitted that the DT should exercise its powers under section 53 of the Medical Registration Act (Cap. 174, 2014 Rev Ed) ("**MRA**") to impose the following sentence on the Respondent:

    (a) That the Respondent's name be removed from the Register of Medical Practitioners pursuant to section 53(2)(*a*) of the MRA ("**the Striking Off Order**"); and

    (b) That the Respondent pays the costs and expenses of and incidental to these proceedings, including the costs of solicitors of the SMC, pursuant to section 53(2)(*h*) read with section 53(5) of the MRA.

31. The SMC's position on the appropriate sentence did not change in the course of the supplementary submissions filed. In contrast, we should highlight that the Respondent's submissions on the appropriate sentence changed as follows:

(a) In the Plea in Mitigation & Sentencing Submissions filed by the Respondent on 16 July 2021 ("**the Respondent's 1WS**"), the Respondent submitted that a "*suspension of thirteen (13) months (with the other usual consequential orders) is fair and appropriate*";[5]

(b) In the course of oral submissions at the hearing on 26 July 2021, Counsel for the Respondent, Mr Peter Ong, submitted that 14 months was a reasonable starting point for a suspension of the Respondent's registration and considering the mitigating factors, a suspension of between 13 to 14 months would be an appropriate sentence;

(c) In the Respondent's Reply Submissions to Prosecution's Further Submissions filed on 30 August 2021 ("**the Respondent's 2WS**"), the Respondent submitted that the DT should "*impose an Order for Conditional Registration under section 53(2)(c) of the MRA for [the Respondent] to be subject to the supervision framework under sections 21(4) and 21(6) to 21(9) of the MRA while he is undergoing treatment and rehabilitation*";[6] and

(d) In the Respondent's Response to DT's Question filed on 26 October 2021 ("**the Respondent's 3WS**"), the Respondent maintained that the DT ought to impose an Order for Conditional Registration.[7] It should be noted that the position taken in the Respondent's 2WS and the Respondent's 3WS are quite different from the position taken in the Respondent's 1WS and in the course of Counsel's oral submissions at the hearing on 26 July 2021.

32. The parties' respective submissions will be summarised in turn below, followed by the DT's decision and reasoning on the appropriate sentence.

[5] See paragraph 165 of the Respondent's Plea in Mitigation & Sentencing Submissions.
[6] See paragraph 137(b) of the Respondent's Reply Submissions to Prosecution's Further Submissions filed on 30 August 2021.
[7] See paragraph 22 of the Respondent's Response to Disciplinary Tribunal's Questions filed on 26 October 2021.

SMC's Submissions on Sentence

33. Counsel for the SMC first relied on the sentencing objectives and general principles set out in *Singapore Medical Council v Kwan Kah Yee* [2015] 5 SLR 201 ("***Kwan Kah Yee***"), *Wong Meng Hang v Singapore Medical Council and other matters* [2019] 3 SLR 526 ("**Wong Meng Hang**"), *Law Society of Singapore v Ravi s/o Madasamy* [2016] 5 SLR 1141 and *Tay Kay Beng v Public Prosecutor* [2006] 4 SLR(R) 10 to highlight that sanctions in medical disciplinary proceedings serve two functions: first, ensure that the offender does not repeat the offence and ultimately to ensure that the public is protected from the potentially severe outcomes arising from the actions of errand doctors and second, to uphold the standing of the medical profession.[8] Counsel for the SMC highlighted that in the context of disciplinary 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. Citing *Wong Meng Hang*, Counsel for the SMC highlighted the following:

(a) "*the need to uphold the standing and reputation of the profession, as well as to prevent an erosion of public confidence and competence of its members*" at [23] of the decision; and

(b) The primacy of public considerations 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 considerations of fairness to the offender may even be rendered substantially irrelevant by countervailing public interest concerns.[9]

34. Applying the four-step sentencing framework laid down in *Wong Meng Hang* and clarified in the Sentencing Guidelines ("**the Sentencing Framework**"), the SMC submitted that a Striking Off Order is appropriate and proportionate. In making this submission, Counsel for the SMC stated that the SMC has taken into consideration all the circumstances of the case, including the seriousness of the Respondent's Insulting

[8] See Prosecution's Sentencing Submissions at paragraph 18.
[9] Citing paragraphs [24] and [26] of *Wong Meng Hang*, see paragraph 19 of the Prosecution's Sentencing Submissions.

Modesty Offences, the deliberate manner in which he committed these offences and the circumstances under which he committed them, the wider consequences arising from the Respondent's actions, the erosion of public confidence in the medical profession as well as the fact that the Respondent pleaded guilty.[10]

35. Citing [43] to [45] of the Sentencing Guidelines, Counsel for the SMC further submitted that "*the Sentencing Guidelines made clear that the Sentencing Framework may be extended to non-clinical care offences such as the present case, where the offences committed cause harm to society, and applies to all five limbs under section 53(1) of the MRA*".[11] This is a point which we will return to later in these Grounds of Decision.

36. Counsel for the SMC then methodically demonstrated how the 4 steps of the Sentencing Framework leads to a Striking Off Order being an appropriate sentence. First, Counsel submitted that there was "serious" or "severe" harm caused. According to Counsel for the SMC, "*[h]arm refers to the type and gravity of the harm or injury that was caused to the patient and society by the commission of the offence(s) and includes harm to the public confidence in the medical profession and harm to public health and safety and the public healthcare system*".[12] In particular, Counsel for the SMC submitted that the relevant factors in assessing harm caused to public confidence in the medical profession are:

(a) <u>Number of breaches and extent of the Respondent's breach</u>: Counsel highlighted that the Respondent recorded upskirt videos of numerous female victims on <u>no fewer than 630 occasions</u>, that this was aggravated by the fact that these offences took place in multiple locations and stretched over a long period of time (viz. almost two years, from September 2017 up to 31 July 2019) and that the Respondent reoffended *twice* after his first arrest on 18 January 2018.[13]

(b) <u>Severity of the consequences</u>: Counsel submitted that the consequences of the Respondent's actions have severe consequences as they erode public confidence in the medical profession to a serious extent because of the large number of

[10] See paragraph 23 of the Prosecution's Sentencing Submissions.
[11] See paragraph 24 of the Prosecution's Sentencing Submissions.
[12] See paragraph 26 of the Prosecution's Sentencing Submissions, citing [48] and [49] of the Sentencing Guidelines.
[13] See paragraphs 29-30 of the Prosecution's Sentencing Submissions.

victims, potential harm caused to those victims (who would undoubtedly feel disturbed and distressed if they found out that they were objectified in a sexual manner) and that the victims included students in a junior college within their own school campus.[14]

(c) Nature of the Respondent's Insulting Modesty Offences: Counsel highlighted that the Insulting Modesty Offences involved the intrusion into the various victims' privacy through a combination of exploiting modern technology (viz. by recording upskirt videos using a GoPro camera hidden in his shoe and by controlling the camera using an application in his mobile phone) as well as the premeditated and elaborate manner in which the Respondent went about recording those videos to avoid detection.[15] On the point regarding the exploitation of modern technology, Counsel for the SMC relied on High Court decision in *Public Prosecutor v Chong Hou En* [2015] 3 SLR 222 ("***Chong Hou Eng***") where the Honourable Justice Chan Seng Onn held, at [66] and [69]:

> "Given the fact that […] cameras with recording functions come in all shapes, sizes and disguises and are getting cheaper to acquire, the perverse now find it easier to prey on unsuspecting women almost anywhere […] Cameras have shrunk remarkably in size while the clarity with which images are captured has improved. The miniaturization of cameras has made it increasingly easier for them to be concealed and harder for victims to detect, thereby encouraging voyeurs to take more risks. […] [T]he advancements in technology warrant a deterrent sentence because of the ease with which such offences may be committed and the ever present danger of the dissemination of the videos. The use of a recording device is an aggravating factor here for a different reason: mainly that the videos can be replayed and the "fruits" of the criminal conduct can be constantly revisited by the respondent. This again is clearly aggravating."

(d) The circumstances in which the Respondent had committed the Insulting Modesty Offences: Counsel submitted that it is significant that the Respondent committed the Insulting Modesty Offences *both* in a professional setting (while he was at work in hospitals with female colleagues) as well as in public spaces which included, alarmingly, a junior college.[16] It was further submitted that commensurate with the high level of trust and esteem that society reposes in the medical profession, members of the public are also entitled to expect that

[14] See paragraphs 31-33 of the Prosecution's Sentencing Submissions.
[15] See paragraphs 34-36 of the Prosecution's Sentencing Submissions.
[16] See paragraphs 41-45 of the Prosecution's Sentencing Submissions.

medical practitioners will hold themselves to the highest standards of conduct, even in their personal capacity, citing *Singapore Medical Council v Leo Kah Woon* [2018] SMCDT 12 at [44].

