

**SINGAPORE MEDICAL COUNCIL DISCIPLINARY COMMITTEE INQUIRY FOR
DR SUSAN LIM MEY LEE HELD ON 21, 22, 23 MAY, 21 JUNE AND 17 JULY 2012**

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DECISION OF THE DISCIPLINARY COMMITTEE

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

1. **INTRODUCTION***

1.1 **The Parties**

1.1.1 The Complainant in these proceedings is the Ministry of Health, Singapore (“**MOHS**”).

1.1.2 The Respondent is Dr Susan Lim Mey Lee (“**Dr Lim**”), a registered medical practitioner under the Medical Registration Act (Cap. 174) (“**MRA**”) of 30 years’ standing.¹ Dr Lim was at the material time registered as practising at Susan Lim Surgery Pte Ltd (“**SLS**”), Block 6 Napier Road #02-17-20 Gleneagles Medical Centre Singapore 258499. Her primary area of practice is in general surgery and she is in private practice at the Gleneagles Hospital and Mount Elizabeth Hospital.²

1.1.3 Dr Lim is also the Chairman and CEO of the following clinics:³

- a. Group Surgical Practice Pte Ltd (“**GSP**”);
- b. Centre for Weight Management Pte Ltd (“**CWM**”);
- c. Centre for Cancer Surgery Pte Ltd (“**CCS**”); and
- d. Centre for Breast Screening & Surgery Pte Ltd (“**CBSS**”).

(together with SLS, collectively referred to as “**Dr Lim’s Clinics**”)

1.1.4 At a hearing on 21 June 2012, this DC delivered its decision in respect of the 94 charges brought by the Prosecution against Dr Lim together with an oral summary of the DC’s reasons. These are the written grounds of the decision of this DC which sets out in full its reasons for arriving at its decision.

* For ease of reference, these footnotes adopt the Bundle References as set out in **Annex A** herein, where Core Bundle is abbreviated as (“**CB**”) and specific references take the following format: [**Volume No. / Bundle Ref / Page or Tab**] e.g. 2 CB 525 refers to the second volume of the Core Bundle, page 525.

¹ 3 RBDCS 21

² 3 RBDCS 21

³ 3 RBDCS 21

1.2 The Charges: Overview

1.2.1 Dr Lim faces 94 charges of professional misconduct in relation to the fees she charged for the services which she and other doctors provided to one particular patient. The details of the charges are elaborated upon below. At this juncture, it suffices to state that the charges fall into two broad categories.

- a. Charges 1 to 83 fall into Category I and allege that Dr Lim is guilty of professional misconduct by overcharging.⁴
- b. Charges 84 to 94 fall into Category II and allege that Dr Lim is guilty of professional misconduct by falsely representing in her invoices that the fees charged in those invoices were fees levied by third-party doctors when in fact she had added a significant and undisclosed markup to the actual charges of those third-party doctors.⁵

1.3 Summary of decision

1.3.1 This DC has carefully considered all of the material before it. It has arrived at the unanimous decision beyond reasonable doubt that Dr Lim is guilty on all 94 charges preferred against her.

1.3.2 In summary, this DC's unanimous findings are as follows:

- a. Dr Lim, like all doctors who practise medicine in Singapore, is subject to an ethical obligation to charge a fair and reasonable fee for her services;
- b. This ethical obligation binds Dr Lim, like all doctors, whether or not there was a fee agreement in place between Dr Lim and her patient. In any event, we find on the facts that there was no fee agreement in place between Dr Lim and her patient.
- c. Dr Lim breached this ethical obligation in respect of the Category I charges in that the fees comprised in her invoices were not fair or reasonable and were, as the Prosecution has

⁴ Prosecution Closing Submissions, para 5.

⁵ Prosecution Closing Submissions, para 7.

charged, far in excess of and disproportionate to the fee that Dr Lim was entitled to charge.

- d. Dr Lim's breaches in respect of each Category I charge constitutes professional misconduct because it was an intentional, deliberate departure from the standards observed or approved by members of the profession of good repute and competency.
- e. In respect of the Category II charges, Dr Lim falsely represented in the relevant invoices that the fees comprised in those invoices had been charged to Dr Lim or would be payable by Dr Lim to the third-party doctors identified in those invoices.
- f. In any event, Dr Lim also breached the ethical obligation identified above in respect of the undisclosed markup which she added in each Category II invoice for her own fees in that these latter fees were far in excess of and disproportionate to the fees that Dr Lim was entitled to charge.
- g. Dr Lim's breaches in respect of each Category II charge constitutes professional misconduct because it was an intentional, deliberate departure from the standards observed or approved by members of the profession of good repute and competency.

