**IN THE REPUBLIC OF SINGAPORE**

**SINGAPORE MEDICAL COUNCIL DISCIPLINARY TRIBUNAL**

**[2018] SMCDT 4**

Between

**Singapore Medical Council**

And

**Dr Lee Siew Boon Winston**

… *Respondent*

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# GROUNDS OF DECISION

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Administrative Law — Disciplinary Tribunals

Medical Profession and Practice — Professional Conduct — Removal from Register

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# Singapore Medical Council
# v
# Dr Lee Siew Boon Winston

**[2018] SMCDT 4**

Disciplinary Tribunal — DT Inquiry No 4 of 2018
Dr Joseph Sheares (Chairman), Prof Lee Eng Hin and Mr Bala Reddy (Legal Service Officer)
21 March 2018

Administrative Law — Disciplinary Tribunals

Medical Profession and Practice — Professional Conduct — Removal from Register

7 May 2018

## GROUNDS OF DECISION

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

### Introduction

1 On 26 May 2014, the Respondent, Dr Lee Siew Boon Winston ("Dr Lee"), was convicted in the State Courts on two charges of using criminal force on a patient, one Mdm P, with the intention to outrage her modesty, under section 354(1) of the Penal Code (Cap. 224, 2008 Rev Ed) (the "Penal Code"). He was sentenced to an aggregate term of 10 months' imprisonment.

2 On 20 July 2015, Dr Lee's appeal against the conviction and sentence was dismissed by Chan Seng Onn J in *Lee Siew Boon Winston v Public Prosecutor* [2015] 4 SLR 1184. Dr Lee's subsequent application for leave to refer questions of law to the Court of Appeal in Criminal Motion No. 21 of 2015 was dismissed by the Court of Appeal on 30 November 2015 in *Lee Siew Boon Winston v Public Prosecutor* [2015] SGCA 67.

3 On 12 January 2016, Dr Lee was convicted in the State Courts on a charge of knowingly making a fraudulent declaration in writing to the Singapore Medical Council ("SMC") in an attempt to procure a Practising Certificate under section 62(a) of the Medical Registration Act (Cap. 174) ("MRA"). Dr Lee was sentenced to pay a penalty of $3,000, or in default serve two weeks' imprisonment.

4 Arising out of the above convictions, the SMC preferred two charges against Dr Lee before this Disciplinary Tribunal (the "Tribunal"). The first charge, SMC 14.6/2013-171, related to his conviction of the outrage of modesty ("OM") offences implying a defect of character which made the Respondent unfit for the medical profession and the second charge, SMC 14.6/2014-019, related to his conviction of the false declaration charge under the MRA which had involved fraud or dishonesty. The SMC's two charges were heard together in consolidated proceedings before the Tribunal.

5 At the Tribunal hearing, Dr Lee elected to plead guilty to both charges. After careful consideration, the Tribunal ordered that:

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

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

We now set out our reasons below.

## Proceedings before the Tribunal

6 At the Tribunal hearing on 21 March 2018, Dr Lee pleaded guilty to the following two charges:

**CHARGE**

1. That you, Dr Winston Lee Siew Boon (NRIC No. S0273337D) are charged that, on 26 May 2014, whilst practising as a medical practitioner at Thong Hoe Clinic at Block 151 Bukit Batok Street 11 #01-252 Singapore 650151, you were convicted in Singapore of two offences of using criminal force on your patient, Mdm P, with the intention to outrage her modesty, under section 354(1) of the Penal Code (Cap 224, 2008 Rev Ed), which are offences implying a defect in character which makes you unfit for the medical profession, to wit:-

**Particulars**

(a) that on the 8th day of June 2011 at about 2.53pm, you did use criminal force to the Patient, to wit, by inserting your hand into the said Patient's left brasserie cup and touching her left breast and nipple, with intention to outrage the modesty of the said Patient;

(b) that on the 30th day of October 2011, at about 11am, you did use criminal force to the Patient, to wit, by inserting your hand into the said Patient's left brasserie cup and touching her left breast and nipple, and repeating this act one more time, with intention to outrage the modesty of the said Patient;

(c) that on or about the 27th day of November 2013, you were charged in the State Courts with two offences punishable under section 354(1) of the Penal Code;

(d) that on about the 26th day of May 2014, you were convicted in the State Courts by the learned District Judge Lim Tse Haw of the aforesaid offences and were sentenced to serve 9 months' imprisonment in respect of (a) above and 10 months' imprisonment in respect of (b) above respectively, to run concurrently for a total of 10 months' imprisonment; and

(e) that the aforesaid convictions have not been set aside.

and you are thereby liable to be punished under section 53(2) read with section 53(1) (b) of the Medical Registration Act (Cap. 174).

(The "First Charge")

**CHARGE**

That you, Dr Winston Lee Siew Boon (NRIC No. S0273337D) are charged that, on 12 January 2016, whilst practising as a medical practitioner at Thong Hoe Clinic at Block 151 Bukit Batok Street 11 #01-252 Singapore 650151, you were convicted in Singapore of an offence under section 62(a) of the Medical Registration Act (Cap. 174) ("MRA"), which is an offence involving fraud or dishonesty, to wit:-

**Particulars**

(a) that on or about the 23rd day of July 2013, you did attempt to procure a Practising Certificate under the MRA by knowingly making a fraudulent declaration in writing, to the SMC, stating that, since your last declaration you had not been the subject of an inquiry or an investigation by the police in Singapore, a fact which you knew to be false;

(b) that on or about the 3rd day of April 2014, you were charged in the State Courts with an offence punishable under Section 62(a) of the MRA in respect of the above;

(c) that on or about the 12th day of January 2016, you were convicted in the State Courts by the learned District Judge Chay Yuen Fatt of the aforesaid offence and were sentenced to pay a penalty of S$3,000 (in default of which you are to serve 2 week's imprisonment); and

(d) the aforesaid conviction has not been set aside,

and you are thereby liable to be punished under section 53(2) read with section 53(1) (a) of the MRA.

(The "Second Charge")

7 Dr Lee admitted to the Agreed Statement of Facts dated 7 March 2018 tendered by Counsel for the SMC ("ASOF"). The salient paragraphs of the ASOF relating to the charges are as follows:

**FIRST CHARGE (S 53(1)(B) MRA – SMC 14.6/2013-171**

4. On or about 15 April 2013, the Respondent was placed under arrest and charged by the police with two offences punishable under section 354(1) of the Penal Code…

5. MAC-3003-2013 alleged that on or about 8 June 2011, at about 2.53pm, during a consultation session at the Clinic, the Respondent did use criminal force to the Patient, by inserting his hand into the Patient's left bra cup and touching her left breast and nipple, with intention to outrage the modesty of the Patient.

6. MAC-3003-2013 alleged that on or about 30 October 2011, at about 11am, during a consultation session at the Clinic, the Respondent did use criminal force to the Patient, by inserting his hand into the Patient's left bra cup and touching her left breast and nipple, and repeating this act one more time, with intention to outrage the modesty of the Patient.

7. On or about 27 November 2013, the Respondent's two charges were amended in the State Courts as follows:

**1st Charge (Amended)**

You,

| | |
|---|---|
| NAME: | WINSTON LEE SIEW BOON |
| SEX/AGE: | 70 YEARS OLD |
| D.O.B.: | 13 NOVEMBER 1943 |
| NATIONALITY: | SINGAPORE CITIZEN |

are charged that you, on the 30th day of October 2011, at about 11am, at Thong Hoe Clinic, located at Blk 151 Bukit Batok Street 11, #01-252, Singapore, did use criminal force to one [patient], *to wit*, by inserting your hand into the said [patient's] left brassiere cup and touching her left breast and nipple, and repeating this act one more time, with intention to outrage the modesty of the said [patient] and you have thereby committed an offence under Section 354(1) of the Penal Code, Chapter 224 (2008 Rev Ed).

**2nd Charge (Amended)**

You,

| | |
|---|---|
| NAME: | WINSTON LEE SIEW BOON |
| SEX/AGE: | 70 YEARS OLD |
| D.O.B.: | 13 NOVEMBER 1943 |

NATIONALITY: SINGAPORE CITIZEN

are charged that you, on the 8th day of June 2011, at about 2.53pm, at Thong Hoe Clinic, located at Blk 151 Bukit Batok Street 11, #01-252, Singapore, did use criminal force to one [patient], *to wit*, by inserting your hand into the said [patient's] left brassiere cup and touching her left breast and nipple, with intention to outrage the modesty of the said [patient] and you have thereby committed an offence under Section 354(1) of the Penal Code, Chapter 224 (2008 Rev Ed).