37. Counsel for the SMC submitted that there was "high" culpability in this case because of the Respondent's intentional and deliberate state of mind, as well as the extent of premeditation involved in the Insulting Modesty Offences which included the purchase of a disguise in the form of the VJC Attire and various pieces of equipment (e.g., GoPro cameras, spectacles with concealed cameras) to exploit technology to record the upskirt videos. Counsel for the SMC contrasted the facts of the present case with the facts in four other recent cases involving doctors and upskirt videos. We have summarised the various factors between the facts in those cases and the present case in the table below for ease of reference:

Case	No. of Victims and No. of Occasions[17]	Sentence passed by Criminal Court[18]	Finding of Culpability by the DT[19]	Period of Suspension in Sentence passed by DT
Singapore Medical Council v Sim Choon Seng [2021] SMCDT 1 ("***Sim Choon Seng***")	20 female victims on 20 occasions	30 weeks' imprisonment	Medium	14 months suspension
Singapore Medical Council v Lum Yang Wei [2020] SMCDT 4 ("***Lum Yang Wei***")	1 female victim	6 weeks' imprisonment	Medium	4 months suspension
Singapore Medical Council v Dr Deshan Kumar Rajeswaran [2020] SMCDT 6 ("***Deshan Kumar***")	2 female victims and 2 upskirt videos	24-month conditional warning in lieu of prosecution	Low	4 months suspension
Singapore Medical Council v Wong Siew Kune (unreported) ("***Wong Siew Kune***")	2 female victims	N.A.	N.A.	24 months suspension

[17] See paragraph 30 of the Prosecution's Sentencing Submissions.
[18] See paragraph 39 of the Prosecution's Sentencing Submissions.
[19] See paragraph 52 of the Prosecution's Sentencing Submissions.

38. Applying Steps 2 and 3 of the Sentencing Framework, Counsel for the SMC submitted that the starting point would be a suspension of three years or a Striking Off Order. Having regard to the severe harm caused by the Respondent's Insulting Modesty Offences, the high level of culpability in the commission of these offences, the principle of proportionality and consistency with previous sentencing precedents, Counsel for the SMC submitted that a Striking Off Order is a reasonable starting point. Counsel emphasised and relied on [31] of the Sentencing Guidelines which states that the guiding principle in assessing whether striking off would be appropriate would be "*whether the misconduct was so serious or so fundamentally at odds with the values of the medical profession that it renders the doctor unfit to remain as a member of the medical profession*".

39. Counsel for the SMC acknowledged in their submissions that "*a Striking Off Order has not been ordered in respect of a medical practitioner who has been convicted under section 509 of the Penal Code for recording upskirt videos and/or images yet*".[20] However, applying the factors laid out in [32] of the Sentencing Guidelines, Counsel submitted that the circumstances in the present matter render it an exceptional one, such that a Striking Off Order would be a proportionate and reasonable sentence. This is because the facts of the present case are "*much more severe and egregious than previous sentencing precedents*" such as *Sim Choon Seng*, *Deshan Kumar*, *Lum Yang Wei* and *Wong Siew Kune*.

40. Applying Step 4 of the Sentencing Framework, Counsel submitted that on a consideration of the aggravating and mitigating factors, a Striking Off Order is reasonable and proportionate. In particular, Counsel submitted that although the Respondent indicated his intention to plead guilty to the disciplinary charge against him, this should be given little or no weight because: (a) there is overwhelming evidence against the offender, such that the SMC would not have any difficulties in proving its case against him (citing [70(a)] of the Sentencing Guidelines); and (b) mitigating factors are viewed in a qualitatively different light where disciplinary proceedings are concerned because disciplinary proceedings are primarily concerned

[20] See paragraph 58 of the Prosecution's Sentencing Submissions.

with the protection of public confidence and the reputation of the profession (citing *Kwan Kah Yee* at [58]).[21]

41. In the course of his oral submissions at the hearing on 26 July 2021, Mr Chia Voon Jiet ("**Mr Chia**"), Counsel for the SMC, highlighted the following salient points:

(a) For the charges that the prosecution proceeded with (and for which the Respondent was sentenced for a total of 36 months' imprisonment), the Respondent recorded upskirt videos on no fewer than 630 occasions (comprising 309 amalgamated occasions for the incidents at VJC on 31 July 2019, 184 occasions between 25 & 27 April 2019 at various locations in Singapore, 89 occasions between 1 & 18 January 2018 at TTSH and 48 occasions between September and December 2017 at CGH).

(b) This is to be contrasted with the facts in *Sim Choon Seng* where the respondent there faced 20 distinct charges for 20 distinct occasions (i.e., one charge per offence);

(c) The charges taken into consideration ("**the TIC charges**") here amount to over 2,000 occasions (including 10 occasions at a bus stop outside VJC, 34 occasions at Parkway Parade, 31 occasions at Plaza Singapura, 2,640 occasions at various locations in Singapore for the 6th charge and the 7th charge).

(d) In *Sim Choon Seng*, the TIC charges add up to only 158 other occasions, which pales in comparison to the number of occasions in the present case.

(e) On the medical evidence presented by the Respondent, Mr Chia highlighted that even the Respondent's psychiatrist, Dr DE, had stated in his report dated 17 September 2020 that the Respondent's "*condition as a Paraphilia evolving in a Disorder has a contributory link to the commission of the alleged offence*",[22] meaning that the paraphilic disorder is one of the contributory factors and not a disorder that caused the act (as a causal link would).

[21] See paragraph 74 of the Prosecution's Sentencing Submissions.
[22] Exhibited at Annex D to the Respondent's 1WS.

(f) While there are differences in the medical opinion of Dr DE (who was engaged by the Respondent) and Dr PW from Hospital A (who had produced a report for the purposes of assessing the mental capacity of the Respondent for the criminal charges), Mr Chia submitted that Dr PW's opinion that there is no contributory link between his mental illness and his alleged offence is to be preferred and given weight. Mr Chia based his submission on the fact that the detailed premeditation and planning for the incidents at VJC after the first two arrests made it difficult to say that the acts were committed due to lack of self-control or had been done involuntarily due to his mental condition.

42. On our question (towards the end of the hearing on 26 July 2021) of whether it would be open to the DT to suspend the Respondent and impose conditions for Part 2 registration under the MRA, Mr Chia submitted that while it is open to the DT to make that order, such an order is not sufficient in light of the gravity of the offences before the DT: what sets this case apart is the fact that it involves a doctor who has completely lost his moral compass and shown to be one who will not hesitate to commit offences, even after he had been arrested twice previously, for his own pleasure. Mr Chia then brought the DT through why the medical supervision framework laid out in *Yeo Eng Hui Damian* make it inappropriate for such an order of rehabilitation to be made – in particular, Mr Chia emphasised that the highly premeditated nature of the offences, particularly for those which occurred at VJC, showed that the Respondent does not have insight and that it would not be likely for the Respondent to comply with conditions and restrictions imposed upon him.

43. In their further sentencing submissions filed on 16 August 2021 and 6 September 2021, Counsel for the SMC submitted that an order for conditional registration would not be appropriate because the criteria for the supervision framework under sections 21(4) and 21(6) to 21(9) of the MRA ("**the Section 21 Framework**") are not met and the facts of the case do not warrant such an order. In summary, the arguments presented by Counsel for the SMC are:

(a) Where different interests pull a DT in different directions in a given case, the interest of the public is paramount and mandates against an order for conditional registration;

(b) The Respondent lacks insight into the seriousness of his conduct;

(c) The Respondent is not likely to be able to comply with any conditions and restrictions imposed on him;

(d) The Respondent has not properly demonstrated anything that would assure the DT that he is amenable to reform; and

(e) The Insulting Modesty Offences are serious and the facts do not warrant a suspension order.

44. Before we round off the summary of the SMC's submissions, we need to highlight two salient points brought out in their further sentencing submissions. First, the SMC submitted that the Sentencing Guidelines, and the 4-step Sentencing Framework laid down in *Wong Meng Hang* should apply in determining the appropriate sentence to be imposed. In coming to this view, Counsel for the SMC relied on the following arguments:

(a) The decision in *Wong Meng Hang* pre-dated the Sentencing Guidelines and the Sentencing Guidelines took into consideration the reservation made by the Court of Three Judges in *Wong Meng Hang* that the Sentencing Framework was not applicable to non-clinical care offences – at paragraphs 17, 43-45 of the Sentencing Guidelines, the Committee made it clear that the Guidelines, together with the Framework, can be applied to both clinical and non-clinical care offences;[23]

(b) At the time of sentencing in *Chua Shunjie*, the Sentencing Guidelines had not yet been published and therefore, the application of the 4-step Sentencing Framework in *Wong Meng Hang* to non-clinical care offences had not yet been clarified by the Sentencing Guidelines;[24]

[23] See paragraph 2(a) of the Prosecution's Further Sentencing Submissions filed on 16 August 2021.
[24] See paragraph 2(b) of the Prosecution's Further Sentencing Submissions filed on 16 August 2021.