2. **FACTUAL BACKGROUND**

2.1 **Dr Lim begins treating the patient in 2001**

2.1.1 In or around 2001, Dr Lim began treating the late patient ("**the Patient**") for cancer of the left breast.⁶ The Patient was a member of the Royal Family of Brunei. Dr Lim was the Patient's principal physician and was responsible for the Patient's overall care and coordinating her treatment.⁷

⁶ 2 CB 647 at [15].

⁷ 1 RWS Tab A, Statement of Dr Susan Lim Mey Lee dated 25 January 2010

2.1.2 In addition to Dr Lim's initial treatment of the Patient in 2001, Dr Lim provided treatment/services to the Patient over the following periods:⁸

- a. Around May to August 2004;
- b. Around January to December 2005;
- c. Around January to November 2006; and
- d. From January to June 2007.

2.1.3 The arrangement for invoicing was that Dr Lim's Clinics would address their invoices to the Brunei High Commission in Singapore. The invoices were ultimately paid by the Brunei Government after approval by the private office of the Sultan of Brunei.⁹

2.2 Care provided by Dr Lim

2.2.1 There is no doubt that the Patient in this case had very high expectations of the services to be provided by Dr Lim personally and by her team. There is also no doubt that the quality of services provided by Dr Lim to the Patient was excellent. But that is an entirely separate question from whether Dr Lim transgressed any ethical limit which may apply as to what she was entitled to charge for those services or made false representations in her invoices.

2.2.2 The total quantum of all invoices issued by SLS for services rendered by Dr Lim in 2001-2002 was \$671,827.80.¹⁰ The total quantum of all invoices issued by Dr Lim's Clinics for services rendered in 2004 was \$2,708,895.¹¹ The total quantum of all invoices issued by Dr Lim's Clinics for services rendered in 2005 was \$3,790,237.50.¹² The total quantum of all

⁸ See 1 CB 237 to 244 (Schedule of Invoices – (Schedule A)) and Schedule I to Prosecution's Closing Submissions

⁹ Respondent's Closing Submissions, para 42(vii).

¹⁰ 1 CB 243 to 244, Schedule A

¹¹ 1 CB 242 to 243, Schedule A

¹² 1 CB 242, Schedule A

invoices issued by Dr Lim's Clinics for services rendered in 2006 was \$7,501,357.50.¹³

2.2.3 For services rendered in 2007, the total amount of invoices issued by Dr Lim's Clinics amounted to \$26,042,112.50.¹⁴

2.2.4 The services which Dr Lim provided in 2007 were essentially coordination of the Patient's overall medical care and providing palliative treatment, constituting end-of-life management for a patient with advanced breast cancer. During the period in question, while Dr Lim undoubtedly spent a great deal of time and care in the treatment of the patient, Dr Lim did not perform any surgical procedures on the Patient which would have required Dr Lim to utilise her considerable surgical skills and expertise.

2.3 Ministry of Health Brunei is alerted

2.3.1 In May 2007, the Brunei High Commission in Singapore alerted the Ministry of Health, Brunei ("MOHB") in respect of "very high bills that were received from Dr Lim" for the Patient's treatment.¹⁵

2.3.2 On 18 July 2007, the Director-General of Medical Services of the MOHB, Dr BB1 met with Professor SS1, Director of Medical Services of the Ministry of Health, Singapore ("MOHS"), the MOHB's counterpart in Singapore. The purpose of the meeting was to review some of the bills issued by Dr Lim in 2007¹⁶ and seek guidance on what was a reasonable amount that should be paid to Dr Lim.¹⁷ Professor SS1 took the view that the bills were very high¹⁸ and invited the MOHB to write in officially to the MOHS so that the MOHS could investigate the matter.¹⁹

2.3.3 On 20 July 2007, Dr BB1 and BB2, the Acting Assistant Director of Administration and Finance, met with Dr L. Dr L is the Chief Executive Officer of the Parkway Group, which operates Gleneagles Hospital where Dr Lim's registered practice is located. Dr L was informed that the MOHB found

¹³ 1 CB 240 to 242, Schedule A

¹⁴ 1 CB 237 to 240, Schedule A

¹⁵ PWS 10, page 89, para [4]; Transcript dated 1 February 2010 page 176-177 ("Tr. 01.02.10 p 175-177)

¹⁶ Tr. 01.02.10 page 197/12 to 20

¹⁷ Tr. 02.02.10 page 28/3 to 10

¹⁸ Tr. 02.02.10 page 31/7 to 12

¹⁹ Tr. 01.02.10 page 195 to 198.

