

IN THE REPUBLIC OF SINGAPORE

SINGAPORE MEDICAL COUNCIL DISCIPLINARY TRIBUNAL

[2018] SMC DT 8

Between

Singapore Medical Council

And

Dr Joel Arun Sursas

... Respondent

GROUNDS OF DECISION

Administrative Law — Disciplinary Tribunals

Medical Profession and Practice — Professional Conduct — Suspension and Fine

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Singapore Medical Council
v
Dr Joel Arun Sursas

[2018] SMC DT 8

Disciplinary Tribunal — DT Inquiry No. 8 of 2018
Prof Walter Tan (Chairman), Prof K Satku and Mr Kevin Ng (Legal Service Officer)
1 August 2018 and 3 September 2018

Administrative Law — Disciplinary Tribunals

Medical Profession and Practice — Professional Conduct — Suspension and Fine

10 September 2018

GROUNDS OF DECISION

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

INTRODUCTION

1. Dr Joel Arun Sursas (“Dr Sursas”) worked as a doctor in a restructured hospital at the material time. At the same time, he worked as a locum in a private clinic, in breach of the conditions of his medical registration. While working as a locum, he wrote medical certificates to himself to excuse himself from work at the hospital. He also backdated one of the medical certificates. He now faces:

- (a) one charge of working as a locum doctor in breach of his temporary medical registration conditions (the “1st Charge”);
- (b) four amended charges of issuing medical certificates (“MCs”) stating he was unfit to work, submitting those MCs to his employer, and giving the

inaccurate impression that the MCs were issued by another doctor (the “Amended 2nd to 5th Charges”); and

- (c) one charge of issuing a backdated MC stating he was unfit for work, in breach of the 2002 edition of the Singapore Medical Council Ethical Code & Ethical Guidelines (“2002 ECEG”) (the “6th Charge”).
2. The Singapore Medical Council (“the SMC”) proceeded on three charges, i.e. the charge of working as a locum (the 1st Charge), a single amended charge of issuing a MC stating he was unfit for work (the amended 2nd Charge), and the charge of backdating a medical certificate (the 6th Charge).

BACKGROUND FACTS

The Charges

3. At the Tribunal hearing on 1 August 2018, Dr Sursas pleaded guilty to the following charges:

1ST Charge (Proceeded)

That you, DR JOEL ARUN SURSAS, are charged that on various occasions in the period 10 July 2015 to 11 December 2015 as listed in Annex A below, whilst practicing as a medical practitioner with temporary registration, you worked as a locum doctor at Clinic A (“Clinic A”) in breach of the conditions under which you were granted temporary registration.

Particulars

- (a) You were granted temporary registration by the Singapore Medical Council (“SMC”) on 2 May 2015.
- (b) The grant of temporary registration was made subject to, inter alia, the following conditions: -
 - (i) You continue to be employed by MOH Holdings Pte Ltd (“MOHH”) and work as a medical practitioner (non-specialist) in institutions approved by the SMC only; and
 - (ii) You must not be posted to any other departments and institutions without SMC’s prior approval.
- (c) At the material times, you were a medical officer employed by MOHH and were posted to the following institutions: -
 - (i) Hospital B’s Accident & Emergency Department (“Hospital B”) for the period 5 May 2015 to 31 August 2015; and
 - (ii) Hospital C’s Diagnostic Radiology Department (“Hospital C”) for the period 1 September 2015 to 4 January 2016.
- (d) On various occasions in the period 10 July 2015 to 11 December 2015 as listed in Annex A below, during your postings at Hospital B

- and Hospital C, you worked as a locum doctor at Clinic A in breach of the conditions of your temporary registration.
- (e) MOHH terminated your employment with effect from 5 January 2016. Accordingly, SMC cancelled your temporary registration with effect from 5 January 2016.

and that in relation to the facts alleged, you have been guilty of professional misconduct under section 53(1)(d) of the Medical Registration Act (Cap. 174) in that your conduct demonstrated an intentional, deliberate departure from standards observed or approved by members of the profession of good repute and competency.

ANNEX A (to 1st Charge)

List of dates on which you worked as a locum doctor at Clinic A

In the year 2015

Month	Dates
July	10, 20, 27
August	13
September	1, 3, 4, 8, 10, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 27, 29, 30
October	1, 6, 8, 9, 13, 15, 16, 20, 22, 27, 29, 30
November	5, 12, 13, 17, 19, 20, 25, 26
December	1, 3, 4, 10, 11

Amended 2nd Charge (Proceeded)

That you, DR JOEL ARUN SURSAS, are charged that on or around 15 October 2015, whilst working as a locum doctor at Clinic A ("Clinic A"), you issued a Medical Certificate ("MC") stating that you were unfit to work for one day on 15 October 2015, deliberately giving the misleading inaccurate impression that the MC was issued to you by another doctor.