(c) After the Sentencing Guidelines were published, the DT in *Sim Choon Seng* stated that the Sentencing Guidelines extend to non-clinical care offences and apply to all 5 limbs under section 53(1) of the MRA.[25]

45. Nevertheless, in their final submissions, Counsel for the SMC argued that even if the Sentencing Framework does not apply to non-clinical care offences such as those committed by the Respondent, the Striking Off order could still be justified based on the general sentencing objectives and principles that operate outside of the Sentencing Framework, the sections of the Sentencing Guidelines which do not depend on the Sentencing Framework, cases involving similar circumstances and guidance from foreign jurisdictions.[26]

Respondent's Submissions on Sentence

46. In the Respondent's sentencing submissions filed on 16 July 2021, Counsel for the Respondent highlighted the following mitigating factors:

(a) Timeous plea of guilt: the Respondent pleaded guilty, "fully co-operated in the criminal investigations and in the DT proceedings, pleading guilty at the first earliest opportunity", thereby preventing a "drawn-out litigation process";[27]

(b) First run-in with the law and no patients involved: that the Respondent had, until the DT inquiry, "*an unblemished record as a medical practitioner, upholding the highest principles and traditions of the medical profession*";[28]

(c) Causal link between paraphilic disorder, major depressive disorder ("**MDD**") and the offences: The Respondent suffers from paraphilic disorder, specifically a voyeuristic disorder and this is agreed upon by both Dr DE and Dr PW from Hospital A. Dr DE goes further than Dr PW to take the view that there is a

[25] See paragraph 3(c) of the Prosecution's Further Sentencing Submissions filed on 16 August 2021, citing [17] of the DT's decision in *Sim Choon Seng* where the DT held, "*[i]t is clear to us that the SMCDT Sentencing Guidelines will extend to non-clinical care offences (which the Respondent has been convicted of) and applies to all 5 limbs under section 53(1) of the [MRA].*"
[26] See Prosecution's Supplementary Sentencing Submissions filed on 26 October 2021, in particular, paragraph 4 which summarises the prosecution's position.
[27] See paragraphs 57-59 of the Respondent's 1WS.
[28] See paragraph 60 of the Respondent's 1WS.

contributory link between the paraphilic disorder and because of Dr DE's view, "*what caused [the Respondent] to act was the strong compulsion or bondage, because if he resisted, the inner tension could become unbearable*" and that the Respondent "*acted out as it was the only way he knows how to release his stress*".

(d) The Respondent is committed to ongoing psychiatric treatment: The Respondent "*never stopped seeking treatment*" while under immense stress during the commission of the offences. Even in prison, the Respondent "*sees the prison psychologist weekly, practices meditation, and continues his research on further steps he can take to address his disorder*".[29]

(e) Unwavering commitment and dedication to clinical medicine: The Respondent "*never stopped to give his 100 percent to his job, regardless of whether he was labouring under mental illness or continuing to work under the shadow of ongoing police investigations*".[30] Hospital B has evaluated the Respondent's work performance favourably, in terms of professionalism, interpersonal and communication skills, medical knowledge, practice-based learning and improvement, patient care and systems-based practice. The Respondent also submitted his evaluation form for work done during the period from November 2019 to January 2020. Counsel for the Respondent also highlighted that there "*is not a single video taken of his patient*" and that this "*displays that despite the struggle he faces with his disorder, [the Respondent's] commitment in his role as a doctor prevails*".

(f) The Respondent is of good character which strengthens his work performance: After tracing the Respondent's track record during his secondary and junior college education through to his various postings, Counsel for the Respondent highlighted this example which requires quotation in full from the Respondent's 1WS:

> "A superlative example would be the night which [the Respondent] was first arrested on a Thursday night at 7pm and was held in lockup and released

[29] See paragraph 86 of the Respondent's 1WS.
[30] See paragraph 90 of the Respondent's 1WS.

> on bail at 3am. [The Respondent] had promptly reported to work at Hospital C at 7am despite having less than an hour of sleep."[31]

(g) The Respondent is determined not to re-offend: Counsel for the Respondent submitted that previously, the Respondent was deterred to seek treatment as he was fearful of the judgment he may receive. However, since his arrest, the Respondent is no longer dissuaded to openly seek treatment and that the Respondent "has overcome his shame and his disorder and offences has been publicly exposed". Perhaps the Respondent himself put it best in his mitigation letter to the DT when he stated the following:

> "Throughout the period of offending, I was very disturbed by my actions. I could not bring myself to see another doctor for help as I felt too ashamed to come out openly, and I was worried about confidentiality as the medical fraternity was so small. I tried to self-administer treatment, but the simple behavioral techniques yielded no lasting results. [...] Now that the veil of secrecy surrounding my paraphilic disorder has been shattered, I can openly seek treatment, and I have every incentive to put in my utmost in treatment to ensure it succeeds."[32]

47. In view of the above mitigating factors, the Respondent submitted that the appropriate sentence, using the Sentencing Framework, would be a suspension of 13 months. To arrive at this, his Counsel urged us to apply the following analysis under the Sentencing Framework:

(a) Step 1 – harm & culpability: The Respondent submitted that on the present facts, the Respondent's case is "to be of moderate harm as the Respondent acknowledged that his offences would undermine public confidence to the medical profession".[33] Counsel further added that "*[a]lthough there are no patients involved and no actual injury or harm was caused, [the Respondent] recognised that the number of offences, the duration in which the upskirt images were taken (Jan[uary] 2017 to December 2019) and the fact that these offences were committed in public places would adversely affect the faith and trust that any member of public will have in any doctor to be consulted knowing that he has committed such offences*".[34] The Respondent also submitted that his pre-existing paraphilic disorder and major depressive disorder "*may have*

[31] Paragraph 102 of the Respondent's 1WS.
[32] Letter from the Respondent to the DT, Annex H of the Respondent's 1WS.
[33] See paragraph 137 of Respondent's 1WS.
[34] See paragraph 138 of Respondent's 1WS.

contributed to his state of mind when committing the various offences and thus should be at the lower end of the medium range for culpability".[35]

(b) Step 2 – applicable indicative sentencing range: The Respondent submitted that the indicative sentencing range should be a suspension of 12-24 months.[36]

(c) Step 3 – appropriate starting point within the indicative sentencing range: Relying on the cases *Sim Choon Seng, Lum Yang Wei, and Singapore Dental Council v Dr Hoo Swee Tiang (3 October 2018)* ("***Hoo Swee Tiang***")the Respondent submitted a reasonable starting point would be 14 months' suspension, given the "largely similarity in facts" between the present case and *Dr Sim Choon Seng* where the DT there had decided that a period of suspension of 16 months would be a reasonable starting point. The Respondent then submitted that "a slightly lower than 16 months of suspension period is justified" even though "some of the offences committed by [the Respondent] took place in hospitals" and "should be treated with more gravity", because "the starting point of 14 months will still reflect the gravity of the misconduct and send a stern reminder of the profession's disapproval in that regard".[37]

(d) Step 4 – adjust starting point by taking into account aggravating and mitigating factors: For this stage, the Respondent highlighted two points. First, the period of 48 months for which the Respondent was not able to practise following his arrest, conviction and incarceration should be considered a mitigating factor and should be given much weight.[38] Second, his early plea of guilt.[39] Considering these two factors, the Respondent then proposed a sentence of 13 months' suspension.

48. Before we turn to our decision and reasoning, we need to highlight how the Respondent's submissions on the appropriate sentence changed in the course of the further submissions filed by the Respondent.

[35] See paragraph 141 of Respondent's 1WS.
[36] See paragraph 143 of Respondent's 1WS.
[37] See paragraph 159 of Respondent's 1WS.
[38] See paragraph 162 of the Respondent's 1WS.
[39] See paragraph 163 of the Respondent's 1WS.

49. In the Respondent's 2WS which were filed to address the DT's question on whether the Sentencing Guidelines were applicable in the present matter given the decision of the Court of Three Judges in *Chua Shunjie*, the Respondent urged the DT to "*impose an Order for Conditional Registration under section 53(2)(c) of the MRA for him to be subject to the supervision framework under sections 21(4) and 21(6) to 21(9) of the MRA while he is undergoing treatment and rehabilitation*".[40] According to Counsel's submissions, Counsel took further instructions from the Respondent and "*he is amenable to an Order for Conditional Registration under section 53(2)(c) of the MRA for him to be subject to the supervision framework under sections 21(4) and 21(6) to 21(9) of the MRA.*"[41] This is a marked deviation from the Respondent's 1WS, where he had urged the DT to impose a suspension of 13 months. In brief, the Respondent relies on the following points to argue why an order for conditional registration would be appropriate:

(a) Insight: The Respondent submitted that throughout the period of offending, he was deeply disturbed by his own actions, that he has "*professional boundaries*" in his doctor-patient interaction and that the thought of taking upskirt videos had never intruded his mind notwithstanding whatever stress he was experiencing".[42]

(b) Apologies: The Respondent had apologised to the DT (at the hearing on 26 July 2021) and "*wishes to state now, unequivocally, that he is sorry for causing hurt, distress and pain to all his victims*".[43]

(c) Appropriate steps to remediate: The Respondent noted that he has "*benefited greatly from the programmes available in prison*" and that he was attending a Cognitive Behavioural Therapy programme with commitment to treatment for the next seven months.[44] Further, the Respondent highlighted that he will be seeking "*proper, holistic psychological treatment*" under Dr DW at Clinic D. On this point, the Respondent countered the arguments raised by the prosecution, by arguing that "*if a practitioner such as Dr DW with experience*