8. At trial, the Patient testified before the learned District Judge Lim Tse Haw that she had gone to see the Respondent on 8 June 2011 to get an HIV test and complained of chest pain. The Patient's testimony was that the Respondent examined the Patient's stomach and slid his hand to the centre of her chest, underneath her bra, touched her left breast and told her not to get chest pain at that spot. The Patient had not doubted the Respondent as she had complained of chest pain.

9. The Patient testified that she had gone to see the Respondent on 30 October 2011 for a sore throat and expressed concern on whether she would be able to continue exercising. The Patient's testimony was that the Respondent told the Patient to stand on the weighing scale and lift her t-shirt, revealing her stomach, did a pinch test on her stomach and commented she was not fat. He then slid his hand to the centre of her chest, underneath her bra, touched her left breast and nipple and told her not to get chest pain there.

10. The Patient then lodged a police report in respect of the above incident on 31 October 2011.

11. On or about 26 May 2014, the Respondent was convicted in the State Courts by the learned District Judge Lim Tse Haw on MAC-3003-2013 and MAC-3004-2013, and was sentenced to serve 10 months' imprisonment and 9 month's imprisonment respectively, to run concurrently for a total of 10 months' imprisonment. …

12. The Respondent appealed against the State Court's conviction and sentence on or around 20 July 2015. The Respondent's appeal was not successful. …

13. The Respondent's application for a criminal motion on or about 30 November 2015 based on procedural issues relating to some unused material in the possession of the prosecutors was also not successful [ABOD at Tab 6].

14. The Respondent began serving his 10-month sentence on 4 January 2016. He was 73 years old at that time. The Respondent completed his sentence and was released from prison on 26 July 2016.

15. As stated above, the Respondent was convicted in Singapore of two offences of using criminal force on the Patient with the intention to outrage her modesty, under section 354(1) of the Penal Code, which are offences implying a defect in character which makes the Respondent unfit for the medical profession, and the Respondent is thereby liable to be punished under section 53(2) read with section 53(1) (b) of the MRA.

**SECOND CHARGE (S 51(1)(a) MRA – SMC 14.6/2014-019**

16. On or about 3 April 2014, the respondent was charged in the State Courts with an offence punishable under section 62(a) of the MRA in respect of a false declaration.

17. MOH-000003-MSC-2014 alleged that on or about 23 July 2013, the Respondent attempted to procure a Practising Certificate under the MRA, by knowingly making a fraudulent declaration in writing to the SMC, in an Application for Renewal of Practising Certificate (Practising Certificate Renewal Form) (PCRF), stating that since his last declaration, he had not been subject of an inquiry or an investigation by the police in Singapore.

18. At the relevant time, the Respondent was the subject of police investigations relating to acts committed by the Respondent, on 8 June 2011 and 30 October 2011, which are offences under section 354(1) of the penal code ("**OOM Charges**").

19. The Respondent had been called up for investigations on 4 November 2011 in respect of the OOM Charges. On 12 April 2013, the Respondent was placed under arrest at Jurong police division and charged by the police. He was subsequently released on bail to appear in Court on 15 April 2013 to answer to the charges.

20. On or about 12 January 2016, the Respondent was convicted in the State Courts by the learned District Judge Chay Yuen Fatt of the aforesaid offence and sentenced to pay a penalty of S$3,000 (in default of which the Respondent was to serve 2 weeks' imprisonment).

21. The said conviction has not been set aside, and on or about 12 January 2016, the Respondent made payment of the penalty of S$3,000.

22. By reason of such conduct set out above, the Respondent was convicted in Singapore of an offence under section 62(a) of the MRA, which is an offence involving fraud or dishonesty, and the Respondent is thereby liable to be punished under section 53(2) read with section 53(1)(a) of the MRA.

8 We heard the address on sentence by Counsel for the SMC as well as the mitigation plea by Dr Lee's Counsel. We carefully considered all the submissions and would deal with the pertinent matters raised by both Counsel in our decision.

**The SMC's Submissions on Sentence**

9 Counsel for the SMC, Mr Anand Nalachandran, submitted that the appropriate sentence in this case should be:

(a) a removal from the Register in respect of the First Charge;

(b) a fine of S$10,000 in respect of the Second Charge; and

(c) the payment of costs of and incidental to the inquiry, including the costs of the solicitors to the SMC.

10 At the outset, it was submitted that under section 53(3) of the MRA, Dr Lee's convictions on all the charges were to be accepted as final and conclusive[1].

11 Mr Nalachandran went on to state that sanctions in disciplinary proceedings serve three functions: (i) to ensure that the offender does not repeat the offence, (ii) to uphold the standing of the medical profession, and (iii) to ensure that the public is protected from the potentially severe outcomes arising from actions of errant doctors (*Singapore Medical Council v Kwan Kah Yee* [2015] 5 SLR 201 ("*Kwan Kah Yee*") at [50] to [55]). In determining the sanctions to be imposed, much will turn on the nature of the misconduct in

[1] Prosecution's submissions on sentence dated 7 March 2018 ("**Prosecutions submissions on sentence**") at [6].

question[2]. A Disciplinary Tribunal ("DT") may take into account considerations of both general and specific deterrence, bearing in mind the function of sanctions in disciplinary proceedings. He further stated that the High Court in *Yong Thiam Look Peter v Singapore Medical Council* [2017] 4 SLR 66 has emphasised (at [17]) that DTs should provide an uplift on sentence when compared to precedents, where necessary.

12 With respect to the First Charge, he highlighted the following aggravating factors:

(a) Dr Lee had carried out the act of using criminal force to the Patient with intention to outrage the modesty of the patient on *repeated occasions*[3]; and

(b) the offences were committed against the Patient *in the course of a medical consultation*[4], where Dr Lee abused his position of trust as a medical practitioner.

13 With regard to the Second Charge, it was submitted that Dr Lee's false declaration was a direct attempt to conceal the criminal investigation against him in respect of the matters arising in the First Charge, which clearly showed *dishonesty*.

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[2] Prosecutions submissions on sentence at [10], citing *Chia Foong Lin v Singapore Medical Council* [2017] 5 SLR 334)

[3] Prosecutions submissions on sentence at [21].

[4] Prosecutions submissions on sentence at [53(a)(i)].

14 As for sentencing precedents, Mr Nalachandran tendered and relied upon a table of eight sentencing precedents for the Tribunal's reference.

15 In the case of *Dr A* (1982)[5], Dr A faced two charges in the Magistrate Court including one charge under section 354 of the Penal Code for using criminal force on a female patient by undressing her when she was in an unconscious state and arranging her body in certain postures for the purpose of taking photographs of her, with the intention to outrage her modesty. The section 354 charge had been compounded on the condition that Dr A compensated the victim, cease his medical practice and leave Singapore for good. In the medical disciplinary proceedings, Dr A's name was ordered to be removed from the Register in respect of the section 354 charge.

16 Two cases involving charges of outrage of modesty by members of other professions were cited to us. In *Dr D* (10 May 2007), Dr D was removed from the Register for registered dentists after being convicted of a section 354 offence for rubbing the vagina and touching the right breast of a female patient; in *Law Society of Singapore v Ismail Bin Atan* [2017] 5 SLR 746 ("*Atan*"), an advocate and solicitor, Mr Atan, was charged under section 354(1) of the Penal Code with outraging the modesty of an employee of the law firm he was working in at the time. Although the matter was eventually compounded, the Law Society subsequently brought disciplinary proceedings against Mr Atan for professional misconduct and the High Court hearing the matter ordered that he be struck off the roll. Mr Nalachandran submitted that *Atan* involved a similar section 354(1) charge as the present case and that as a matter of policy, the standards applied

[5] Prosecutions submissions on sentence at Annex A, A1.

in Singapore to the professional conduct of doctors should not be lower than that of other professions.

17 Mr Nalachandran cited three further DT cases involving doctors with a conviction for other sexual offences. It was submitted that such cases show the firm stance taken against respondent doctors in respect of their convictions relating to sexual offences under the Penal Code. In the case of *Dr Ong Theng Kiat* (8 June 2015) ("*Dr Ong*"), Dr Ong was convicted of two charges of sexually penetrating a minor under 16 years of age with her consent and a charge of knowingly making a fraudulent declaration in writing to the SMC in an attempt to procure a Practising Certificate. He was ordered to be removed from the Register. In *Dr C* (22 July 1998), Dr C was convicted of intruding into a woman's privacy by peeping and shining a torch into her vehicle in which she was in a state of undress, with the intention to insult her modesty. He was ordered to be removed from the Register. In the third case of *Dr B* (10 May 2007) he was convicted of two charges of taking "up skirt" photos with his mobile phone. He was suspended for 2 years, fined $5,000, and ordered to continue with psychiatric treatment for such period as determined by his psychiatrist.