Particulars

- (a) At the material time, you were a medical officer employed by MOH Holdings Pte Ltd and were posted to Hospital C's Diagnostic Radiology Department ("Hospital C").
- (b) Whilst working as a locum doctor at Clinic A, you issued an MC on or about 15 October 2015 stating that you were unfit to work for one day on 15 October 2015 and signed off as "locum" without stating your name.
- (c) By doing so, you deliberately gave the misleading inaccurate impression that the MC was issued to you by another doctor.
- (d) You submitted the MC to Hospital C to justify your absence from work on 15 October 2015.

and that in relation to the facts alleged, you have been guilty of professional misconduct under section 53(1)(d) of the Medical Registration Act (Cap. 174) in that your conduct demonstrated an intentional, deliberate departure from standards observed or approved by members of the profession of good repute and competency.

Amended 3rd Charge

(Taken Into Consideration ("TIC") for Sentencing)

That you, DR JOEL ARUN SURSAS, are charged that on or around 20 October 2015, whilst working as a locum doctor at Clinic A ("Clinic A"), you issued a Medical Certificate ("MC") stating that you were unfit to work for one day on 20 October 2015, deliberately giving the misleading inaccurate impression that the MC was issued to you by another doctor.

Particulars

- (a) At the material time, you were a medical officer employed by MOH Holdings Pte Ltd and were posted to Hospital C's Diagnostic Radiology Department ("Hospital C").
- (b) Whilst working as a locum doctor at Clinic A, you issued an MC on or about 20 October 2015 stating that you were unfit to work for one day on 20 October 2015 and signed off as "locum" without stating your name.
- (c) By doing so, you deliberately gave the misleading inaccurate impression that the MC was issued to you by another doctor.
- (d) You submitted the MC to Hospital C to justify your absence from work on 20 October 2015.

and that in relation to the facts alleged, you have been guilty of professional misconduct under section 53(1)(d) of the Medical Registration Act (Cap. 174) in that your conduct demonstrated an intentional, deliberate departure from standards observed or approved by members of the profession of good repute and competency.

Amended 4th Charge
(TIC for Sentencing)

That you, DR JOEL ARUN SURSAS, are charged that on or around 13 November 2015, whilst working as a locum doctor at Clinic A ("Clinic A"), you issued a Medical Certificate ("MC") stating that you were unfit to work for one day on 13 November 2015, deliberately giving the misleading inaccurate impression that the MC was issued to you by another doctor.

Particulars

- (a) At the material time, you were a medical officer employed by MOH Holdings Pte Ltd and were posted to Hospital C's Diagnostic Radiology Department ("Hospital C").
- (b) Whilst working as a locum doctor at Clinic A, you issued an MC on or about 13 November 2015 stating that you were unfit to work for one day on 13 November 2015 and signed off as "locum" without stating your name.
- (c) By doing so, you deliberately gave the misleading inaccurate impression that the MC was issued to you by another doctor.
- (d) You submitted the MC to Hospital C to justify your absence from work on 13 November 2015.

and that in relation to the facts alleged, you have been guilty of professional misconduct under section 53(1)(d) of the Medical Registration Act (Cap. 174) in that your conduct demonstrated an intentional, deliberate departure from standards observed or approved by members of the profession of good repute and competency.

Amended 5th Charge
(TIC for Sentencing)

That you, DR JOEL ARUN SURSAS, are charged that on or around 25 November 2015, whilst working as a locum doctor at Clinic A ("Clinic A"), you issued a Medical Certificate ("MC") stating that you were unfit to work for one day on 20 November 2015, deliberately giving the misleading inaccurate impression that the MC was issued to you by another doctor.

Particulars

- (a) At the material time, you were a medical officer employed by MOH Holdings Pte Ltd and were posted to Hospital C's Diagnostic Radiology Department ("Hospital C").
- (b) Whilst working as a locum doctor at Clinic A, you issued a MC on or about 25 November 2015 stating that you were unfit to work on 20 November 2015 and signed off as "locum" without stating your name.
- (c) By doing so, you deliberately gave the misleading inaccurate impression that the MC was issued to you by another doctor.
- (d) You submitted the MC to Hospital C to justify your absence from work on 20 November 2015.

and that in relation to the facts alleged, you have been guilty of professional misconduct under section 53(1)(d) of the Medical Registration Act (Cap. 174) in that your conduct demonstrated an intentional, deliberate departure from standards observed or approved by members of the profession of good repute and competency.