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[40] See paragraph 137(b) of the Respondent's 2WS.
[41] See paragraph 37 of the Respondent's 2WS.
[42] See paragraph 43 of the Respondent's 2WS.
[43] See paragraph 65 of the Respondent's 2WS.
[44] See paragraphs 67 & 68 of the Respondent's 2WS.

is involved, he does not need countless sessions to do this",[45] that although Dr DW had only spent "*an extended 4 hours of in-depth assessment and evaluation with [the Respondent], a total of 29 hours was spent for this in-depth report for assessment and treatment*".[46] Interestingly, at paragraph 101 of the Respondent's 2WS, the Respondent submitted:

> "All we are seeking for is the chance for [the Respondent[to make good his commitment to rehabilitation. A spirit of restorative posture is requested. If [the Respondent] for reasons to his own detriment [*sic*] defaults on this proposed holistic approach to his treatment plan, it will be at his own cost and peril. Until then (which is remote), let's be there for each other when our own are [*sic*] down." [emphasis added]

(d) Public interest: The Respondent submitted that "*[i]t would be in the public interest if [the Respondent] is given a second chance to be rehabilitated and reintegrated into the medical profession*".[47]

50. Finally, to round off the Respondent's submissions, we should point out the Respondent's position on whether the Sentencing Framework applied to non-clinical care offences. In the Respondent's 2WS, the Respondent took the position that post-*Chua Shunjie,* the Sentencing Guidelines applied to non-clinical care offences. Counsel for the Respondent submitted that "*[w]hile the Sentencing Guidelines provide guidance to DTs which covers both clinical and non-clinical care offences, the four-step sentencing framework set out in* Wong Meng Hang *does not*".[48] The Respondent further submitted that "*[s]ubsequent to the publishing of the Sentencing Guidelines, the Sentencing Framework was applied in* Singapore Medical Council v Dr Sim Choong Seng *[2021] SMCDT 1 and* Singapore Medical Council v Dr Deshan Kumar Rajeswaran *[2020] SMCDT 6 both of which are non-clinical care offences*".[49]

The DT's Decision on the Appropriate Sentence

Public interest as the paramount sentencing consideration

[45] See paragraph 80 of the Respondent's 2WS.
[46] See paragraph 82 of the Respondent's 2WS.
[47] See paragraph 103 of the Respondent's 2WS.
[48] See paragraph 16 of the Respondent's 2WS.
[49] See paragraph 17 of the Respondent's 2WS.

51. To begin, we are guided by two decisions of the Court of Three Judges. First, in *Kwan Kah Yee*, the Court at [50] (referring to *Cheatle v General Medical Council* [2009] EWHC 645 (Admin) (which in turn followed *Bolton v Law Society* [1994] 1 WLR 512) held that:

> "sanctions in medical disciplinary proceedings serve two functions: first, to ensure that the offender does not repeat the offence; and second, to **u**phold the standing of the medical profession. With respect to the former, we considered that the ultimate aim is to ensure that the public is protected from the potentially severe outcomes arising from the actions of errand doctors". [emphasis added]

52. At [51] of the same decision, the Chief Justice went on to observe that:

> "[T]he concept of public interest which guides sentencing of medical misconduct extends further than just the danger which the doctor may pose to his patients." [emphasis added]

53. Second, in *Wong Meng Hang*, the Court of Three Judges again laid down valuable guidance on the objectives of sentencing in disciplinary matters involving medical doctors (at [23] and [25] of the decision) which we found useful for the present case:

> "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" […]
>
> Second, the courts will also have regard to key sentencing principles of general application, such as the interests of general and specific deterrence. […] [G]eneral deterrence, in particular, is a matter of considerable importance because it is "intended to create awareness in the public and more particularly among potential offenders that punishment will be certain and unrelenting for certain offences and offenders". This is a central and operative sentencing objective in most, if not all disciplinary cases. Specific deterrence, on the other hand, is directed at discouraging the *particular offender* from committing future offences, and the weight to be accorded to this sentencing objective may be greater in cases involving recalcitrant offenders as opposed to those with long, unblemished track records that are suggestive of a lack of propensity to reoffend […] " [emphasis added]

54. We have quoted the above passages in detail because of their importance to our deliberation on the appropriate sentence. We will analyse the two key considerations, of public interest and general deterrence, in turn.

55. First, we elaborate on what "public interest" means in the context of sentencing considerations for the present matter against the Respondent. Translated into the facts of the case, we take the view that "public interest" involved answering the three questions, bearing in mind the severity and egregious nature of the offences committed by the Respondent:

(a) Would public confidence in the trustworthiness of medical practitioners be eroded if the Respondent is kept on the rolls of medical practitioners?

(b) Would the standing and reputation of the profession be affected if the Respondent is allowed to remain on the rolls of medical practitioners?

(c) Would the safety of members of the public and the Respondent's co-workers in the health care sector be better assured if the Respondent is no longer kept on the rolls of medical practitioners?

56. The extreme gravity of the Respondent's offences, particularly the Insulting Modesty Offences, led us to answer all three questions in the affirmative. In particular, we were particularly disturbed by the following facts:

(a) The Respondent was sentenced on four charges which involved no less than 630 occasions of filming upskirt videos, as stated on those four charges alone;

(a) If one included the 2,810 incidents involving offences under section 509 of the Penal Code, as stated in the other TIC charges, this amounts to a total of 3,440 incidents of upskirt videos listed in all the charges brought against the Respondent;

(b) The offences between 2017 and 2018 went undetected until the Respondent was confronted by the female victim at Novena Square 2 on 18 January 2018;

(c) The Respondent reoffended not once, but twice, after his first arrest on 18 January 2018;

(d) The Respondent's offences escalated to the point where he was able to record 97 upskirt videos on no less than 309 occasions in a short span of less than two and a half hours at VJC, after meticulous and careful planning which involved disguise by putting on the VJC Attire;

(e) The fact that the Respondent committed offences at not one, but two hospitals (where he had worked at) was discovered only after a review of the hardware and devices seized from the Respondent after his arrest; and

(f) In his mitigation plea to the DT, the Respondent stated the following:

> "Despite the failures in my personal life, I take pride in having maintained my tremendous work ethic and high standard at work. In all my 4 MO postings to date, I have achieved gradings of 'Exceeds Expectations' or 'Outstanding', the two highest possible grades. Even though some of my offences coincided with the period in which I was at work, I have always [*sic*] never stopped giving my 100 percent on the job. **A superlative example would be the night which I was first arrested- I was caught on a Thursday night at 7pm, and was held in lockup and released on bail at 3am. I went home, wept with my parents, and promptly reported to work at Hospital C at 7am, sleeping for barely an hour.** [...] I wish to emphasize that the reason I put in so much effort is that I take great pride in giving the best possible treatment for the patients under my care. Despite the lapses in my personal life, my other core values of commitment, industriousness, and dedication remain intact. This is also the reason why I have never committed, nor even considered committing any offence against any patient under my care. I never have, and I never will."[50] [emphasis added]

57. We pause here to make some observations on the Respondent's statements concerning how he had resumed work the next morning at 7am even though he had been held in lockup the night before until he was released on bail at 3am. We saw this example rather differently from the Respondent. Instead of an example of strong work ethic, we saw this as an example of how he lacked insight into his conduct and character while he was placed under stress. For a young doctor who had just spent the previous night in lockup, a more sensible and rational thing to do might have been to take urgent leave, rather than potentially putting the lives of his patients (he saw on the next day) at risk.

58. To our mind, we had to consider whether the reputation of the profession would be placed at risk, if members of the public became aware that a member of the profession who has committed these offences on so many occasions, is still allowed to remain on the rolls after a disciplinary hearing.

59. Next, we considered the importance of general deterrence. In a short spate of over a year, there have been four cases (including the present matter) before the DTs involving

[50] The mitigation plea from the Respondent is not paginated and does not contain paragraph numbering. The passage quoted is from the third page of the mitigation plea.

medical practitioners who have been involved in taking upskirt videos of female victims (starting from *Lum Yang Wei* decided in March 2020 to *Sim Choon Seng* decided in January 2021). While we recognise that one swallow does not make a summer and that the date of the offences took place at various points in time (even though the DTs were convened between 2020 and 2021), the fact that these cases had been referred to the DTs in quick succession does signal a worrying trend. In order to address this, general deterrence became another important factor in our consideration of the appropriate sentence.

60. Therefore, as a starting point, we were strongly persuaded by the fact that public interest is a paramount consideration and that general deterrence also played a significant part in our deliberations on the appropriate sentence. With that in mind, we will next consider whether the Sentencing Framework (set out in *Wong Meng Hang*) applies to this case since it involves a non-clinical care offence.

Whether the Sentencing Framework applies in the present case

61. To be clear, this part of our decision only addresses the narrow but important issue on whether the Sentencing *Framework* (as opposed to the Sentencing *Guidelines*) applies. We are mindful that the Sentencing *Guidelines* offer invaluable guidance to the parties and to the various DTs including ourselves. We were simply concerned about whether the Sentencing *Framework*, which was first established in *Wong Meng Hang* and encapsulated in the Sentencing *Guidelines,* still applied in non-clinical care cases after the decision of the Court of Three Judges in *Chua Shunjie*.