18 With regard to the Second Charge, three authorities were cited. In *Dr Wong Mei Ling Gladys* (1 September 2015) ("*Dr Wong*") and *Dr Chio Han Sin Roy* (16 October 2015) ("*Dr Chio*"), the respondent doctors were each fined $10,000 for knowingly making a fraudulent declaration in writing to the SMC that they were not involved in any active clinical practice since a certain date. In the third case of *Dr Ong*, Dr Ong was ordered to be removed from the Register as a sanction for all his convictions, including his conviction under one charge of knowingly making a fraudulent declaration in writing to the SMC in an attempt to procure a Practising Certificate under section 62(a) of the MRA.

19 Mr Nalachandran pointed out that in *Dr Ong*'s case, the SMC had not made submissions for a separate fine to be ordered in respect of the fraudulent declaration charge, but that in the present case, the SMC's submissions are for the Tribunal to order a fine of $10,000 in respect of the Second Charge, over and above the removal from the Register submitted for the First Charge. Citing *Chia Yang Pong v Singapore Medical Council* [2004] 3 SLR(R) 151, he submitted that the Tribunal has powers to order both a removal from the Register as well as a fine in these proceedings.

**The Respondent's Mitigation**

20 Counsel for Dr Lee, Mr Charles Lin assisted by Mr Phang Cunkuang, urged the Tribunal to exercise leniency and submitted that a sentence of a fine would be just and reasonable in the circumstances.

21 A written mitigation dated 7 March 2018 annexed with eight testimonials from Dr Lee's peers, his wife and his patients was tendered. Dr Lee's personal statement to the Tribunal dated 21 March 2018 was also tendered. The salient points of the written mitigation were as follows[6]:

> (a) Dr Lee is a man of good character. Dr Lee is down to earth, honest and strives to be a caring and professional doctor to all patients. Eight testimonials from his peers and patients attest to his professionalism. Dr Lee's good character mitigates the "defect in character" central to a conviction of the First Charge.

[6] Respondent's mitigation plea and sentencing submissions dated 21 March 2018 ("Respondent's mitigation") at [36] – [73].

(b) Dr Lee poses a very low risk to the public and of re-offending in the same manner. The incident relating to the Patient remains Dr Lee's only brush with the law in over 40 years of medical practice, and was done out of character. Dr Lee sold off the Clinic on 31 December 2015 and now works as a locum doctor. He has not received any complaints about his professional care since resuming practice as a locum, and has even taken steps to improve his practice by ensuring there is a chaperone in the room when attending to female patients. He is not a recalcitrant doctor whom the public needs to be protected against.

(c) Dr Lee has served a *de facto* term of suspension. Dr Lee started serving his prison sentence in respect of the OM offences on 4 January 2016 and completed it on 26 July 2016 on account of good conduct. His incarceration was effectively a suspension from practice for about 8 months, and such de facto suspension is a relevant sentencing consideration as held in *Dr Lim Kok Houw Mervin* (5 May 2014) at [6]. In considering the appropriate sentence for a breach of section 53(1)(b) of the MRA, the DT in that case took into account the fact that that the respondent doctor had already been put out of practice for 12 months due to his imprisonment and detention in a Drug Rehabilitation Centre, and eventually ordered the respondent doctor to be censured and ordered to give an undertaking and pay the costs of the disciplinary proceedings.

(d) Dr Lee faces difficult personal circumstances. Dr Lee is 75 years old and remains the sole breadwinner and carer of his immediate family. His wife suffered a debilitating stroke in 2011 and remains housebound. Dr Lee also has to care for his son who suffered brain injury at birth, leading to a subnormal IQ and the inability to be gainfully employed. Counsel urged the Tribunal to exercise leniency in light of these trying

circumstances and to impose alternative sanctions on Dr Lee so he may continue to support his family and serve patients in the heartlands.

(e) Dr Lee pleaded guilty at an early stage and is remorseful. Dr Lee's decision to contest the OM charges before the State Courts does not diminish his early plea of guilt before the Tribunal. In *Dr Teo Tiong Kiat* (14 March 2014), the DT gave full credit to Dr Teo's early guilty plea despite Dr Teo's decision to challenge three "hit-and-run" charges before the Courts. The DT commented that Dr Teo was entitled to claim trial before the Courts.

22 Testimonials from four of Dr Lee's employers, three female patients and Dr Lee's wife were also tendered[7]. The salient points are summarised below:

(a) Dr E1, a former member of the Organisation A and former President of the Organisation B, hired Dr Lee as a locum after Dr Lee's release from prison and says that Dr Lee "has shown extreme professionalism" in the management of his patients and that his staff and patients have "high praise and regard for the way he conducts himself during the consultations".

(b) Dr E2 has employed Dr Lee as a locum for about one year and finds Dr Lee to be "courteous, caring and careful in attending to all his patients" and that he "always conducts himself with dignity and respect as befitting a medical professional". He observes that many previous patients of Dr Lee visit the clinic to be treated by Dr Lee as they trust his medical expertise and professionalism.

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[7] Respondent's mitigation, Tab 1.

(c) Dr E3 is an anchor doctor at the Clinic A where Dr Lee has performed locum services. He attests that Dr Lee "is an industrious, caring and good Doctor … with female patients, he calls for the nurses on duty to chaperone".

(d) Dr E4 is an Adjunct Assistant Professor at the Institution A and Institution B, and has engaged Dr Lee for locum services. She observes that "proper doctor-patient professional decorum has been observed at all times, including having a nurse chaperone when examining female patients, and the feedback from patients and staff have been "nothing but positive".

(e) Ms PT1 has been consulting Dr Lee for over 40 years. She says that she has "always been very comfortable in his care, knowing the wealth of experience that he possesses and knowing that he will always carry out his work with utmost professionalism and kindness".

(f) Ms PT2 has been consulting Dr Lee since she was a child and continues to do so three decades later. She feels very comfortable around Dr Lee and travels long distances to see him at various clinics. She has a young daughter whom she brings to see Dr Lee whenever she is unwell, and says "[t]o have three generations of patients who continue to consult him should speak for itself".

(g) Ms PT3 has been consulting Dr Lee as her GP for 35 years. He has been her preferred doctor and she would consult him wherever the clinic location. She says that "[t]hrough the years, he has always been professional in his medical examinations and has never ever made [her] feel uncomfortable or embarrassed".

(h) Dr W is Dr Lee's wife of 48 years. She had a stroke in 2011 and testifies to his devotion and care to her, working five days a week as a locum all over the island at 75 years old and still waking up four to five times a night to attend to her toilet and other needs: "[t]his is his life work. Though no longer young, he has never lost his zeal and love for treating patients. I could honestly describe him as a truly good doctor, husband, friend and companion".

23 As for sentencing considerations, Mr Lin and Mr Phang urged the Tribunal to adopt a sentencing methodology[8] as follows:

(a) The overarching consideration in sentencing is that the sentence must be just and fair in light of all the circumstances of the case (*Ang Peng Tiam v Singapore Medical Council* [2017] 5 SLR 356 at [89]) and the sentencing Court must balance the principle of deterrence against the principle of proportionality and impose a sentence reflecting the culpability of the offender (*Tan Kay Beng v Public Prosecutor* [2006] 4 SLR(R) 10 at [31]).

(b) A core aspect of the sentencing process is the "true culpability" of the doctor (*Kwan Kah Yee* at [72] to [73]), and such culpability is assessed holistically, based on all the circumstances, which includes whether special efforts were made to avoid detection or the offender's motive in committing the offence (*Vasentha d/o Joseph v Public Prosecutor* [2015] 5 SLR 122 at [49] to [50]).

[8] Respondent's mitigation at [10] – [20].

(c) After assessing culpability, the Court must consider the entire spectrum of sentences prescribed by statute to identify where the offender's conduct would fall within the spectrum in order to determine the appropriate sentence to impose, with the statutory maximum imposed for conduct that was the "worse conceivable for that particular offence" (*Public Prosecutor v Hue An Li* [2014] 4 SLR 661 at [58]).

24 Mr Lin set out a table of sentencing precedents[9] for the Tribunal's consideration.

25 In relation to the First Charge, Mr Lin submitted that there are no sentencing precedents which are directly on point in relation to Dr Lee's breach of section 53(1)(b) of the MRA due to his conviction under the OM charges. Mr Lin distinguished the cases cited by the SMC involving doctors who have been convicted of sexual offences. It was submitted that the case of *Dr Ong* could be distinguished because Dr Ong was the one who initiated contact with the 14 year old girl and made preparations to have sexual intercourse with her. In contrast, Dr Lee's culpability was much lower as there was no element of pre-meditation or planning in his case. *Dr B*'s case was distinguished on the ground that the doctor there had insulted the modesty of multiple victims and had likely done so over a period of time, with pre-meditation, whilst Dr Lee's case arose from a single complainant and he has not received any similar complaints since resuming practice in August 2016.