6th Charge (Proceeded)

That you, DR JOEL ARUN SURSAS, are charged that on or around 25 November 2015, whilst working as a locum doctor at Clinic A ("Clinic A"), you issued a backdated Medical Certificate ("MC") stating that you were unfit to work for one day on 20 November 2015, in breach of guideline 4.1.8 of the 2002 edition of the SMC's Ethical Code and Ethical Guidelines ("2002 ECEG").

Particulars

- (a) At the material time, you were a medical officer employed by MOH Holdings Pte Ltd and were posted to Hospital C's Diagnostic Radiology Department ("Hospital C").
- (b) Whilst working as a locum doctor at Clinic A, you issued a backdated MC on or around 25 November 2015 stating that you were unfit to work on 20 November 2015.
- (c) You submitted the backdated MC to Hospital C to justify your absence from work on 20 November 2015.
- (d) Guideline 4.1.8 of the 2002 ECEG states that: -

" ... Medical certificates may neither be post-dated nor back-dated and shall start from the day of consultation or procedure, except where it is clear that a patient's absence from work prior to consultation is consistent with the patient's clinical presentation to the doctor and there is medical justification to issue the certificate..."

- (e) You did not consult any doctor on 20 November 2015 and were fit enough to work as a locum doctor at Clinic A on that day from 6:30pm to 9:30pm and there was no medical justification to issue the backdated MC.

and that in relation to the facts alleged, you have been guilty of professional misconduct under section 53(1)(d) of the Medical Registration Act (Cap. 174) in that your conduct demonstrated an intentional, deliberate departure from standards observed or approved by members of the profession of good repute and competency.

DISCIPLINARY TRIBUNAL INQUIRY

The Pre-Inquiry Conference (“PIC”)

4. At the PIC on 28 June 2018, Dr Sursas indicated he would plead guilty to the 1st, the amended 2nd and the 6th charges. The SMC indicated they were agreeable to that, and that they would apply to have the remaining three amended charges taken into consideration for sentencing.

The Plea

5. At the hearing on 1 August 2018, the Dr Sursas pleaded guilty to the 1st, the amended 2nd and the 6th charges, and he agreed to have the amended 3rd, the amended 4th and the amended 5th charges taken into consideration for the purposes of sentencing.

The Agreed Statement of Facts (ASOF)

Temporary Registration

6. Dr Sursas was granted temporary registration on the Register of Temporarily Registered Medical Practitioners by the Singapore Medical Council (“SMC”) in 2015. In SMC’s letter to him dated 29 April 2015, it set out, inter alia, the following conditions and restrictions of the registration on Dr Sursas:-

- (a) He would continue to be employed by MOH Holdings Pte Ltd (“MOHH”) and work as a medical practitioner (non-specialist) in institutions approved by the SMC only; and
- (b) He must not be posted to any other departments and institutions without the SMC’s prior approval.

7. At the material time, Dr Sursas was a medical officer employed by MOHH and was posted to the following institutions:

- (a) Hospital B's Accident & Emergency Department ("Hospital B") for the period 5 May 2015 to 31 August 2015; and
- (b) Hospital C's Diagnostic Radiology Department ("Hospital C") for the period 1 September 2015 to 4 January 2016.

Working as a locum doctor

8. Whilst Dr Sursas was employed with MOHH, he worked as a locum doctor at Clinic A ("Clinic A") on 47 separate occasions in 2015, as set out below:

10, 20, 27 July 2015;
13 August 2015;
1, 3, 4, 8, 10, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 27, 29, 30 September 2015;
1, 6, 8, 9, 13, 15, 16, 20, 22, 27, 29, 30 October 2015;
5, 12, 13, 17, 19, 20, 25, 26 November 2015; and
1, 3, 4, 10, 11 December 2015.

9. He was not given prior approval by the SMC to practice at Clinic A, thereby breaching of the conditions and restrictions of his registration.

Issuance of Medical Certificates to himself

10. Hospital C discovered that Dr Sursas had issued four separate MCs to himself stating that he was unfit for work on the four occasions as set out below:

- (a) 15 and 20 October 2015; and
- (b) 13 and 20 November 2015.