62. As stated in paragraph 26 above, the Court of Three Judges in *Chua Shunjie* observed categorically at [55] that "*[a]t the outset, it should be noted that the four-step sentencing framework as set out in* Wong Meng Hang *[…]* <u>*does not apply to the charges brought against Dr Chua because these do not involve situations where his clinical care had caused harm to a patient*</u>". [emphasis added]

63. Given the Court of Three Judges' observations, a question then arose as to whether the Sentencing Framework is applicable in the present case which (like in *Chua Shunjie*) does not involve a situation where the doctor's clinical care had caused harm to a

patient. To our mind, this is an important issue because in their written submissions filed on 16 July 2021 (before the hearing on 26 July 2021), both parties had assumed that the Sentencing Framework applied and made submissions applying the 4-step Sentencing Framework. If the Sentencing Framework applies in non-clinical care cases, we would be able to rely on the parties' written submissions (as they were filed prior to the hearing on 26 July 2021). However, if the Sentencing Framework does *not* apply (in accordance with the guidance from the Court of Three Judges in *Chua Shunjie*), we needed to make sure that the parties were given an opportunity to address us on the appropriate sentence and, in particular, whether their submissions on sentence would differ. Therefore, at the end of the hearing on 26 July 2021, we invited parties to file further submissions to address this issue.

64. As summarised earlier on in these Grounds of Decision, both parties took the position that despite the Court of Three Judges' decision in *Chua Shunjie*, the Sentencing Framework applies in non-clinical cases. Both parties appear to rely quite heavily on the fact that the Sentencing Guidelines make express mention that they apply equally to clinical and non-clinical care cases. In particular, they relied on [17] of the Sentencing Guidelines where it is stated that "*the* Wong Meng Hang *sentencing framework can be applied to analyse both clinical and non-clinical care offences*") and [44] of the Sentencing Guidelines where it is stated that "*the definition of "harm" in* Wong Meng Hang *is broad enough to include other forms of harm, such as non-physical harm (e.g. emotional or psychological distress), potential harm, as well as harm caused to public confidence in the medical profession, or to public health and safety or the public healthcare system. For this reason, the Sentencing Framework may be extended to non-clinical care offences.*"

65. On reading the further submissions filed by parties (on 16 August 2021, 30 August 2021 and 6 September 2021), we remained uncomfortable with the parties' analysis. In particular, we noted that the *Chua Shunjie* decision was heard by the Court of Three Judges on 18 August 2020, which was more than a month after the Sentencing Guidelines were published on 15 July 2020. As such, we needed to ascertain whether the attention of the Court of Three Judges in *Chua Shunjie* was brought to the Sentencing Guidelines which led to the observations made at [55] of the decision. If the

Court of Three Judges' attention was not brought to the Sentencing Guidelines, that may lend greater force to the argument that the observations made at [55] were made without consideration of what had been stated in the Sentencing Guidelines. On the other hand, if parties in *Chua Shunjie* referred the Court of Three Judges to the Sentencing Guidelines, one may come to the conclusion that the Court of Three Judges chose to depart from what had been stated at [17] and [44] of the Sentencing Guidelines when it came to the view that the Sentencing Framework does not apply in non-clinical cases.

66. Therefore, at the Case Management Conference on 28 September 2021, we invited Counsel for the SMC to check the SMC's records and to forward the parties' written submissions in *Chua Shunjie* to the DT and to Counsel for the Respondent, before parties file their further supplementary submissions (limited to 10 pages) to address the following issue: "If the Sentencing Framework in the Sentencing Guidelines does not apply to non-clinical offences such as those committed by the Respondent, how would the parties justify their submissions on the appropriate sentence in the present matter?"

67. We are grateful for the letter from Counsel for the SMC dated 12 October 2021, where they confirmed that the SMC referred to the Sentencing Guidelines and made submissions before the Court of Three Judges in *Chua Shunjie*. In particular, it was pointed out that the SMC referred to the Sentencing Guidelines in their Further Written Submissions dated 14 August 2020 at [13]. We pause here to note that the reference to the Sentencing Guidelines in the submissions filed on 14 August 2020 follows from the fact that the Sentencing Guidelines were published on 15 July 2020. At [13] of SMC's Further Written Submissions in *Chua Shunjie* filed on 14 August 2020, the SMC made the following submissions, under the heading "*The SMC's reasons for seeking a Striking-Off Order against Dr Chua*":

> "Finally, the SMC has, in these proceedings, sought a Striking-Off Order principally because it is of the view that Dr Chua's actions are inconsistent with that expected of a member of the medical profession. As a regulator, the SMC is obliged to seek the most appropriate disciplinary sanction based on the facts of the case – applying the SMC's recent Sentencing Guidelines and this Court's decision in *Wong Meng Hang*, this would be a Striking-Off Order. The SMC is cognisant of, and intends for, the 3-year restriction on subsequent applications for restoration of one's name to a register (per s. 56(2)(a)), as well as the requirements set out in reg. 65(1) and (4) of the Medical Registration Regulations

> 2010, to be imposed on Dr Chua – this is a necessary (and appropriate) response to the nature of Dr Chua's misconduct." [emphasis added]

68. With this context in mind, it gives us greater comfort in coming to the conclusion that the Court of Three Judges' attention *was indeed* drawn to the Sentencing Guidelines and that the Court of Three Judges' observations at [55] of the *Chua Shunjie* decision were made with the Sentencing Guidelines in mind. We were fortified in our view when we took a closer look at the guidance offered by the Court of Three Judges in *Chua Shunjie* where, at [51] and [52], the Court of 3 Judges observed:

> 51 In Wong Meng Hang ([3] supra), we observed that public interest considerations are accorded primacy in sentencing for disciplinary cases. To this end, the key sentencing principles of general and specific deterrence are relevant, with the former being the central operative sentencing objective in most disciplinary cases. Considerations of fairness to the offender are also relevant and may, in certain cases, warrant a reduction in sentence (at [23]–[26]).
>
> 52 Specific to cases where deficiencies in a doctor's clinical care caused harm to a patient, we set out a four-step sentencing framework. **<u>It was made clear that this framework would not be applicable to other types of medical misconduct</u>** for which different sentencing considerations might be relevant, and for which the appropriate sentences would fall to be determined by reference to other precedent cases (Wong Meng Hang at [36])" [emphasis added]

69. Consequently, we were persuaded by the Court of Three Judges' guidance in *Chua Shunjie* that the Sentencing Framework does <u>not</u> apply in non-clinical care cases. This is not just a reasonable, but sensible, approach to take because several of the steps in the Sentencing Framework deals with "harm" which is more appropriate in the clinical care context. It also accords with the guidance offered by the Court of Three Judges consistently in *Wong Meng Hang* and in *Chua Shunjie*. Nevertheless, for the sake of completeness and in case the DT is found to be wrong in coming to the conclusion that the Sentencing Framework does not apply, we will provide our analysis of the appropriate sentence below in the event the Sentencing Framework applies. To our mind, given the grave nature of the offences in this matter, the final sentence that we would have meted out to the Respondent (even if the Sentencing Framework applies) would have been the same.

Our reasoning if the Sentencing Framework does not apply

70. In determining what would be the appropriate sentence in the absence of the Sentencing Framework, we are guided by the Court of Three Judges' decision in *Wong Meng Hang* which was referred to and cited with approval by the Court of Three Judges in *Chua Shunjie*. To that end, we can do no better than to set out the Court of Three Judges in *Chua Shunjie* at [53] and [54]:

> "53 We also set out a number of principles and factors that may be relevant when considering whether a striking off order should be made (*Wong Meng Hang* at [66]–[67]). In summary, the following factors were identified as relevant, bearing in mind that the ultimate question is whether the misconduct is so serious that it renders the doctor unfit to remain as a member of the medical profession: (a) whether the misconduct involved a flagrant abuse of the privileges accompanying registration as a medical practitioners; (b) whether the misconduct caused grave harm; (c) the culpability of the doctor; (d) whether the misconduct evinced a defect of character; and (e) whether the facts of the case disclosed an element of dishonesty. Moreover, where any of these factors are present, the sanction of striking off may be especially warranted where the errant doctor has demonstrated a persistent lack of insight into the seriousness and consequences of his misconduct.
>
> 54 We also outlined an analytical framework dealing specifically with the relevance of dishonesty in sentencing. As to this, we held that misconduct involving dishonesty "should almost invariably warrant an order for striking off when the dishonesty reveals a character defect rendering the errant doctor unsuitable for the profession" (*Wong Meng Hang* at [72]). This would typically be the case where dishonesty is integral to the commission of a criminal offence which the doctor was convicted of, or when the dishonesty violates the relationship of trust and confidence between doctor and patient. In other situations, the circumstances of the case should be examined to determine whether striking off is warranted with reference to the following non-exhaustive list of factors (*Wong Meng Hang* at [72]–[73]):
> (a) the real nature of the wrong and the interest that has been implicated;
> (b) the extent and nature of the deception;
> (c) the motivations and reasons behind the dishonesty and whether it indicates a fundamental lack of integrity on the one hand or a case of misjudgement on the other
> (d) whether the errant [doctor] benefitted from the dishonesty; and
> (e) whether the dishonesty caused actual harm or had the potential to cause harm that the errant doctor ought to have or in fact recognised." [emphasis added]

71. Applying those principles and factors to the present matter, we are convinced that the Respondent's acts which led to the Insulting Modesty Offences were clearly "*so serious that it renders the doctor unfit to remain as a member of the medical profession*". While dishonesty was not integral to the commission of the criminal offence which the Respondent was convicted of, the Respondent's acts clearly evinced an intention to deceive, such that when it is viewed as a whole, his conduct was so abominable and reprehensible that his dishonesty in *concealing* his actions and the Modus Operandi

revealed a serious character defect rendering the Respondent unsuitable for the profession. We also found the non-exhaustive list of factors drawn up by the Court of Three Judges at [72] and [73] in *Wong Meng Hang* and reiterated at [54] of *Chua Shunjie* to give us clear guidance on why a Striking Off Order was warranted in the circumstances. In the next section, we will briefly go through each of these factors to illustrate why, on a closer examination of the facts, the Striking Off Order was apposite for the Respondent.