26 Mr Lin cited and distinguished the three cases of non-sexual offences in which sanctions of suspension or removal from the Register were ordered: *Dr*

[9] Respondent's table of sentencing precedents dated 7 March 2018, at Tab 2 of the Respondent's mitigation.

*Liew Kert Chian* (1 April 2016), *Dr Cheng Shao Lin Benny* (15 March 2016) and *Dr Ho Thong Chew* (9 February 2015). Mr Lin stated that the serious sanctions ordered in those cases were justified due to the intentional and illegal prescriptions of cough syrup (drugs) to the public for profit, while Dr Lee's case had a much lower culpability since he did not knowingly perpetrate or contribute to any potentially serious harm to the public in the same degree.

27 Finally, Mr Lin raised the decision of the Interim Orders Committee ("IOC") for *Dr Wee Teong Boo* (22 April 2017). That case involved a medical practitioner who had been charged with two offences under the Penal Code for raping a female patient and for using criminal force against her by rubbing her vagina with his penis in the course of carrying out a medical examination on her with the intent to outrage her modesty. In deciding not to impose an interim suspension against Dr Wee, the IOC held (at [33]) that an assessment of potential risk to the public requires an analysis of both the gravity of the consequences of the risk (if it materialises) and whether the risk is high or low. In assessing the risk level, the IOC took into account that the charges were isolated allegations from a single complainant, and there were no previous complaints against Dr Wee in his practice of over 40 years. The IOC ordered that Dr Wee undertake consultations of female patients with a female chaperone, and was of the view that this significantly reduced the risk of any subsequent allegation of rape or molest.

28 With respect to specific deterrence, it was stressed that Dr Lee has a very low likelihood of re-offending[10]. The incident leading to these proceedings was his only brush with the law. He has sold off his clinic and has not received any

[10] Respondent's mitigation at [57] – [62], [99] – [101].

complaints about his professional services since he resumed practice as a locum doctor in August 2016, and he has taken steps to change his practice by ensuring there is a chaperone in the room when attending to female patients. Accordingly, it was submitted that Dr Lee is not an errant doctor that the public needs protection from.

29 With respect to general deterrence, Mr Lin stressed that a deterrent sentence "does not necessarily mean or invariably require a sentence of suspension" (*Dr Wong Mei Ling Gladys* (16 October 2015) at [18]), and in principle, a fine can restore the public confidence in the medical profession where a doctor was convicted of an offence implying a defect in character (*Dr Teo Tiong Kiat* (28 January 2014)). Taking into account Dr Lee's mitigating factors, the fact that he has already served a jail term for the OM convictions, and the fact that there was no dishonesty or deception by Dr Lee to the police during the investigations into the OM charges, Mr Lin emphasised that a fine was appropriate to address both charges in all the circumstances of the case.

30 In relation to the Second Charge, Mr Lin also submitted that a fine would be a sufficient professional sanction. He referred to three authorities, two of which were also relied on by counsel for the SMC above. In *Dr Wong's* and *Dr Chio's* cases, the doctors were fined $10,000 by the DT in relation to their conviction of a fraudulent declaration charge under section 62(a) of the MRA, in breach of section 53(1)(a) of the MRA. In the third case, *Dr Ng Hor Liang* (16 October 2015), the DT ordered a $20,000 fine against Dr Ng in relation to his convictions under one charge of procuring Practising Certificate by knowingly making a fraudulent declaration in writing to the SMC, and one charge of practising without a valid Practising Certificate. Mr Lin submitted that the factual matrix of the present case was very similar to the three cases above, except that in those cases, the State Courts had earlier sentenced the doctors to

a heftier fine of $4,000 for the fraudulent declaration charge under section 62(a) of the MRA, compared to Dr Lee's fine of $3,000. It was submitted before us that a sentence of a fine of less than $10,000 would be appropriate to address Dr Lee's culpability in the present case[11].

31 Further, it was highlighted to us that Dr Lee was under severe stress at the time of making the declaration to SMC, and being unfamiliar with investigation and legal processes, believed in the possibility that the Attorney General's Chambers ("AGC") would accept his representations and drop the OM charges against him since he had not heard back from the AGC for close to two months since his representations to them[12]. In a momentary lapse of judgment, Dr Lee made a false declaration on his application form for renewal of his Practising Certificate.

32 Based on this sentencing framework, case precedents and mitigating factors in the case, Mr Lin submitted that Dr Lee's conduct and culpability was not amongst the "worst conceivable", and a severe professional sanction such as a removal from the Register would be disproportionate and against the interests of justice. A fine would be sufficient to meet the need for deterrence.

**Decision**

33 The main issue of contention between the SMC and Dr Lee was whether the circumstances were sufficiently serious to warrant a removal of Dr Lee's name from the Register. The SMC has sought a removal from the Register in relation to the First Charge and a fine in relation to the Second Charge, whereas

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[11] Respondent's mitigation at [124], [128].

[12] Respondent's mitigation at [31], [125], [130].

Dr Lee's position is that a fine would suffice as the appropriate sanction in all the circumstances of the case.

34 In these Grounds we will first set out the relevant factors that determine when a removal from the Register under section 53(2) of the MRA may be appropriate. We will then explore the sentencing approach taken in medical disciplinary cases involving improper conduct of a sexual nature. Finally, we will consider the circumstances of the present case and provide our reasons for the sentence imposed on Dr Lee.

***When a removal from the Register may be appropriate***

35 It is trite law that in sentencing, a DT may take into account considerations of both general and specific deterrence, and bearing in mind that sanctions in disciplinary proceedings serve to (i) ensure that the offender does not repeat the offence, (ii) uphold the standing of the medical profession, and (iii) ensure the protection of the public interest (*Kwan Kah Yee* at [50] to [55]).

*Singapore*

36 We note that of the 126 disciplinary cases against doctors which were reported between 2008 and 2017, only three have resulted in the removal of a doctor from the Register[13]. The common thread in these cases seems to be that the doctors in question had flagrantly abused the trust reposed in them as doctors and therefore shown themselves to be unfit to practice medicine. We examine them below.

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[13] Dr Ong Theng Kiat (29 April 2015); Dr Ho Thong Chew (18 December 2014); Dr AAN (13 March 2009) ("AAN").

37 The first two reported cases involved the sale of hypnotics in large quantities in egregious circumstances. The doctors had repeatedly facilitated the abuse of addictive controlled substances which could have catastrophic effects on the health of abusers. In *Dr Ho*, the DT noted (at [11], [15] to [17]) that Dr Ho had transacted large volumes of the hypnotics (about 1907 litres over five months) for substantial profit, and had persisted in this even after his clinic had been raided. In *Dr AAN* (13 March 2009), the DT took into account that he was a repeat offender who had previously been caught for the same offence in 1993. On that occasion, his name had also been removed from the Register but it was restored two years later.

38 The third case, cited by both parties, involved an obstetrician and gynaecologist who had pleaded guilty in the State Courts to several charges of having sex with a minor, who was only 14 at the time. In *Dr Ong*, the DT found that Dr Ong had lied to the victim about his age and profession to encourage her to engage in unprotected intercourse. The doctor had also made a false declaration to the SMC that he was not the subject of any criminal investigations in order to obtain a practising certificate. The DT found that Dr Ong's offence of sex with a minor was a grave one which brought the profession into disrepute and noted that the nature of the offence and the particular facts relating to his criminal convictions rendered him fundamentally unsuited to continue as a registered medical practitioner.

39 Although it may appear from the above cases that a removal from the Register would be ordered in cases where there are serious abuses of trust, we are mindful that the practice does not always bear this out. For example, in the case of *Dr Looi Kok Poh* (2014), Dr Looi performed a procedure on his patient without obtaining his informed consent, and subsequently instructed his nurse to alter the patient's consent form to cover up this fact. The DT held that in

acting as he did, Dr Looi had "flagrantly violated the standards of probity and moral integrity which are expected of doctors who are permitted to practice medicine" and that his actions were "objectionable and repugnant". However, Dr Looi was only suspended from practice for 12 months and fined $10,000.

40 In light of this, and given the dearth of reported local cases where a removal from the Register had been ordered, we turned to study the position in the UK and Australia for general principles relating to a removal from the Register, and to distil some factors which would warrant such a removal.