(collectively referred to as the "MC Dates")

11. Dr Sursas had issued each of the four MCs whilst working as a locum doctor at Clinic A, using Clinic A's letterhead. Three of the four MCs were issued by Dr Sursas on the same day that the MCs were dated, namely 15 and 20 October 2015, and 13 November

2015. The last MC dated 20 November 2015, was issued by Dr Sursas on 25 November 2015 (“Backdated MC”).

12. On each of the MCs, Dr Sursas signed off as “locum” without stating his name. By doing so, Dr Sursas deliberately gave the inaccurate impression that each of the MCs was issued to him by another doctor.

13. These MCs were issued by Dr Sursas to himself during the period when he was posted to work at Hospital C. On each of the MC Dates, Dr Sursas had reported to be sick and was absent from work at Hospital C. Dr Sursas had submitted the MCs to Hospital C to justify his absence from work on the MC Dates.

14. Dr Sursas also admitted in the course of investigations by Hospital C that he was not sick on most of the days that he had reported to be sick during his posting with Hospital C.

Issuance of Backdated MC

15. Guideline 4.1.8 of the 2002 ECEG states that: -

“... Medical certificates may neither be post-dated nor back-dated and shall start from the day of consultation or procedure, except where it is clear that a patient’s absence from work prior to consultation is consistent with the patient’s clinical presentation to the doctor and there is medical justification to issue the certificate...”

16. Dr Sursas did not consult any doctor on 20 November 2015. In fact, he had worked as a locum doctor at Clinic A on that day from 6.30pm to 9.30pm, and was therefore fit enough to work. Accordingly, there was no medical justification for Dr Sursas to issue the Backdated MC.

Termination of employment

17. MOHH terminated Dr Sursas’ employment with effect from 5 January 2016. Accordingly, the SMC cancelled Dr Sursas’ registration with effect from 5 January 2016. MOHH submitted the information leading to Dr Sursas’ termination to SMC.

The Mitigation by the Counsel for Dr Sursas

18. Counsel for Dr Sursas submitted that a fine of \$30,000 was appropriate for the following reasons:

- (a) Dr Sursas is remorseful and filled with regret, and that he fully appreciates the gravity of his actions, and is willing to accept full responsibility for his misconduct.
- (b) No harm came to his patients in any of his actions.
- (c) The relative youth of a doctor, and that the incident happened early in his medical career is a recognised mitigating factor.
- (d) He has consistently received outstanding testimonials from his colleagues and superiors, after learning that he is facing disciplinary proceedings.
- (e) Punishment has already been inflicted on Dr Sursas. He has not been allowed to apply for full registration until the disposal of the disciplinary proceedings. Thus he has not been able to practice medicine for the past 2½ years, close to the maximum suspension period of three years.
- (f) There has been an inordinate delay in the proceedings. The Complaints Committee took seven months to arrive at its conclusion to refer the matter further to a Disciplinary Tribunal. Thereafter, it took another 11 months for the Notice of Inquiry to be drawn up. Given that Dr Sursas' ability to obtain full registration was blocked pending the disposal of the disciplinary proceedings, the matter could and should have proceeded more expeditiously.
- (g) Dr Sursas has suffered financial hardship of having to pay liquidated damages following the cancellation of his registration.

The Submission on Sentence by the SMC

19. The SMC sought an order to remove or strike off Dr Sursas' name from the register (as if he was still registered). In the alternative, an order to suspend Dr Sursas for

a period of 36 months (as if he was still registered). In addition, the SMC asked for a fine of \$15,000 to \$20,000 and a censure to be imposed.

20. The SMC raised various aggravating factors in this case, namely:

- (a) Dr Sursas' dishonesty;
- (b) The sustained and repeated breaches by Dr Sursas;
- (c) The systematic and deliberate nature of the breaches;
- (d) The importance of adhering to the conditions of registration (for the 1st Charge); and
- (e) The abuse of the practitioner's privilege of issuing MCs (for the amended 2nd to 5th Charges and the 6th Charge).

21. The common thread running through the matter was Dr Sursas' dishonesty.

22. For the 1st Charge, Dr Sursas concurrently and surreptitiously worked as a locum at Clinic A on a regular basis, without the knowledge of his employer and without SMC's consent. His breach was not a one-off occasion but on 47 occasions over a sustained period of five months. The conditions of temporary registration were put in place to ensure accountability by the doctor, and to safeguard the best interests of patients. These conditions cannot be breached with impunity.

23. The events in the 2nd to 5th Charges took place when Dr Sursas was posted to Hospital C. Any employer receiving the MCs in question would have gotten the false impression that another doctor had certified Dr Sursas to be unwell and unfit to work. He has admitted that he was not sick on most of the days that he had reported to be sick during his posting with Hospital C.