<u>Real nature of the wrong and the interest that has been implicated</u>

72. Under the charge before the DT, the Respondent was convicted of four counts of the offence of intruding upon the privacy of women with the intention to insult their modesty under section 509 of the Penal Code. However, the fact that he was convicted based on these four counts belies the number of upskirt videos that he was found to be in possession of as a result of these four charges. In the ASOF, the number of upskirt videos that were found on the Respondent upon his three arrests were tabulated as follows:
    (a) 2,945 upskirt videos between 2009 up to the Respondent's (first) arrest on 18 January 2018 as found on the items seized from the Respondent;[51]
    (b) A further 217 upskirt videos taken of 185 women between 25 April 2019 and 27 April 2019;[52] and
    (c) A further 97 upskirt videos of unknown female students on 309 distinct occasions on 31 July 2019.[53]

73. This brings the total number of upskirt videos that the Respondent was found to be in possession of *and* for which he agreed to include in the Statement of Facts to be a staggering <u>3,259</u>. These 3,259 videos were taken on no fewer than 630 occasions which meant that on no fewer than 630 occasions, the privacy of female victims had been violated due to the Respondent's conduct. Given the number of victims involved, the number of upskirt videos taken and the long period which they were taken (from 2009), we agreed with counsel for the SMC who submitted that "*[i]t cannot be emphasized*

[51] See paragraph 11 of the ASOF.
[52] See paragraph 17 of the ASOF.
[53] See paragraph 22 of the ASOF.

enough that each of [the Respondent's] Insulting Modesty Offences had gone undetected for extended periods, and were only brought to light by the vigilance and courage of his victims and members of the public".[54] Counsel for the SMC rightly pointed out that but for the bravery and vigilance of the victim who first reported the Respondent in January 2018, the Respondent's offences relating to upskirt videos at CGH and TTSH would have gone undetected.

74. We also agreed with Counsel for the SMC when he submitted that the severity of his offences is underscored by the length of his imprisonment term of 36 months meted out to him. In contrast, the respondent in *In the matter of Dr Ong Theng Kiat* [2015] SMCDT 2 ("***Ong Theng Kiat***") was convicted of offences of sexual penetration of a minor and sentenced to 10 months' imprisonment while the respondent in *Singapore Medical Council v Dr Lee Siew Boon Winston* [2018] SMCDT 4 ("***Lee Siew Boon Winston***") was convicted of two charges of using criminal force with the intention to outrage the modesty of the victim and sentenced to an aggregate term of 10 months' imprisonment. Both Dr Ong and Dr Lee were struck off the register. Here, we note that the sentence meted out against the Respondent in the criminal court was a total of 36 months' imprisonment, more than three times the sentence in Dr Ong's and Dr Lee's criminal cases.

Extent and nature of the deception

75. To our mind, this factor was the single most important factor on the facts of this case. Apart from the number of occasions where upskirt videos were recorded and found to be in the Respondent's possession stated in the paragraphs immediately above, we were particularly disturbed by the extent of the deception which he employed to keep his criminal activity under wraps. The methods used, ranging from the modification of his shoes to place a camera in them, to how he controlled the camera using his mobile phone in order to obtain a good angle of his upskirt videos, demonstrated *extreme* sophistication in his method of deception: both to enable him to record the videos and more importantly, to evade detection and punishment.

[54] See paragraph 32 of Prosecution's 1WS.

76. What was particularly disturbing to us was that after his 18 January 2018 arrest and while investigations were ongoing, the Respondent not only failed to stop in his criminal conduct, he continued to perpetuate it. In our view, his lack of self-awareness and lack of insight led him to perpetuate his criminal offence on 27 April 2019 where he was caught and arrested again for recording the upskirt videos of another victim in a different shopping mall.

77. Unfortunately, the Respondent's conduct did not stop even after he was out on bail. Just three months later, on 31 July 2019, he was found to have put up an extremely elaborate ruse to move around undetected in a junior college. What was required of him, to pull this off, involved advance planning to purchase a set of school uniform for the junior college, another pair of sport shoes, a GoPro camera as well as other accessories including a black pen containing a built-in camera function. He also chose, of all days, to do this on a day where he knew the junior college would be having a careers fair, as it would be easy for him to go into the school and move around undetected. More importantly, when he was first confronted, instead of confessing to his actions (as he did on the previous two occasions), he even had the audacity to claim that he was from the Ministry of Defence.

78. Taking the extent and nature of the deception that he has been found to have committed, it was clear to us that a Striking Off Order was warranted in the circumstances.

<u>Motivations behind the dishonesty and whether the errant doctor benefitted from the dishonesty</u>

79. When we examined the facts, it became clear to us that the Respondent was motivated by his need to satisfy his urge to record upskirt videos for his personal gratification in order to manage stress. Seen in that light and examining it from the perspective of how long a period of time the upskirt videos were recorded from 2009 up to the Respondent's first arrest on 18 January 2018, to the date of his third arrest on 31 July 2019, it also became clear to us that the motivation and reasons for his dishonesty – in recording upskirt videos using the Modus Operandi – indicated a fundamental lack of integrity and not a case of misjudgement.

80. We pause here to comment on counsel's arguments that the Respondent had pleaded guilty to the disciplinary charge, and to the offences, at an early stage and that we should take his early plea of guilt into account and not make the Striking Off Order. While we acknowledge that an early plea of guilt may, in certain circumstances, be taken as a mitigating factor, we are of the view that the pleas of guilt – both in the criminal court and in the DT – are insufficient to weigh against the imposition of a Striking Off Order. In [70a] of the Sentencing Guidelines, it is stated that the mitigating weight of a timely plea "*would be less where there is overwhelming evidence against the offender such that the prosecutor would not have any difficulties in proving its case against him*". We agreed with counsel for the SMC that the facts were overwhelmingly against the Respondent, such that we could not place much weight on his early pleas of guilt in the criminal court and before the DT.

81. Further, guidance on whether a doctor is likely to have insight into the seriousness of his misconduct can be found at [25] and [26] of the Sentencing Guidelines:

> "25. A doctor is likely to have insight into the seriousness and consequences of his or her misconduct if he or she:
> a. Accepts that he or she should have behaved differently (e.g. by showing empathy and understanding);
> b. Takes timely steps to remediate (e.g. takes steps to address concerns about his knowledge, skills, conduct or behaviour, for example, voluntarily attending courses and/or taking active steps to improve his or her clinical care and medical practice, such that the lapse would not be repeated);
> c. Express remorse at an early stage; and
> d. Demonstrates the timely development of insight during the investigation and hearing.
>
> 26. On the other hand, a doctor is likely to lack such insight if he or she: -
> a. Refuses to apologise or accept his or her mistakes;
> b. Promises to remediate, but fails to take appropriate steps, or only to do so when prompted immediately before or during the hearing;
> c. Does not demonstrate the timely development of insight."

82. We are of the view that not only did the Respondent fail to express remorse at an early stage, he allowed his urges to get the better of him and continued to perpetuate the misconduct and allowed it to escalate to the incident at the junior college. This clearly demonstrated to us that he lacked insight because if he had insight, he had more than ample opportunity not just after his first arrest, but also after his second arrest, to reflect on his conduct and seek help to control his urges. While we appreciate that the

Respondent may have been labouring under the impression that there is stigma associated with seeking psychiatric help, we do not agree that that is a sufficient excuse or justification for him *not* to seek help between his arrests. If he knew that it was a problem, he could and should have sought help at an early stage. Instead, he allowed his misconduct to escalate which was extremely unfortunate.

Whether the dishonesty caused actual harm or had the potential to cause harm that the errant doctor ought to have or in fact recognised

83. While there was no evidence before the DT that the Respondent caused harm to his patients by taking upskirt videos of them, it is evidently clear to us that the upskirt videos had caused irreparable harm to the countless number of women whose privacy have been invaded by the Respondent's extremely offensive and deplorable acts of taking upskirt videos of them when they least expect it. To our mind, the upskirt videos in and of themselves demonstrate clearly that actual harm was caused to members of the public at large. The Respondent ought to and should have recognised this. Instead of stopping it after he was caught, he perpetuated the offences and continued to allow it to escalate.

84. Consequently, viewed in this light, it was very clear to the DT that a Striking Off Order would be an appropriate sentence to be meted out on the unusual and unfortunate facts of this case.