*United Kingdom*

41 In England, the Medical Practitioners Tribunals ("MPT") are guided by the "Sanctions guidance" (May 2017) (the "UK Sanctions Guidance"). The *UK Sanctions Guidance* was developed by a steering group of staff from the Medical Practitioners Tribunal Services and the General Medical Council ("GMC"), and approved by the Council of the GMC.

42 Before we elaborate on the guidelines under the UK Sanctions Guidance, we pause to note certain differences in the medical disciplinary regime in England and Singapore.

43 First, in Singapore, the charges brought by the SMC have to be proven beyond a reasonable doubt, whereas the standard of proof before an adjudication panel in England is that of a balance of probabilities (i.e., the civil standard) (see J.K. Mason and G.T. Laurie, *Law and Medical Ethics* (Oxford University Press, 8th Ed, 2011) at para 1.40).

44 Second, while both the MPT in England and DT in Singapore are empowered to order a doctor's name to be removed from the register, the

requirements with respect to restoration of medical practitioner's name to the register differ. In England, under section 41(2)(a) of the Medical Act 1983, a doctor whose name has been erased cannot apply to be restored to the medical register until five years have elapsed. In Singapore, a doctor who has been removed from the register pursuant to an order made by a DT under section 53 of the MRA cannot make an application to be restored until three years have elapsed, and unless the medical practitioner has complied with all the terms of the order made against him: section 56(2)(a), MRA.

45 Notwithstanding the above differences, the UK Sanctions Guidance may still serve as a broad guide in deciding the issue of when a removal from the Register may be appropriate. We further note that the rationale for imposing sanctions as enunciated in the UK Sanctions Guide is similar to that in Singapore, namely, "to protect the public," "maintain public confidence in the medical profession" and "maintain proper professional standards and conduct for members of the profession" (at para 14).

46 Accordingly, the UK Sanctions Guidance considers that (at para 108):

> **Erase the doctor's name from the medical register**
>
> Erasure may be appropriate even where the doctor does not present a risk to patient safety, but where this action is necessary to maintain public confidence in the profession. For example, if a doctor has shown a blatant disregard for the safeguards designed to protect members of the public and maintain high standards within the profession that is incompatible with continued registration as a doctor.

47 As for when conduct may properly attract an order for erasure rather than a suspension, the UK Sanctions Guidance explains thus (at para 92):

> 92 … A period of suspension will be appropriate for conduct that is serious but falls short of being fundamentally incompatible with continued registration (i.e. for which erasure is more likely to be the appropriate sanction because the

> tribunal considers that the doctor should not practise again either for public safety reasons or to protect the reputation of the profession). [Emphasis added]

48 The UK Sanctions Guidance also sets out a non-exhaustive list of factors which would indicate when a removal from the Register may be appropriate (at para 109):

> **Erase the doctor's name from the medical register**
>
> …
>
> **109** Any of the following factors being present may indicate erasure is appropriate (this list is not exhaustive).
>
> **a** A particularly serious departure from the principles set out in Good medical practice where the behaviour is fundamentally incompatible with being a doctor.
>
> **b** A deliberate or reckless disregard for the principles set out in Good medical practice and/or patient safety.
>
> **c** Doing serious harm to others (patients or otherwise), either deliberately or through incompetence and particularly where there is a continuing risk to patients …
>
> **d** Abuse of position/trust (see Good medical practice, paragraph 65: 'You must make sure that your conduct justifies your patients' trust in you and the public's trust in the profession').
>
> **e** Violation of a patient's rights/exploiting vulnerable people …
>
> **f** Offences of a sexual nature, including involvement in child sex abuse materials …
>
> **g** Offences involving violence.
>
> **h** Dishonesty, especially where persistent and/or covered up …
>
> **i** Putting their own interests before those of their patients …
>
> **j** Persistent lack of insight into the seriousness of their actions or the consequences. … [Emphasis added]

49 From the foregoing, it may be observed that in the UK, the question in considering an order for erasure is whether the conduct was so serious so as to be fundamentally incompatible with continued registration, and in this regard, the presence of factors such as abuses of a position of trust, offences of a sexual nature and dishonest conduct have been identified as indicating that erasure may be appropriate. It will also be noted that these factors can be identified in the three Singapore cases cited above where the doctors had been removed from the Register. Finally, in making an order for erasure, protecting the public and maintaining public confidence in the profession are of paramount consideration.

*Australia*

50 We then considered the approach taken in Australia. As with England, the standard of proof in Australia is the civil standard, on a balance of probabilities (*Medical Board of Australia v Myers* [2014] WASAT 137 at [8]). With regards to orders for erasure, section 196(2)(e) of the Australian Health Practitioner Regulation National Law Act 2009 (the "National Law") empowers a tribunal to cancel a practitioner's registration after hearing a matter about a registered health practitioner, and section 196(4) further empowers a tribunal to, among other things, disqualify the person from applying for re-registration for any specified period. This is unlike in UK and Singapore, where medical practitioners who have their registrations cancelled are entitled to apply to be restored on the register after a period of five years and three years respectively.

51 In interpreting section 196(2)(e) of the National Law, the Western Australia State Administrative Tribunal ("WASAT") in *Medical Board of Australia v Duck* [2017] WASAT 28 ("*Duck*") set out a guide on when an order for cancellation of registration may be appropriate (at pages [32], [33]):

> **Cancellation of registration**
>
> The jurisdiction of the Tribunal to cancel a practitioner's registration is exercised not for the purpose of punishing the practitioner concerned, but for the protection of the public and the reputation and standards of the medical profession...
>
> Where an order for cancellation of a practitioner's registration is contemplated, the ultimate question is whether the material demonstrates that the practitioner is not a fit and proper person to remain a practitioner...
>
> A practitioner is not a fit and proper person to be a registered practitioner and should be removed from the Register where the conduct is so serious that the practitioner is permanently or indefinitely unfit to practise ...
>
> The practical effect of an order cancelling registration is that if a practitioner wishes to resume practice he/she must persuade the relevant regulatory authority that he/she is truly reformed and that he/she is a fit and proper person to resume practice.
>
> **Suspension**
>
> Suspension is a less serious result and differs from cancellation of a practitioner's registration because suspension is for a specified limited period (Myers at [20]).
>
> The proper use of suspension is in cases where the practitioner has fallen below the high standards to be expected of such a practitioner, but not in such a way as to indicate that the practitioner lacks the qualities of character which are the necessary attributes of a person entrusted with the responsibilities of a practitioner
>
> ... That is, suspension is suitable where the Tribunal is satisfied that, upon completion of the period of suspension, the practitioner will be fit to resume practice ... [Emphasis added]

52 The above dicta in *Duck* was cited with approval by the Victorian Civil and Administrative Tribunal ("VCAT") in *Medical Board of Australia v Alkazali (Review and Regulation)* [2017] VCAT 286. In *Duck*, the respondent doctor was ordered to be removed from the Register for, among other things, inappropriately prescribing Xanax to a Patient with whom he had also been engaging in sexualised behaviour.

53 It is clear that in Australia, as with the UK, protecting the public and maintaining public confidence in the profession are paramount considerations when contemplating an order for erasure, and the "ultimate question is whether the material demonstrates that the practitioner is not a fit and proper person to remain a practitioner." Drawing the common threads together, the overarching test for when a removal from the Register is appropriate appears to be whether a practitioner has displayed serious misconduct such that he may be inferred to be lacking in the qualities of character which are necessary attributes of a person entrusted with the responsibilities of a medical practitioner, the lack of such qualities being fundamentally incompatible with continued registration. Additionally, in contemplating a removal from the Register, the need to protect the public and maintain the integrity of the medical profession are paramount considerations.

54 With this, we turned our attention to the specific treatment of sexual misconduct in the medical profession, bearing in mind that offences of a sexual nature has been identified by the UK Sanctions Guidance as a factor strongly suggesting erasure may be warranted, and that it has been present in at least 1 reported case in Singapore (*Dr Ong*) and in Australia (*Duck*) where a removal from the Register was ordered.

***Misconduct involving sexual offences***

55 Our review of the cases and ethical guidelines in Singapore, UK and Australia puts it beyond doubt that trust is the foundation of a doctor-patient relationship. In disciplinary proceedings, the gravamen of a sexual misconduct offence by a medical practitioner against a patient centres on an abuse of the trust that is reposed in the medical practitioner by the patient and the community.

56 The introductory paragraph to SMC's Ethical Code and Ethical Guidelines (2002 Edition) ("2002 ECEG") reads:

> The medical profession has always been held in the highest esteem by the public, who look to their doctors for the relief of suffering and ailments. In modern medical practice, patients and society at large expect doctors to be responsible both to individual patients' needs as well as to the needs of the larger community. Much trust is therefore endowed upon doctors to do their best by both. This trust is contingent on the profession maintaining the highest standards of professional practice and conduct.