that Dr Lim's bills were excessive.²⁰ Dr L conveyed the MOHB's dissatisfaction with the bills to Dr Lim on the same day,²¹ and subsequently informed the MOHB that he had spoken to Dr Lim about working out a suitable compromise in respect of her bills.²²

2.4 Invoices annulled, avoided and discounted

2.4.1 On 1 August 2007, Dr Lim wrote to the Permanent Secretary of the MOHB stating that 43 invoices issued by her various clinics in 2007 were to be "disregarded" and considered "null and void" ("**the 1 August Letter**").²³ Further, 2 invoices issued in 2007 by Susan Lim Surgery Pte Ltd which related to conferences with Professor A (totalling about \$940,000) were withdrawn.²⁴ In addition, Dr Lim indicated that the amount on the remaining invoices would be reduced by 25%.²⁵ This effectively reduced the total amount which Dr Lim was charging the patient from about \$26 million originally to about \$12.6 million.²⁶

2.4.2 On 18 August 2007, Dr Lim wrote to the Minister of Health, Brunei, to apologise for the "inconvenience" caused to the MOHB as a result of what Dr Lim described as "inadvertent mistakes" made by her office in respect of the invoices ("**the 18 August Letter**").²⁷

2.4.3 On 19 August 2007, the Patient sadly passed away.

2.5 MOHB continues to view charges as unacceptably high

2.5.1 By a letter dated 27 August 2007, the MOHB wrote to Dr Lim stating that they found the charges to be "extremely high".²⁸

2.5.2 Also by a letter dated 27 August 2007, the MOHB wrote to the MOHS, expressing its view that Dr Lim's charges for services rendered from January 2007 to July 2007 were "unacceptable and extremely high".²⁹

²⁰ PWS 10, page 90 at [4].

²¹ PWS 10, page 90 at [4]; PWS 1, page 2 at [4]

²² PWS 1, page 2 at [4] (Statement of Dr L); PWS 10, page 90 at [4] (Letter from the MOHB dated 26 January 2010); 7 RBD 158; Tr. 02.02.10 page 34/18 to 23.

²³ 2 CB 525 to 526

²⁴ 2 CB 525 to 526

²⁵ 2 CB 525 to 526

²⁶ Prosecution's Closing Submissions dated 24 April 2012 at [30]

²⁷ 2 CB 527

²⁸ 2 CB 528

2.5.3 The MOHB referred to Dr Lim's 1 August Letter but asserted that notwithstanding the withdrawal of the 45 invoices and the 25% discount, the MOHB nevertheless found the charges to be "unacceptable". The MOHB also referred to Dr Lim's 18 August Letter and drew attention to the admitted "inadvertent mistakes" made by Dr Lim. The MOHB letter went on to seek the intervention of the MOHS in the matter.³⁰

2.6 The Complaint

2.6.1 Pursuant to the 27 August 2007 letter from the MOHB seeking the intervention of the MOHS, the MOHS conducted an investigation. At the conclusion of MOHS' investigations, it took the view that serious questions had been raised as to the propriety of Dr Lim's billings to the Brunei government in relation to services rendered to the Patient.

2.6.2 By a letter of complaint to the SMC dated 3 December 2007 ("**the Complaint**"),³¹ the MOHS expressed concerns that Dr Lim "may have taken unfair advantage of her position as the principal physician to the Patient".³² In particular, the Complaint raised the following issues of concern:³³

- a. Whether the invoices issued by Dr Lim for the period of January to June 2007 showed a pattern of overcharging and/or improper billing and whether Dr Lim had overcharged the Patient prior to January 2007;
- b. Whether Dr Lim had charged inappropriately for professional services which she had not personally rendered to the Patient; and
- c. Whether conflicts of interest arose in light of the fact that Dr Lim was the manager of all the clinics which had issued invoices for services rendered to the Patient.

2.6.3 It is important to note that the issues raised by MOHS in (b) and (c) above form no part of the charges against Dr Lim. This DC must

²⁹ 2 CB 523

³⁰ 2 CB 523 to 524

³¹ 2 CB 519 to 521

³² 2 CB 521 at [12]

³³ 2 CB 521 at [13]

therefore proceed on the basis that all of the services comprised in the various invoices were actually rendered to the Patient and were reasonably rendered to the Patient. The main issue before this DC is the ethical significance, if any, of the quantum of the fees which Dr Lim charged bearing in mind the services which Dr Lim rendered to the Patient.