24. In the 6th Charge, the SMC argued Dr Sursas' dishonesty went up another notch. Not only did he issue the MC to himself, he also backdated the MC to a date five days before, to justify his absence from work. Dr Sursas did not consult any doctor on 20 November 2015, the day he was absent from work. In fact, he had worked as a locum doctor at Clinic A on that day from 6.30pm to 9.30pm, and was therefore fit enough to work.

25. The SMC submitted that Dr Sursas' misconduct showed a systematic and deliberate modus operandi which consisted of lying to his employers that he was sick, then issuing MCs to himself without stating his name, to cover up his absence at work.

DELIBERATION

The Deliberation of the Disciplinary Tribunal (“DT”)

26. This is likely the first time a doctor has faced these specific types of charges in recent years. Indeed, for the 1st Charge of working as a locum in breach of the temporary registration conditions, the SMC has confirmed that this would be the first time a doctor has been so charged. While there have been past cases of medical practitioners making fraudulent declarations or wrongful certifications, there are few direct and meaningful precedents available in relation to sentencing for the charges related to writing MCs to oneself. The DT considered the following factors.

Integrity

27. For the 1st Charge of working as a locum, the DT found a distinct lack of integrity on the part of Dr Sursas, by deliberately flouting the conditions of his employment in taking on additional employment as a locum while already employed by MOHH; knowing that it was against his conditions of registration; knowing that he did not have specific permission or approval to carry on working in an organization other than those approved by the SMC; and persisting in locuming even after being found out. This lack of integrity reflects a departure from the standards expected of a member of the medical profession.

Dishonesty

28. For the 2nd to 6th Charges of writing MCs to himself and backdating another MC for himself, the DT found clear dishonest behaviour. The MCs deliberately gave an inaccurate impression to his employer that those were valid MCs. By doing so, Dr Sursas essentially asserted that the locum had examined him (i.e. Dr Sursas) and found him unfit for work on four separate occasions, when in fact he himself was that locum; that in fact he had obviously not carried out any medical examination; that he was actually not ill and not unfit for work; that he led Hospital C to believe, by submitting the MCs, that he was

unfit for work when he was actually working and earning additional income. The 6th Charge of backdating the MC is particularly disturbing. Writing MCs to himself without medical justification is one thing. Writing an MC to himself and backdating it, where there are clear guidelines regarding the backdating of an MC, takes the deceit to a higher level.

Pattern of Misconduct

29. The DT agrees there was pattern of misconduct. Dr Sursas performed locum duties on 47 occasions spanning six months, and writing four MCs in that time for himself to justify his absence.

30. He appears to have dug a deeper and deeper hole for himself with each act. It is a cautionary tale for any employee that the more one lies and covers up their absence from work, the higher the likelihood the deceit would be detected and crumble like a house of cards.

31. Even worse, he continued to locum a further four occasions (i.e. on 3, 4, 10 and 11 December 2015) after he was caught out and interviewed by Hospital C officers on 2 December 2015. During the interview, he amongst other things, admitted to locuming on a regular basis. His explanation, during his plea of mitigation, was that he had already signed up to perform locum duties at Clinic A on those four dates, and he didn't want to inconvenience the clinic. To the DT, he either severely failed to appreciate the gravity of the situation at the material time, or he was simply intent on continuing with his wrongful conduct.

Unjust Enrichment

32. There is no question Dr Sursas benefitted from being employed by MOHH and at the same time by working as a locum. He admitted, during the mitigation plea, earning around \$13,000 in total during his locum stints.

33. Upon questioning at mitigation, he admitted that part of the reason was to earn extra monies to be able to travel to Canada to meet his ex-girlfriend whom he wished to be reunited with. Clearly then his motivation to perform locum duties was one driven by financial benefit to himself.

Sentencing Principles

34. The case of Singapore Medical Council vs Kwan Kah Yee [2015] 5 SLR 201 (“Kwan Kah Yee”) states the proposition that clear cases of dishonesty may well merit striking off as a starting point. In that case ultimately, a suspension totalling 36 months was imposed on the doctor. For the legal profession, striking off is the starting point for cases involving lawyers who have acted dishonestly, i.e., the “dishonesty rule”.