57 Maintaining proper sexual boundaries is crucial to upholding the trust that patients and the community repose in doctors. This is reinforced by the 2016 edition of the ECEG ("2016 ECEG"), which although came about after the offence underlying the First Charge had been committed, contains relevant principles that bear mention:

> **C4. Propriety and sexual boundaries**
>
> In order to uphold the trust that patients and the community repose in doctors, it is critical that you maintain propriety and observe appropriate boundaries in your relationships with patients. Having an inappropriate or sexual relationship with patients is unprofessional as it exploits the patient-doctor relationship and may cause profound psychological harm to patients and compromise their medical care. Maintaining propriety means:
>
> You must not breach sexual boundaries with your patients by inappropriate physical contact or any sexualised behaviour of any kind through words, gestures, actions or other behaviour designed to arouse sexual feelings or desires.
>
> When you need to ask intimate questions or examine intimate parts of the body, you must explain the need to do so and be sensitive to any discomfort or hesitancy on patients' part and reconsider your approach if they express discomfort.
>
> You must ensure that during clinical examination, your approach would leave reasonable patients feeling safe, secure and comfortable in your presence, without any misconception

> or fear that their modesty is being compromised or that you are taking advantage of them for your own gratification.
>
> If your patients indicate that they would be more comfortable having a chaperone for clinical examination, or you assess them to be so, you must have a chaperone present. If in your judgment of the situation you are better protected if there is a chaperone, you may insist on having one present. If despite your explanations and reassurances patients object, you may decline to examine them until a mutually acceptable chaperone is available.
>
> When you need patients to undress for clinical examination, you must ensure their privacy. … [Emphasis added]

58 From the precedents cited by the parties which we will discuss below, it is clear that sexual misconduct by doctors have been treated with severity, and a suspension or a removal from the Register was ordered in all of the cases.

59 We raise two further cases in this regard. In the case of *Dr Kong Sim Guan* (2012), the respondent psychiatrist was suspended for 3 years and fined $10,000 for maintaining a sexual relationship with a patient. In the case of *Dr AAB* (2008), the respondent doctor was suspended for a period of 24 months and censured for, among other things, having a consensual sexual relationship with his patient that spanned almost 2 years. The Committee remarked (at [4]):

> The Courts in Singapore and also in England have always supported the finding of the medical body that sexual intercourse with a patient is a most serious breach of the proper relationship between doctor and patient amounting to infamous conduct in a professional respect.

60 The Committee was of the view that his action was a serious breach of professionalism and stated that it needed to send a clear signal to the profession that gross improper behaviour cannot be tolerated.

61 Turning to the UK, the UK Sanctions Guidance states that that sexual misconduct seriously undermines public trust in the profession. It states (at 142):

> **Abuse of professional position**
>
> **142** Trust is the foundation of the doctor-patient partnership. …
>
> …
>
> **Predatory behaviour**
>
> **147** If a doctor has demonstrated predatory behaviour, motivated by a desire to establish a sexual or inappropriate emotional relationship with a patient, there is a significant risk to patient safety, and to public confidence and/or trust in doctors. …
>
> **Sexual misconduct**
>
> **149** This encompasses a wide range of conduct from criminal convictions for sexual assault and sexual abuse of children (including child sex abuse materials) to sexual misconduct with patients, colleagues, patients' relatives or others. …
>
> **150** Sexual misconduct seriously undermines public trust in the profession. The misconduct is particularly serious where there is an abuse of the special position of trust a doctor occupies, or where a doctor has been required to register as a sex offender. More serious action, such as erasure, is likely to be appropriate in such cases.
>
> **Sex offenders and child sex abuse materials**
>
> **151** Any doctor who has been convicted of, or has received a caution for, a sexual offence listed in Schedule 3 to the *Sexual Offences Act 2003* must notify the police (register) under section 80 of the *Sexual Offences Act 2003* and may need to undertake a programme of rehabilitation or treatment.
>
> …
>
> **155** To protect the public, the tribunal should consider whether any conditions it imposes should stipulate no contact with any patients while the doctor is registered as a sex offender. (Doctors may of course be registered as sex offenders following other sexual offences not related to child sex abuse materials.)
>
> **156** The tribunal should also consider whether doctors registered as sex offenders should be they pose to patients before they may be permitted to resume any form of practice.

> **157** When a tribunal is reviewing cases where the doctor has completed the prescribed period of registration as a sex offender (which is dependent on the nature and gravity of the offence) and is no longer required to register as a sex offender, the tribunal should take into account:
>
> **a** the seriousness of the original offence
>
> **b** evidence about the doctor's response to any treatment programme they have undertaken
>
> **c** any insight shown by the doctor
>
> **d** the likelihood of the doctor reoffending
>
> **e** the possible risk to patients and the wider public if the doctor were allowed to resume unrestricted practice
>
> **f** the possible damage to the public's trust in the profession if the doctor were allowed to resume unrestricted practice.
>
> …
>
> **159** If the tribunal has doubts about whether a doctor who no longer needs to register as a sex offender should resume unrestricted practice, it should not grant the doctor unrestricted registration. [Emphasis added]

62 In Australia, the Medical Board of Australia has developed specific guidelines on sexual boundaries for doctors under section 39 of the National Law. Sexual Boundaries: Guidelines for doctors (28 October 2011) ("Sexual Boundaries Guidelines") complement the general medical ethics guidelines in "Good Medical Practice: A Code of Conduct for Doctors in Australia". The Sexual Boundaries Guidelines provides that sexualised behaviour "includes any words or actions that might reasonably be interpreted as being designed or intended to arouse or gratify sexual desire," and explains (at section 4):

> **4. Why breaching sexual boundaries is unethical and usually harmful**
>
> A breach of sexual boundaries is unethical and unprofessional because it exploits the doctor-patient relationship, undermines the trust that patients (and the community) have in their doctors and may cause profound psychological harm to patients and compromise their medical care.

> **Power imbalance**
>
> The doctor-patient relationship is inherently unequal. The patient is often vulnerable. In many clinical situations, the patient may depend emotionally on the doctor. It is an abuse of this power imbalance for a doctor to enter into a sexual relationship with a patient.
>
> **Trust**
>
> Trust is the foundation of a good doctor-patient relationship. Patients need to trust that their doctors will act in their best interests. It is a breach of trust for a doctor to enter into a sexual relationship with a patient. This breach of trust may impact on that patient's (or other patients') ability to trust other doctors. … [Emphasis added]

63 In summary, the cases in Singapore, UK and Australia point towards the fact that the sting of sexual misconduct by doctors is in the clear abuse of trust, which not only causes harm to the patients but seriously undermines public trust and confidence in the profession. However, it is clear that sexual misconduct does not automatically attract a removal from the Register, and each case will have to depend on its own unique facts.

***Precedents***

64 We now consider the sentencing precedents cited to us for cases involving similar misconduct.

*First Charge*

65 We agreed with Mr Lin that there was no sentencing precedent directly on point with the instant case. Notwithstanding this, we found the case of *Dr A* (1982) to be useful in that it involved a doctor who had been charged with using criminal force on a female patient with the intent to outrage her modesty. The doctor undressed the patient when she was in an unconscious state and arranged her body in certain postures for the purpose of taking photographs of her. Dr A was sentenced to be removed from the Register. Without the benefit of further

facts and detailed reasons for the decision, we did not think a meaningful comparison could be made with the instant case to determine whether Dr Lee's culpability was greater or lesser than Dr A and mete out an appropriate penalty accordingly. Instead, in our view, the usefulness of *Dr A*'s case is in the fact that a removal from the Register had been ordered for a case involving an OM offence, which shows that such conduct is met with grave severity.

66 The cases of *Dr B* (10 May 2007) and *Dr C* (22 July 1998) also merited consideration. Both medical practitioners were convicted for sexual related offences although neither had physically touched the victims involved. In those cases, the offences were also committed outside of the doctors' professional role. Notwithstanding that *Dr B*'s case involved more than one victim, this Tribunal's view is that Dr Lee's culpability is greater than both Dr B and C in that there was direct contact with the Patient's breast, more than once, and the actions were done in the course of a medical consultation. Dr C was removed from the Register while Dr B was suspended for two years and ordered to practice within a supervisory framework for a period of 1 year. We observe that while the sentences differed, the suspension sentence of two years plus another year of supervised practice in Dr B's case arguably comes close to a removal from the Register, whereby the practitioner struck off would have been entitled to apply to be reinstated after three years under the MRA. Both sentences are also much more severe than the overall fine Mr Lin proposes for both charges in the instant case.