2.6.4 The Complaint concluded by saying that MOHS was referring the matter to the SMC for a thorough investigation into Dr Lim's general conduct in relation to the Patient and whether said conduct amounts to professional misconduct.³⁴

2.7 Dr Lim meets the Permanent Secretary of MOHB

2.7.1 On 1 November 2007, Dr Lim wrote to the Permanent Secretary of the MOHB requesting a meeting in order to "resolve the outstanding Billings from [herself], [her] companies and all the other doctors and nursing staff involved in the care of the [Patient], finalise the accounts for the financial year end 2007 and settle the matter."³⁵

2.7.2 Dr Lim met with the Permanent Secretary of the MOHB on or about 8 November 2007. Dr Lim explained her bills and indicated that many of them had been issued by mistake on the part of her accountant. She offered to waive her and her team's professional fees from 15 January to 14 June 2007 and requested that the MOHB pay the remaining sum of \$3,248,791.29, which represented the bills from other specialists and disbursements.³⁶

2.7.3 Surprised by the sudden reduction and the offer made by Dr Lim, the MOHB took no position on the offer and informed her that the MOHB would look into the matter further.³⁷

2.7.4 Subsequently, Dr Lim sent a letter dated 12 November 2007 to the Permanent Secretary of the MOHB, setting out the offer that she had made at the meeting.³⁸

³⁴ 2 CB 521 at [14]

³⁵ 2 CB 663A

³⁶ PWS 10, page 90 at [6] (Letter from MOHB dated 26 January 2010); 2 CB 664 to 665

³⁷ PWS 10, page 90 at [6]

³⁸ 2 CB 664 to 665B

2.8 Complaints Committee and Disciplinary Committee

2.8.1 The SMC duly laid the MOHS' complaint before a Complaints Committee ("**the CC**").³⁹ By a letter dated 18 December 2007, the CC invited Dr Lim to provide her written explanation on the Complaint. Dr Lim did so by way of letters dated 4 February 2008⁴⁰ and 18 July 2008.⁴¹

2.8.2 On 17 November 2008, the CC ordered that a formal inquiry be held by a Disciplinary Committee into the Complaint pursuant to s 41 of the MRA. Pursuant to ss 41 and 42 of the MRA, the SMC appointed the First Disciplinary Committee ("**the First DC**") to inquire into the Complaint. The First DC comprised Associate Professor DC1-A, Associate Professor DC1-B, Dr DC1-C and Ms DC1-D. The legal assessor to the First DC was Mr DC1-E.⁴²

2.9 Dr Lim meets MOHB

2.9.1 In January 2009, Dr Lim met with the Minister of Health, Brunei in Brunei Darussalam.⁴³ Dr Lim stated that she was prepared to withdraw all her invoices, including "*third party billings*" if the MOHB was prepared to issue a "*letter of good standing*".⁴⁴ By this letter, Dr Lim essentially sought confirmation in writing from the MOHB that the Brunei government would not pursue the matter of her bills any further and that the Brunei government took no issue with these bills.⁴⁵

2.9.2 Under instructions from BBM, the MOHB did not accede to Dr Lim's request.⁴⁶

2.10 94 charges preferred

2.10.1 On 20 July 2009, the SMC issued to Dr Lim a Notice of Inquiry preferring 94 charges of professional misconduct against Dr Lim in relation to

³⁹ Pursuant to s 39(7) of the MRA

⁴⁰ 2 CB 595 to 640

⁴¹ 2 CB 641 to 661

⁴² Respondent's Bundle on the composition of the First Disciplinary Committee ("**RBC**") Vol. 2 Tab 3

⁴³ 4 RBD 135; PWS 10, page 91 at [8]

⁴⁴ PWS 10, page 91 at [8]

⁴⁵ PWS 10, page 91 at [8]; Tr. 02.02.10 page 101/11 to page 102/4

⁴⁶ Tr. 02.02.10 page 101/11 to page 106/21

the fees Dr Lim charged for services rendered to the Patient (“**the Charges**”).⁴⁷

2.10.2 The charges can be broadly grouped into 6 categories:

- a. Category A (Charges 1-65) relates to fees for services rendered by Dr Lim in one day or over a period of time;
- b. Category B (Charges 66-67) relates to fees for services rendered by employees of SLS: Dr B and Dr C;
- c. Category C (Charges 68-73) relates to fees for services rendered by radiotherapy facilities and staff (charges 68-73);
- d. Category D (Charges 74-76 and 84-94) relates to fees for services rendered or procedures done by other doctors.
- e. Category E (Charges 77-78) is in respect of fees invoiced for cancellations of attendances at overseas conferences; and
- f. Category F (Charges 79-83) relates to fees invoiced for Clinical Management Conference with Professor A and others.