35. The DT is unable to agree with Counsel for Dr Sursas that the actions of Dr Sursas could be seen as only “bordering on dishonesty” (R1 at paragraph 41), that there was little or no impact on the medical profession, and that a deterrence was not called for. It is clear to the DT however, that there were clear elements of dishonesty, a lack of integrity, a pattern of lengthy misconduct, and unjust enrichment.

36. Both the legal and medical professions have a certain core set of values, one of which is conducting himself or herself with honesty (Law Society of Singapore vs Chia Choon Yang [2018] SGHC 174 (“Chia Choon Yang”)) at [42]. The Court of Three Judges in that case said that it might expect to find some similarity in the way each profession responds to grave breaches of such commonly held core values. An order for striking out would invariably arise where the dishonesty reveals a defect of character rendering the errant solicitor unsuitable for the profession, or undermines the administration of justice. It is the presumptive penalty unless there are truly exceptional facts to show that it would be disproportionate (Chia Choon Yong at [39]).

37. Some of the relevant principles which guide sentencing in cases of dishonesty in the legal profession could be summarized as follows:

- (a) Disciplinary proceedings are designed not so much to punish the offender as to uphold the confidence of the profession, and to protect the public. (Law Society of Singapore v Ravi s/o Madasamy (“Ravi Madasamy”) [2016] 5 SLR 1141 at [17])
- (b) Where there is a tension between the two approaches, the profession is more important. (Ravi Madasamy at [17])

- (c) There is no spectrum of dishonesty, with no range of punishments for degrees of dishonesty, unless there are exceptional mitigating circumstances.
(Law Society of Singapore v Uder Kumar s/o Sethuraju and another matter [2017] 4 SLR 1369)

Sentencing Considerations

38. Applying the principles to the fact situation in this case, it would appear that striking out would objectively be the appropriate sanction.

39. There have been four cases in the past 10 years where medical practitioners were struck off the register.

40. Two cases involved the sale of hypnotic medication, with aggravating circumstances. In the cases of Dr AAN (Disciplinary Committee's ("DC") Grounds of Decision dated 13 May 2009) and Dr Ho Thong Chew (DT's Grounds of Decision dated 18 December 2014), both doctors had their name removed from the register.

41. Two other cases of striking off involved criminal acts of sexual misconduct / outrage of modesty offences together with making false declarations, i.e. DT Inquiry for Ong Theng Kiat (DT's Grounds of Decision dated 29 April 2015) and DT Inquiry for Dr Lee Siew Boon Winston (DT's Grounds of Decision dated 7 May 2018) ("Winston Lee"). The SMC cited the Winston Lee case as the appropriate precedent. Dr Lee was charged and convicted in the criminal courts of two separate charges. One was an outrage of modesty charge. The other was a fraudulent declaration charge. The DT in that case dealt with both charges and in sentencing Dr Lee on a global basis, ordered him struck off from the register. The conduct, according to that DT, constituted one of the "worst conceivable" under s 53(1)(b) MRA. This would, however, be quite different from the fact scenario here. While serious, the dishonesty offences in the present case were not prosecuted in the criminal courts, and significantly, not coupled with sexual misconduct or outrage of modesty charges. It cannot be said to be the worse conceivable conduct of a medical practitioner. We also did not think, as contended by the SMC, that because the fraudulent declaration charge constituted dishonesty in the Winston Lee case, that was reason for the doctor being struck off. Clearly the outrage of modesty charge was a major consideration in the sentencing.

42. The DT seriously considered striking off Dr Sursas. The acts committed by Dr Sursas, particularly those regarding the MCs, continuing to work as a locum *after* being interviewed by the hospital administrators and earning an extra \$13,000 through the misconduct, were fairly shocking. However, after lengthy deliberation, the DT came to the view that in terms of proportionality to the offences committed by Dr Sursas, striking out may be excessive for the following reasons:

- (a) The four striking off cases stated above all appear to have far more egregious fact situations, e.g. the sale of hypnotics, sexual misconduct with a minor and the outrage of modesty of a patient;
- (b) The four striking off cases all flowed from criminal convictions (although that fact should not be determinative of the appropriate order);
- (c) There is yet to be a clear “dishonesty rule” imposed on medical practitioners. Until such time, we do not believe this particular case to be one deserving of a striking off order.

43. There are cases where a firm sentence is necessary to re-establish the public trust and to uphold its confidence in the profession. There is also a time when a second chance for the offender is called for.