67 As for the case of *Dr Ong*, we agreed with Mr Lin that it involved more aggravated conduct than the instant case. *Dr Ong*'s case involved pre-meditation, and the engaging of sexual intercourse with a minor on two occasions, one of which involved unprotected sex. In contrast, there was no pre-meditation in the instant case and it did not involve a minor. However, that is

not to say that Dr Lee's conduct cannot still be within the higher end of the spectrum of egregious conduct by medical practitioners, and in this regard it must be borne in mind that Dr Lee's acts of molestation had led the Patient to suffer from Post-Traumatic Stress Disorder ("PTSD") for which she had to seek professional help for almost a year.

68 From the above cases, it may be observed that sexual misconduct in the medical profession is met with severity, with sentences ranging from a suspension to a removal from the Register.

69 The severe sentences are also reflected in the two outrage of modesty cases relating to other professions, namely, *Dr D*'s case and *Atan*. We were mindful that these cases related to other professions but were in any event of the view that Dr Lee was no less culpable than the respective dentist and lawyer, in that all the cases involved a clear and flagrant abuse of trust by the professionals in directly touching a female's body parts against their will.

70 We did not find much assistance in the three cases of non-sexual offences cited by the Respondent, namely, *Dr Liew Kert Chian* (1 April 2016), *Dr Cheng Shao Lin Benny* (15 March 2016) and *Dr Ho Thong Chew* (9 February 2015), as they relate to matters which are very different from the instant case. As for the IOC case of *Dr Wee Teong Boo* (22 April 2017), it must be noted that in that case, the serious charges of rape and molest against Dr Wee at that stage had yet to be proven beyond a reasonable doubt, and the overall assessment of risk, the gravity of the offence and the eventual decision not to impose an interim suspension sentence should be viewed in that context. In the instant case, Dr Lee had already been convicted of the offences underlying the First and Second Charge, and also had had his appeal dismissed.

*Second charge*

71 In relation to the Second Charge, both parties have submitted that a fine would be a sufficient professional sanction. As regard precedents, both raised the cases of *Dr Wong* and *Dr Chio*, where the doctors were fined $10,000 in relation to their conviction of a fraudulent declaration charge under section 62(a) of the MRA, in breach of section 53(1)(a) of the MRA.

72 Counsel for the SMC relied on the above precedents to seek a fine for $10,000 for the second charge. Counsel for the Respondent however, stressed that in those cases, the State Courts had earlier sentenced the doctors to a higher fine of $4,000 for the fraudulent declaration charge under section 62(a) of the MRA, compared to Dr Lee's fine of $3,000. As such, it was submitted that a sentence of a fine of less than $10,000 would be an appropriate sanction.

73 We are not persuaded by Mr Lin's argument for what appears to be a general proportionate discount to reflect the $1,000 difference in the fines ordered in the criminal proceedings[14], without an examination into the minutiae of why and how the $4,000 fines were arrived at in the first place. Even if this were done, this Tribunal would be hesitant to make reference to the sentence ordered by the criminal courts in deciding the corresponding sanction in these disciplinary proceedings due to the different nature of criminal and medical disciplinary proceedings. As DTs are primarily concerned with the protection of public confidence and the reputation of the profession, mitigating factors which weigh in favour of an offender in criminal proceedings are viewed in a different light where disciplinary proceedings are concerned (*Kwan Kah Yee* at

[14] Respondent's mitigation at [128] – [132]

[58]). The appropriate DT sanctions would have to depend on the specific facts of each case with the purpose of medical disciplinary proceedings in mind.

74 That being said, this Tribunal also finds some difficulty with the SMC's submissions for a separate penalty for the Second Charge, over and above a removal from the Register for the First Charge. We note that no authority on point has been cited for this, and it is open to this Tribunal to order a single sanction for both Charges. In our view, a global penalty based on the entirety of Dr Lee's conduct would at least be consistent with the decision in *Dr Ong*'s case, where the sanction of removal was ordered after the DT considered Dr Ong's charges relating to sexual misconduct as well as the fraudulent declaration charge under section 62(a) of the MRA. Counsel for the SMC attempted to distinguish *Dr Ong*'s case by stating that the SMC had not made submissions for a separate fine to be ordered in that case for the fraudulent declaration charge. Be that as it may, one can only speculate if the DT would have ordered an additional $10,000 penalty if SMC had made the relevant submissions. Mr Nalachandran, quite rightly, also did not go so far as to challenge the adequacy of the sentence in *Dr Ong*'s case. As alluded to above, both Dr Lee and Dr Ong exhibited reprehensible conduct and we see no reason why Dr Lee should be sanctioned more severely than Dr Ong.

***Circumstances of the present case***

75 Having considered the framework and precedents, we examined the appropriate sentence to be imposed in the present case.

76 First, we considered that a global sentence may be appropriate in all the circumstances of this case. In *Duck*, the Medical Board of Australia held (at page 31) that a global approach to sanction, rather than the imposition of separate sanction for each finding as to conduct, may be more appropriate in

disciplinary proceedings where the facts of the case are so inextricably woven as to make it difficult to meet a clear standard of prescription, or alternatively, where the practitioner's conduct, if considered alone, would be subsumed in the more serious conduct. In *Dr Chan Heang Kng Calvin* (22 November 2017), the DT ordered a suspension of six months as a global sentence for various charges against the respondent, reasoning:

> We did not think it would be necessary to impose separate penalties for the proceeded charges … We were of the view that a single set of penalties for all proceeded charges will better reflect the cumulative gravity of the Respondent's breaches. Secondly, on the facts of this case, given that we were of the view that a global 12-month suspension would be appropriate, we also did not think it would serve any additional purpose to add on a fine to the Respondent. [Emphasis added]

77 In the instant case, we observed that both the First and Second Charge against Dr Lee stem from the same incident and may be viewed as a single transaction. Both charges against Dr Lee also relate to a defect of character which makes Dr Lee unfit for the profession, namely, that in being convicted of the OM Charges and a charge involving fraud or dishonesty, it is clear that Dr Lee lacks the hallmarks of integrity and honesty which are the necessary attributes of a person entrusted with the responsibilities of a practitioner. As we will explain below, we found that his serious deficiency in these virtues was fundamentally incompatible with his continued registration.

78 The nature of the offence underlying the First Charge was not of a molest *simpliciter*. We agree with the aggravating factors cited by counsel for the SMC and note that that Dr Lee's act had clearly caused harm and distress to the Patient, who suffered from PTSD as a result of his actions for which she had to seek professional help for almost a year. As observed by Chan Seng Onn J in *Winston Lee Siew Boon v Public Prosecutor* [2015] 4 SLR 1184 at [211] to

[212], Dr Lee was cunning enough to disguise his multiple acts of molestation as part of the medical examination to avoid complaint or discovery:

> I agree with the prosecution that what is particularly aggravating in this care is the fact that the appellant had abused his position of trust as a medical practitioner. In fact he committed the act on one more occasion after the complainant had given him the benefit of the doubt the first time. I further note that he was particularly cunning in disguising his act of molestation as if it were part of his explanation of a potential medical problem to his patient in the course of a medical examination to reduce the likelihood of the patient perceiving it as molestation and therefore minimise the risk of the patient complaining or reporting to the police. The Prosecution also points me to an instructive passage in *Chow Dih v Public Prosecutor* [1990] 1 SLR(R) 53. While in that case the doctor was charged with cheating for deceiving his patients into believing that they had ailments so that they would become regular customers, the observations expressed by Chao Hick Tin JC (as he then was) at [58] are relevant to the present case:
>
> > I have given this matter the most anxious consideration as it involves a member of one of the noble professions. The charges relate to six patients and they stretched over a period of more than three months; it is not just an isolated case of indiscretion. …Taking advantage of their ignorance and trust, the appellant made them attend as his clinic regularly. … These patients trusted him and did not suspect anything was awry. He had no regard whatsoever for the fears and anxieties which his dishonest representations had caused to his patients. He had no qualms in creating misery for them. *He has abused a position of trust. Such conduct cannot be tolerated without the public's confidence in the medical profession being undermined. What he has done is mean and despicable. He has brought shame to the profession which has always been held in high esteem by the public.* [Emphasis added]
>
> The complainant trusted the appellant and even gave him the benefit of the doubt after the 8 June Incident. It is loathsome that he did not relent and tried it again by molesting her twice on the second occasion. He violated the dignity of the complainant on more than one occasion and in the conduct of his noble and professional duty. He clearly abused the trust that the complainant had placed in him as her doctor. [Emphasis in original]

79 In outraging his patient's modesty in the manner that he did, Dr Lee has demonstrated grossly improper conduct that diminishes the standing of members of the profession in the eyes of the community.