Our evaluation of the experts' opinion on the Respondent's psychological condition

85. To round off our analysis in this section, we should say a few words about the medical reports on the Respondent's psychological condition that had been adduced before us. In the course of submissions, both parties referred to and/or relied on the expert reports produced by three medical experts who had treated and/or interviewed the Respondent. These experts were:
    (a) Dr DE, Consultant from Hospital E who wrote two reports dated 11 March 2018 and 17 September 2020;
    (b) Dr PW, Senior Consultant at Hospital A who produced two reports dated 27 August 2019 and 11 September 2020; and

(c) Dr DW, Clinical Psychologist & Clinical Director at Clinic D who authored one report dated 7 July 2021.

86. Both Dr DE and Dr PW were in agreement that the Respondent suffered from paraphilic disorder and major depressive disorder. We do not need to go into the details, save to say that in all the experts' reports, it had been noted that the Respondent was exposed to pornography from a very tender age and that he grew up in a family where his parents had frequent quarrels.

87. Counsel for the Respondent relied on the following statement by Dr DE at page 2 of his 17 September 2020 report: "*[the Respondent's] condition as a Paraphilia evolving into a Disorder has a contributory link to the commission of the allege offence.*" This is to be contrasted with the unequivocal statement from Dr PW who, in his 27 August 2019 report, stated that "*[t]here is no contributory link between his mental illness and his alleged offence*". We also thought that the following passage from Dr PW's 11 September 2020 report neatly summarises his views on the Respondent's psychological condition:

> "Dr Chu [sic] upskirting behaviour was to gain pleasure or to relieve stress. He had to cope with growing up in family where his parent [sic] had frequent quarrels and fights. [...] He said he had to suppress his emotions to cope with his parent's frequent quarrelling. As such, when faced with a stressful situation, he would remain emotionless and sought to manage his stress by taking upskirting videos. Another factor which contributed to his behaviour was his early and recurrent exposure to pornography from about 6-7 years old."

88. Having gone through the experts' reports in some detail, we were persuaded that the position taken by Dr -PW, that there was no contributory link between paraphilic disorder and the alleged offences, is in line with the weight of the evidence before the DT. It is not disputed that the Respondent knew what he did was wrong and this was exemplified in his lying to the teachers at VJC when he was first caught. Even if he had been "compelled" by his disorder to premeditate and record the videos, the fact that he gained full consciousness to try to flee and, when caught, lied, demonstrated quite clearly to us that there was no contributory link. In addition, we also found it difficult to accept Dr DE's conclusion that there was a "contributory link" because while Dr DE seemed to rely on his assessment that the "*incessant acts of upskirting*" was a

"*compulsion or bondage because if he resisted, the inner tension could become unbearable*", he did not appear to us to have applied his analysis to the actions and behaviour of the Respondent immediately after he was caught each time.

89. More importantly, based on Dr DE's and Dr DW's reports, it became clear to us that their respective opinion was that any treatment of the Respondent's paraphilic disorders will most likely take time, given the Respondent's character traits. For example, in his 11 March 2018 report, Dr DE concluded that he was "*optimistic that [the Respondent's] long term prognosis of recovery is good".* [emphasis added] Further, in Dr DW's report, he opined that "*[r]esearch strongly points towards treatment as a choice [...] and have shown that sustained treatment show positive outcome and significant decrease of relapse of offenders".* [emphasis added] Even though Dr DW had, by the time of his report, only interviewed the Respondent once in prison, he had observed (at pages 4 and 5 of his report) that the Respondent had an "*unwillingness to disclose personal information*" and that he was "*unlikely to openly express what is happening to him, particularly with personal issues [...] If people are not aware of what is happening to him they may be unable to help [...] This lack of openness and self-reliant attitude may work well when he is feeling capable and in control. However, he could have problems if he feels less able to cope, and the first indication to others may be when things have already gone wrong"*. Eventually, Dr DW concluded that "*[the Respondent] will need much more medical, therapeutic mentorship and peer support to see him through his deep-seated struggles"* and that *"[p]revious support offered to him did not factor in ALL SIX components of treatment over a sustained period of 2 years (or longer if required)".* [emphasis added] These various observations from Dr DE and Dr DW, and in particular, Dr DW's poignant observations that the Respondent is likely to keep to himself, led us to the conclusion that a condition registration order would not be ideal and that a Striking Off Order was the most appropriate order to be made in the circumstances.

Our reasoning if the Sentencing Framework applies

90. In the preceding section, we have provided our analysis on why we are of the view of the Sentencing Framework does not apply in non-clinical cases and the factors we considered in coming to our view that a Striking Off Order would be appropriate. Even

if we are found to be wrong and the Sentencing Framework applies to the facts of the present case, we would still have meted out a Striking Off Order and this section briefly explains our decision in that regard.

91. We agreed with Counsel for the SMC that applying Step 1 of the Sentencing Framework, there was "serious" or "severe" harm caused in this case. From the 3,259 upskirt videos taken on no fewer than 630 occasions, to the severity of the consequences, it was clear to us that the harm caused to the women whose upskirt videos were taken is extremely serious or severe. We also agreed with Counsel for the SMC that the degree of culpability would also lead to a finding that there was high culpability. The level of premeditation and the scale to which the Respondent offended, not once, but twice, after his first arrest in January 2018, puts this case on the extreme end of the spectrum. We were also cognisant of the fact that the Respondent committed some of the offences in both a professional setting as well as a public setting (in various shopping malls). Worst of all, it also took place in a junior college where the victims of the Respondent's acts were to feel safe in the school environment.

92. Taking these facts as a whole and applying Step 2 of the Sentencing Framework, we agreed that a Striking Off Order or a suspension of three years is the applicable indicative sentencing range. Bearing in mind the proportionality principle, we found that a Striking Off Order would not only be proportionate to the severity of the Insulting Modesty Offences committed by the Respondent, it would also be necessary for it to be a strong deterrence. Bearing in mind the sentencing precedents, we also found the facts of the present unusual case to be so extreme that a Striking Off Order would be appropriate.

93. Applying Step 3 of the Sentencing Framework, we then took into account two principles. First, applying the proportionality principle, we found that the facts sufficiently strong deterrent needed to be an appropriate starting point. Second, we also took into account the need for consistency in sentencing. While we recognise that a Striking Off Order has not been made in other cases involving upskirting videos, we have tried to explain above why we are of the view that the extremely unusual facts of this case warranted a departure. In any event, as we had stated in paragraph 74 above,

a Striking Off Order would be consistent when one bears in mind the sentence meted out by the DTs in *Ong Theng Kiat* and *Lee Siew Boon Winston*.

94. In coming to this conclusion, we were unable to agree with Counsel for the Respondent who submitted that there was only "moderate" harm because "the Respondent acknowledged that his offences would undermine public confidence to the medical profession" and because "there was no patients involved and no actual injury or harm caused". We found this argument both flippant and factually wrong. The Sentencing Guidelines and the guidance from the Court of Three Judges make it clear that in assessing the degree of harm, one looks at not just whether patients are involved, but the harm and culpability of the doctor vis-à-vis the society and the profession. The Respondent's reprehensible conduct undergirded by a lack of insight in hardly qualifies him for a finding that there was merely "moderate" harm. The astounding number of upskirt videos and the countless number of women whose privacy has been invaded speak for themselves.

95. Given that Counsel for the Respondent wrongly identified the degree of harm and culpability to be "moderate" and "medium", Counsel for the Respondent consequently identified the wrong indicative sentencing range when he submitted that the indicative sentencing range should be a suspension of 12-24 months. Finally, even though Counsel for the Respondent referred to the sentences meted out in *Sim Choon Seng, Lum Yang Wei and Hoo Swee Tiang*, we found that the facts of the present case are sufficiently different from the facts in those cases such that it would be inappropriate to rely on those cases as sentencing precedents for the present matter.

Why an order for conditional registration would not be appropriate

96. We now address the Respondent's arguments made in the further written submissions that instead of a suspension of 13 months (according to the oral submissions at the hearing on 26 July 2021) or 14 months (according to the written submissions filed prior to the 26 July 2021 hearing), the DT should impose an order for conditional registration under section 53(2)(*c*) of the MRA for the Respondent to be subject to supervision framework under sections 21(4) and 21(6) to 21(9) of the MRA.

97. In essence, Counsel for the Respondent sought to rely on the decision in *Singapore Medical Council v Dr Yeo Eng Hui Damian* [2019] SMCDT 6 (a case referred to in the SMC's written submissions) to argue that in exceptional cases, even doctors whose misconduct involved dishonesty could benefit from rehabilitation and that like Dr Yeo in that matter, the Respondent should be offered a chance at rehabilitation to go through a two-year treatment plan with Dr DW of Clinic D upon his release from prison.