44. Why should a second chance be afforded Dr Sursas? The DT considered the following factors:

- (a) Dr Sursas is relatively young. After the gravity of his actions sunk in, he seems to be genuinely remorseful and repentant. His medical career had barely gotten off the ground before being stalled by his acts of indiscretion. By all accounts through his testimonials (R1 at Annex A), he worked hard and has tried to redeem himself during his national service stint; is evidently capable; has been offered re-employment by Hospital C, the very same employer who uncovered his misdeeds (P1 at Annex H); and he appears to have a good future ahead of him.
- (b) He has paid a price for his indiscretions. When his temporary registration was cancelled on 5 January 2016, Dr Sursas was effectively unable to

practice medicine from that date. In most other cases, a doctor would be able to continue to practice while disciplinary proceedings were underway until he was ordered to be removed or suspended from the register (or otherwise) by an appropriate authority. Here is a case where Dr Sursas has not been able to practice pending the outcome of these proceedings. Counsel for Dr Sursas has pointed out that it has been 2½ years since Dr Sursas had his temporary registration cancelled, almost coming to the 3-year maximum suspension limit. They said that that is punishment enough (R1 at paragraph 63). The DT is aware that Dr Sursas losing his ability to practice medicine was consequence of him breaching the terms of his registration. Essentially, it was a result of his own wrongdoing. The DT however is of the opinion it would be remiss if it failed to take that significant fact into account in deciding on the appropriate sentence. The fact remains the Dr Sursas has been unable to practice medicine for two years eight months (to the date of this judgement).

45. This DT therefore does not believe removing Dr Sursas' name from the register (even notionally, as his name is actually not on any register at present), is warranted.

46. The DT has to, and will, come down on Dr Sursas. There is a need to protect the public from such misconduct by doctors, and to maintain the public confidence in the profession. Yet, we do not have to crush Dr Sursas. He needs to suffer the consequences of his actions. Yet this DT is making a deliberate chance to allow him to start again and to remake his life. He must not make any further miss-steps. There will likely be no third chance.

47. So what may be an appropriate sentence? It certainly cannot be a mere censure a merciful Disciplinary Committee imposed on Dr Quah Weiren Charles Abraham (DC's Grounds of Decision dated 27 May 2011). The young houseman doctor had been convicted in court for an offence of shoplifting, clearly a case of dishonesty.

48. A fine as suggested by Counsel for Dr Sursas would also absolutely not, in our view, address the severity of the offences.

49. The false declaration cases cited by Counsel for Dr Sursas have limited application here. In the case of Chio Han Sin Roy (DT's Grounds of Decision dated 1

September 2015) and Wong Mei Ling Gladys (DT's Grounds of Decision dated 1 September 2015), they were each fined \$10,000 for procuring a practising certificate with a false declaration. In Ng Hor Liang (DT's Grounds of Decision dated 1 September 2015), he was fined \$20,000 for a false declaration charge and practising without a practising certificate charge. Counsel for Dr Sursas thus submitted that Dr Ng was fined \$10,000 on the false declaration charge. We agree with the SMC that these cases involved one-off offences with no financial gain to the doctor.

50. In Sim Kwang Soon (DT's Grounds of Decision dated 18 August 2017) at [32], the DT took some pains to distil the principles where a suspension may be appropriate. Amongst them were cases where there were elements of dishonesty, subject to aggravating or mitigating factors.

51. The case of Singapore Armed Forces medical officer, Dr D (SMC Annual Report 2006, Case 3), provides a glimpse of one such scenario, albeit with scant details. The doctor essentially used an old medical certificate that he had previously been issued, and forged a new date on it. He was discharged from the SAF, and was subsequently given a three month suspension by the DC. The only available information for this case comes from the said Annual Report and a news clipping dated 17 July 2006 (R2 at Tab 6 & 7), and the oral submissions of the SMC and Counsel for Dr Sursas. This case occurred more than a decade ago, appeared to deal with just one charge, and preceded the current thinking of the Court of Three Judges in the Chia Choon Yong and Kwan Kah Yee cases.

52. It is noted in Kwan Kah Yee at [33] that while issuing a false medical certificate is a serious matter, the direct harm as a result is a loss of money or productivity. Far severe consequences could result from the issue of improper death certificates. Dr Kwan faced two charges of wrongful certification of a patient's death. He was given an 18-month suspension for each charge to run consecutively, for a total suspension of 36 months. However, the Court of Three Judges noted at [62] that the doctor could well have been struck off the medical register, but for many questions left unanswered after the investigations.