80 Turning to the Second Charge, we agree with Mr Nalachandran that the fraudulent declaration to the SMC was a direct attempt to conceal the criminal investigation against him in respect of the matters arising in the First Charge, which clearly showed dishonesty. We do not accept as valid mitigation the explanation that Dr Lee had optimistically but erroneously thought, at the time of making the declaration to SMC, that AGC would be dropping the OM charges against him having not heard back from AGC for close to two months since his representations to them on the same. The declaration to SMC did not relate to charges, but to whether there had been any investigations against Dr Lee since his last declaration to the SMC. Regardless of whether Dr Lee thought that the OM charges might have been dropped, he knew that investigations had been made against him. In stating that no investigations had been made against him, he was clearly being dishonest.

81 This Tribunal is seriously concerned with Dr Lee's attempt to conceal the investigations against him for the OM charges. In this regard, we note the insightful comments of the learned Chief Justice Sundaresh Menon, at the inaugural Lecture of the Academy of Medicine, Singapore Professional Affairs delivered on 14 March 2018. Exploring the possible harmonisation of the treatment of dishonesty in the medical and legal professions in the future, he noted thus:

> 40. … The principle undergirding the dishonesty rule is that honesty and integrity are so fundamental to a profession that a member who departs from it demonstrates conduct which is contrary to his suitability to continue to practice as a member of that profession. This is a principle which is common to both our professions. In Dr Wu's case, the tribunal wrote:

> … We cannot overemphasise that every medical practitioner is expected to carry the hallmarks of integrity and honesty whether in his professional or personal capacity. Any act of dishonesty from a medical practitioner tarnishes and brings disrepute to the medical profession as a whole …

41. That seems to be correct. And it brings me to the second point, which is on the place of integrity in the medical profession. The suggestion that integrity is somehow less important in the medical than it is in the legal profession does not strike me as a particularly edifying one, and I do not in any event think it is a view that is held by doctors. I need only refer to the Introduction of the SMC's Ethical Code and Ethical Guidelines, which contains the following exhortation:

> As a member of the medical profession, you are held in the highest esteem by the public and society, who depend on a reliable and trustworthy healthcare system and look to you for the relief of their suffering and ailments. Much trust is therefore vested in you to do your best by both. This trust is contingent on the profession maintaining the highest standards of professional practice and conduct. You must therefore strive to continually strengthen the trust that has been bestowed.

42. In the same vein, the first paragraph of the Ethical Code reads as follows:

> Patients and the public must be able to trust you implicitly with their lives and well-being. To justify this trust, you have to maintain a good standard of care, conduct and behaviour. The SMC prescribes the Ethical Code which you are required to uphold. These principles are applicable to a wide variety of circumstances and situations. Adherence to the Ethical Code will enable society to have trust and confidence in the profession.

43. Unless we say these are just nice-sounding but ultimately empty words, the argument that dishonesty within the medical professional can be tolerated because honesty is not essential to the discharge of a doctor's duties and functions does not in this light seem to be a particularly persuasive one. In fact, because patients entrust their very *lives* in the hands of medical professionals, honesty might be said to be *at least* of equal importance in the medical profession as it is in the legal profession. [Emphasis added]

82 In the legal profession, dishonesty is treated severely and any form of dishonesty, even dishonesty of a "technical" nature would almost invariably lead to an order for striking off (*Law Society of Singapore v Udeh Kumar s/o Sethuraju* [2017] 4 SLR 1369 at [102] to [104]). We are well aware that the relevant cases for the Second Charge prescribe a fine of about $10,000 for the same, and with both counsel submitting that a fine would be sufficient for the second charge, we did not have the benefit of full argument on whether a more severe sanction was warranted for the Second Charge on its own. In any event, we are of the view that Dr Lee's actions should be taken as a whole in determining the appropriate sanction, and reflect the cumulative gravity of Dr Lee's conduct.

83 On that basis, we are of the view that Dr Lee has demonstrated a reprehensible course of conduct that points to a serious lack of integrity and honesty in him, such lack being fundamentally incompatible with his continued registration. For the avoidance of doubt, it is this Tribunal's view that taken as a whole, Dr Lee's demonstrated conduct was properly among the "worst conceivable" under s 53(1)(*b*) of the MRA.

84 Considerations of general and specific deterrence were amply warranted in the instant case. On the issue of protecting the public from possible future misconduct by Dr Lee, we gave full credit to Dr Lee for having taken steps to introduce a chaperone into his locum sessions. We have not been made aware of any possible professional misconduct from the time Dr Lee resumed practice in August 2016 to date, and further note that the testimonials from Dr Lee's employers speak of his utmost professionalism in dealing with all patients, including female patients.

85 However, when assessing the risk of re-offending, this Tribunal could not overlook the fact that Dr Lee had a good track record and standing in the medical profession for over 40 years before the incident happened and the gravity of the incidents underlying the First Charge as explained above. The fact that the professional boundaries between Dr Lee and the Patient could completely collapse out of the blue demonstrates to us a clear need to protect the public. We simply cannot trust that such an incident would not happen again, with or without a chaperone, given the course of conduct that reveals a serious lack of integrity and honesty in Dr Lee.

86 Gross misconduct (such as Dr Lee's) will bring the profession into ridicule and seriously undermine public trust in the profession. Patients consent to their doctors touching their bodies based on the trust and understanding that doctors will be acting in their best interests and that it is necessary for the purpose of treating their illness. To uphold public trust and confidence in the profession, the public must have absolute confidence in their doctors that they will not abuse that trust when treating their patients. There is a clear public interest in the imposition of a penalty which reflects the high standards of the profession and uphold the integrity of the medical profession. A clear message needs to be sent that such acts by other doctors will not be tolerated.

87 In arriving at the appropriate sentence, we gave full regard to Dr Lee's early plea of guilt, and to the various good testimonials from his employers, female patients and his wife. We also note that he is the sole bread winner of his family. We also considered that he has duly served his prison sentence for the offence underlying the First Charge and was already effectively suspended for eight months. However, these mitigating factors have to be weighed against interests of protecting the public and maintaining public trust and confidence of the profession which must take centre stage in this case. In all the circumstances

of this case, Dr Lee's actions imply a defect of character that renders him fundamentally unsuited to continue as a registered medical practitioner. Consistent with sentencing precedents of *Dr A*, *Dr C* and *Dr Ong*, the Tribunal is of the view that the only just and proportionate sanction to reflect the culpability of Dr Lee and to uphold the proper standards of conduct and behaviour and public confidence in the profession is for the name of the Respondent to be removed from the Register. We did not think it would serve any additional purpose to also impose a fine on Dr Lee.

**Sentence imposed**

88 Taking into account the nature of the complaint together with Dr Lee's conduct and the need to impose a sanction which was not only sufficiently deterrent but also proportionate in all the circumstances of this case, this Tribunal ordered that:

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

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

**Concluding observations**

89 Finally, we note that no IOC was appointed by the SMC under section 59A of the MRA shortly after Dr Lee was charged or at the latest after his appeal was finally disposed of, to consider whether any Interim Orders (such as an interim suspension of registration or making registration subject to conditions or restrictions) was necessary for the protection of members of the public or was otherwise in the public interest.

90 As such, Dr Lee was able to locum *carte blanche* on a full licence since his release in August 2016. Considering the pattern of deception Dr Lee practised on the Patient above, it was only fortunate that Dr Lee did not reoffend during this period. If he had, this would have been a matter of grave concern.

91 For future cases of similar misconduct, SMC may wish to consider the early appointment of IOCs, especially where charges against the relevant medical practitioner has already been proven in a criminal court. While this Tribunal could have recommended to SMC to appoint an IOC under section 59(A)(3) of the MRA when these proceedings began in November 2017, but given the time and expense that would likely have taken for separate IOC proceedings, and in the interest of facilitating the just, expeditious and economical disposal of the inquiry, we took the view that parties would be better served by having these charges dealt with swiftly in this Inquiry.

**Publication of Decision**

92 We order that the Grounds of Decision be published with the necessary redaction of identities and personal particulars of persons involved.

93 The hearing is hereby concluded.

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| Dr Joseph Sheares<br>Chairman | Prof Lee Eng Hin | Mr Bala Reddy<br>Legal Service Officer |

Anand Nalachandran and Michelle Chew (TSMP Law Corporation)
for Singapore Medical Council; and
Charles Lin, Phang Cunkuang and Gan Guo Wei (Charles Lin LLC)
for the Respondent.