98. First, we make a few observations about the Memorandum of Understanding ("**the MOU**") signed between Clinic D and the Respondent and the submission of 13 or 14-month suspension made by Counsel for the Respondent. Under the MOU which was signed on 1 July 2021, 15 days before the written submissions were filed and 20 days before the first hearing before the DT, the Respondent agreed to undergo a treatment plan for "a minimum duration of 2 years".[55] Second, as we observed at the hearing on 26 July 2021, the Respondent's earliest date of release was 7 January 2022. If, on the Respondent's own evidence, he will be undergoing a treatment plan with a minimum period of two years (which means, as stated in the MOU, it will be "reviewed again, pending on progress" after two years) and if the DT were to accept the Respondent's submission that he be given a suspension of 13 or 14 months, the Respondent would not have completed his two-year treatment plan (assuming it is not extended) before he finishes his suspension. Third, in the Respondent's written submissions, it is stated that Dr DW "*has only spent an extended 4 hours of in-depth assessment and evaluation with"* the Respondent.[56]

99. More importantly, we are not persuaded that the Respondent's treatment plan with Dr DW is sufficient to persuade the DT that an order for conditional registration should be ordered. We highlight that even though the Respondent was sentenced on 11 December 2020, he only signed the MOU with Clinic D on 1 July 2021, more than six months after he was sentenced. More curiously, the Respondent did not explain why the MOU was only signed shortly before the hearing before the DT (and before the written submissions were filed). Taking the circumstances as a whole, we drew the inference that the MOU with Clinic D was a last-ditch attempt to persuade the DT that

[55] See MOU at Annex E of the Respondent's 1WS.
[56] See paragraph 83 of the Respondent's 2WS.

there is a structured programme in place. The Respondent also did not explain why he chose not to continue with the previous doctors who had assisted him.

100. Based on these facts, we found that the Respondent's intended treatment plan with Clinic D is a far cry from the facts found in *Dr Yeo Eng Hui Damian*. There, Dr Yeo had voluntarily submitted to supervision by his colleagues and had his prescriptions audited, with there being no untoward incidents for one and a half years.[57] Here, we agreed with Counsel for the SMC that the treatment plan with Dr DW falls woefully short of a concrete plan with sufficient details.[58]

101. In particular, while the DT in *Dr Yeo Eng Hui Damian* found that all three factors for an order under section 53(2)(*c*) of the MRA to be present, namely:

(a) That as part of the conditions and restrictions that could be imposed by section 21(4) of the MRA, a period of supervision and rehabilitation may be helpful to address the shortcomings of the doctor, be they in professional or personal conduct;

(b) The doctor has insight, is likely to be able to comply with the conditions and restrictions imposed, and be able to positively respond to the supervision and rehabilitation; and

(c) The setting the doctor practices in is appropriate for the supervision and rehabilitation, or that there is a likelihood the doctor is able to procure such an appropriate setting.

102. We took the view that even if it could be said that the first factor is in the Respondent's favour, we were not persuaded that the second and third factors are in the Respondent's favour. For reasons stated above, we came to the conclusion that the Respondent lacked insight, from his failure to recognise that what he was doing was wrong, even after not one but two arrests, to his propensity to escalate his offences from recording upskirt videos in public malls to recording them in a junior college with elaborate premeditation. This is very different from the facts in *Dr Yeo Eng Hui Damian* where

[57] See paragraph 16 of the SMCDT's decision in *Dr Yeo Eng Hui Damian.*
[58] See paragraphs 24 and 25 of the Prosecution's 3PWS.

leading up to the DT hearing, Dr Yeo had already been placed in an environment where he had demonstrated a track record of compliance in an environment conducive to rehabilitation.

103. More importantly, we agreed with Counsel for the SMC that no submissions have been made by the Respondent on the appropriate conditions or restrictions to be imposed, or the basis for such conditions or restrictions to be imposed on him. It is trite that a party who makes an argument that a certain sentence should be imposed bears the burden of persuading the tribunal why such a sentence should be imposed and the mechanics for the sentence to be meaningfully imposed. Regrettably, Counsel for the Respondent failed to provide a draft set of conditions or restrictions which the DT could even begin, as a starting point, to impose on the Respondent.

104. Above all, based on the evidence before the DT, we came to the view that the Respondent has demonstrated a propensity for concealing his misconduct such that it would be difficult, if not impossible, for any supervisor to determine if there is compliance with any treatment plan for rehabilitation. An example which illustrates this is the Respondent's reliance on his good work review at Hospital B during the period where he was investigated for the Insulting Modesty Offences. We note that on the face of the work evaluation form, the indicative start date was 1 November 2019, about four months after his arrest for the offences at VJC. The overall assessment was indicated to be "exceeds expectation", the second highest possible grading out of 5 grades. This was a strong indication to the DT that *despite* the fact that he had committed very serious offences, he was able to conceal these acts from his supervisors. This is further supported by the findings and observations of the Respondent's character by Dr DW as noted in his report: see paragraph 89 above. Consequently, based on the evidence before the DT, we had no confidence that any supervisory regime would be able to detect any relapse or misconduct on the part of the Respondent.

105. For completeness, we acknowledge that the Respondent has submitted that he has taken appropriate steps to remediate, including the "Social Skills Training Programme" and the Cognitive Behavioural Therapy programme, both programmes available to him in prison. While the DT commends the Respondent for taking steps at attending these programmes and seeing the prison psychologist weekly, we failed to see how the

Respondent's participation in these programmes which are available in the prison setting would enable the DT to conclude that he would be able to meet any conditions or restrictions imposed on his registration. Put in another way, the Respondent's participation in the various prison programmes is no answer to the question of what conditions or restrictions the DT should impose for an order of conditional registration.

A Striking Out Order does not mean that the Respondent cannot be rehabilitated

106. Finally, we turn to a recurring theme in the arguments made by counsel for the Respondent. Repeatedly, Counsel for the Respondent urged the DT to impose suspension order and/or order for conditional registration because he seemed to equate rehabilitation with only one of those two options. The corollary to that argument appears to be that a Striking Off Order would be the antithesis to rehabilitation and would not allow the Respondent to rehabilitate.

107. In case the DT's decision in meting out a Striking Out Order or any part of our reasoning gives the wrong impression that the DT did not consider, much less value, the importance of rehabilitation, we should emphasise that we firmly believe that the Respondent can be rehabilitated and that he has a desire to do so. We have every confidence that if the Respondent puts his mind to it, just as he has been able to put his mind to completing medical school, he would be able to turn over a new leaf and indeed, the DT sincerely hopes that he would.

108. However, it is important to bear in mind that "broader public interest considerations are paramount in disciplinary proceedings": see [23]-[24] of *Wong Meng Hang* and [9] of the Sentencing Guidelines. On the facts of this case, the DT has placed emphasis (at the start of our grounds) that upholding the reputation of and confidence in the medical profession is key. While the DT also recognises that rehabilitation is a valid, and sometimes important, sentencing consideration, the Sentencing Guidelines do state that rehabilitative orders "*may be appropriate in less serious cases where the other sentencing objectives do not feature as prominently, and/or where the doctor shows that he or she is amenable to reform*": see [10] of the Sentencing Guidelines. Unfortunately, the facts of this matter are so egregious and unusual that significantly more weight had to be placed on the importance of public interest.

109. More importantly, faced with the tension between the public interest in upholding the reputation and confidence in the medical profession on one hand, versus the need for rehabilitation on the other, the Sentencing Guidelines do state that "*[w]hen particular interests pull the DT in different directions in a given case, it is the interest of the public that is paramount and must therefore prevail*": see [11] of the Sentencing Guidelines citing [32] of *Law Society of Singapore v Ravi s/o Madasamy* [2016] 5 SLR 1141. Here, faced with this central tension, the DT finds that the public interest must prevail.

110. We emphasise that a Striking Off Order does not – and need not – spell the death knell for the Respondent's medical career. The Respondent may, but not before the expiry of three years from the date of the removal from his name from the register, apply to the SMC to restore his name pursuant to section 56 of the MRA read with Reg 65 of the Medical Registration Regulations 2010. Like the DT in *Singapore Medical Council v Dr Teo Shun Jie Clarence* [2021] SMCDT 3, the present DT agreed with the submission from SMC in that a Striking Off Order would provide a better mechanism for SMC to determine whether the Respondent is fit again to have his name restored, if and when such an application is made.[59] To our mind, this would be more appropriate than the imposition of any condition or restriction under an order for conditional registration.

Conclusion

111. Accordingly, this Tribunal ordered that:

(a) the Respondent's name be removed from the appropriate register; and

(b) the Respondent pay the costs and expenses of and incidental to these proceedings, including the costs of the solicitors to the SMC.

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[59] See [71] of the Prosecution's Sentencing Submissions citing [94] of *Dr Teo Shun Jie Clarence* where the DT opined, "*we think the removal of the Respondent's name from the medical register would provide a better mechanism for the SMC to determine whether the Respondent is fit again to have his name restored to the medical register when the Respondent does make such an application*".

112. We further ordered that the Grounds of Decision be published with the necessary redaction of identities and personal particulars of persons involved.

113. The hearing is hereby concluded.

Dr Vaswani Chelaram Moti Hassaram
Chairman

A/Prof Ong Biauw Chi

Mr Lee Yeow Wee David
Legal Service Officer

Mr Chia Voon Jiet and Ms I-Lin Lee (M/s Drew & Napier LLC)
for Singapore Medical Council; and

Mr Peter Ong Lip Cheng (M/s Peter Ong Law Corporation)
For Dr Chu Ben Wee