53. The DT would like to address three other points raised by Counsel for Dr Sursas in its' mitigation:

- (a) No Harm Caused To Patients: We agree with the SMC that this would be a neutral factor with no mitigating value, if harm was not an element of the charge (Yong Thiam Look Peter [2017] SGHC 10 at [12]). If harm had been caused by Dr Sursas in his acts as charged here, that could well be an aggravating factor.
- (b) Inordinate Delay: While the time it took the Complaints Committee to come to its conclusion, and the time it took for the Notice of Inquiry to be served could both have been more expeditious, it is the opinion of this DT that there was no inordinate delay such that it would cause Dr Sursas to suffer anxiety and distress of having the case hang over his head as found in Ang Peng Tiam v Singapore Medical Council [2017] 5 SLR 356 (“Ang Peng Tiam”). The time it has taken to conclude this case certainly doesn’t justify the DT reducing the sentence or considering it a major factor in sentencing. Indeed, Dr Sursas has used his time fruitfully, serving out his national service from January 2016 (around the time his temporary registration was cancelled) to January 2018. On the contrary, the testimonials which arose from serving his national service has in fact been taken into account by the DT, along with the fact that Dr Sursas has not been able to practice since 5 January 2016.
- (c) Financial Hardship: In his mitigation, Dr Sursas clarified that no liquidated damages has yet been paid by him. His has managed to have his national service stint counted towards the discharge of his bond. He also informed the DT that his potential subsequent employment (subject to his registration with SMC) at a restructured hospital could also be counted towards discharging his bond. As such, we do not find that he has, at this time, suffered significant financial hardship arising from the demand for liquidated damages as part of not fulfilling his medical degree bond. In any event, if Dr Sursas has to face paying the liquidated damages in the future, it is part and parcel of the consequences of breaching the terms of his medical registration.

SENTENCE

54. The DT fully considered all the facts and circumstances, the respective submissions of both parties, and the sentencing precedents cited, in particular the reasoning for the sentence in the Kwan Kah Yee case. In addition, it considered the fact Dr Sursas faces six charges, the clear dishonesty and lack of integrity, the prolonged pattern of misconduct, and the unjust enrichment. As such, the DT is of the view that a lengthy suspension and fine would be appropriate in this case. As stated, the DT is aware that Dr Sursas is not actually on any register at this time. Were he on the register however, this DT would order that in respect to the three charges Dr Sursas pleaded guilty to, and taking into consideration the other three charges:

- (a) That he be suspended for **36 months**;
- (b) That he be fined **\$15,000**;
- (c) That he be censured;
- (d) That he gives a written undertaking to the SMC that he will not engage in the conduct complained of or any similar conduct; and
- (e) That he pays the costs of these proceedings, including the costs of the solicitors to the SMC.

60. The DT is aware that, because of the uniqueness of this case, the effect of the suspension order on Dr Sursas may have little direct effect on him. He is not on any register, so he does not have to serve out the length of the suspension. The practical effect of the orders is that Dr Sursas could theoretically apply for registration very shortly after this judgement is delivered. However, if consideration is given conceptually to the 36 month “suspension” period, the DT has already noted that 2 years 8 months (to the date of this judgement) have already elapsed since Dr Sursas was last able to practice medicine. For the avoidance of doubt, the fine, censure, undertaking and cost order are applicable to Dr Sursas. The appropriate authority may wish to take into account the findings, views and orders meted by this DT, should there be an application for registration by Dr Sursas in the future.

61. Notwithstanding the limited direct effect of the suspension order on Dr Sursas, we believe the psychological impact of it would not be lost on him. The \$15,000 fine would be to address the element of unjust enrichment. The orders as a whole would serve as an appropriate deterrence for him from even thinking of repeating his behaviour. The suspension of 36 months is also to send a message, loud and clear, to the profession that dishonesty in any form will be dealt with firmly. We are of the opinion that this would act as a general deterrent to all medical practitioners to take with the utmost seriousness the terms of their registration, the contractual obligations with their employers with regard to performing locum duties, the privilege of issuing medical certificates, and what any form of dishonesty will be met with.

62. The appropriate authorities may want to enquire further into private medical clinics or organizations allowing medical practitioners with temporary registration to practice as their locums, especially where being able to practice as a locum is not stipulated in the conditions of the temporary registration.

PUBLICATION OF DECISION

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

64. The hearing is hereby concluded.

Prof Walter Tan
Chairman

Prof K Satku

Mr Kevin Ng
Legal Service Officer

Ms Chang Man Phing and Ms Rachel Lee (M/s WongPartnership LLP)
for Singapore Medical Council; and
Mr Melvin See and Ms Lee Qiu Li (M/s Dentons Rodyk & Davidson LLP)
for the Respondent.