2.11 Category A: Dr Lim’s Fees (Charges 1-65)

2.11.1 Charges 1 to 65 are in respect of the fees which Dr Lim charged for services rendered by Dr Lim. The Prosecution alleged that these fees were “far in excess of and disproportionate to what [Dr Lim was] entitled to charge for the services [Dr Lim] rendered.”

2.11.2 The template for these charges is as follows:

“That you, DR LIM MEY LEE SUSAN ... did charge [the Patient], for services rendered by you to the Patient on [date], fees which were far in excess of and disproportionate to what you were entitled to charge for the services you rendered.

Particulars

⁴⁷ 1 CB 1 to 462

(1) By way of invoice no. ... issued under [Dr Lim's Clinic], you rendered fees amounting to ... for the services set out in the invoice, a copy of which is attached in a Schedule (Schedule A) at ...

...

(5) The aggregate fees for invoices referred to at subparagraphs ... to ... above amount to ...

(6) You subsequently, by way of a letter dated 1 August 2007 to the Permanent Secretary, Ministry of Health, Brunei Darussalam, offered to reduce the fees charged by 25%, which would then reduce the fees charged from ... to

(7) For services rendered by you, the fees of ... were excessive.

and that in relation to the facts alleged, you have been guilty of professional misconduct under section 45(1)(d) of the Medical Registration Act (Cap. 174)."

2.12 Category B: Fees for Dr Lim's employees (Charges 66-67)

2.12.1 Charges 66 and 67 are in relation to fees which Dr Lim charged for services rendered by employees of SLS: Dr B and Dr C. Dr B is a general surgeon while Dr C is a general practitioner. Charge 66 relates to the charges for services rendered from 19 April 2007 to 14 June 2007 while Charge 67 relates to the charges for services rendered from 10 May 2006 to 20 May 2006.

2.12.2 These charges allege that the further fees that Dr Lim charged for the services of Dr B and Dr C, on top of the fees which Dr Lim charged separately for services rendered by Dr Lim over the same period, were "inappropriate and far in excess of and disproportionate" to the services they each rendered.

2.12.3 For example, Charge 66 as set out in the Notice of Inquiry reads as follows:

“That you, DR LIM MEY LEE SUSAN, ... did for the period from 19 April 2007 to 14 June 2007, in addition to invoices which you had already rendered as particularised in Section B below, rendered further invoices through your other clinics (“Further Aggregate Fees”) and did charge [the Patient], Further Aggregate Fees, as particularised in Section A, which was inappropriate and far in excess of and disproportionate to the services you rendered.

A. The Further Aggregate Fees comprised the following:

Particulars

(1) Dr B

On or around 28 June 2007, you issued invoice no. GSP/INV/2007/0070 under Group Surgical Practice, and charged the Patient professional fees purportedly for your employee, Dr B, amounting to \$140,000 (not inclusive of GST) for services rendered for the period from 19 April 2007 to 14 June 2007 as set out in the invoice [Sch A / 105].

(2) Dr C

On or around 28 June 2007, you issued invoice no. GSP/INV/2007/0002A under Centre for Breast Screening & Surgery and charged the Patient professional fees purportedly for your employee, Dr C, amounting to \$82,500 (not inclusive of GST) for services rendered for the period from 7 May 2007 to 14 June 2007 as set out in the invoice [Sch A / 107].

(3) The Further Aggregate Fees as set out above amounted to \$222,500.

(4) You subsequently, by way of a letter dated 1 August 2007 to the Permanent Secretary, Ministry of Health, Brunei Darussalam, offered to reduce the fees charged by 25% which would result in a reduction of the

Further Aggregate Fees from \$222,500 to \$166,875 which were inappropriate and excessive as you had already charged the Patient separately for services as particularised in Section B below.

B. Invoices which you rendered

- (1) The invoices rendered above were in addition to the invoices which you had already rendered for a similar period from 16 April 2007 to 14 June 2007, amounting to \$10,122,750 (not inclusive of GST) after a withdrawal of some invoices and a discount of 25% ...
- (2) You subsequently, by way of a letter dated 1 August 2007 to the Permanent Secretary, Ministry of Health, Brunei Darussalam, offered to reduce the fees charged by 25% which would result in your fees being reduced from \$14,547,000 to \$10,122,750.

and in relation to the facts alleged, you have been guilty of professional misconduct under section 45(1)(d) of the Medical Registration Act (Cap 174).”

2.13 Category C: Radiotherapy charges (Charges 68-73)

2.13.1 Charges 68 to 73 are in respect of fees which Dr Lim charged for services rendered for radiotherapy facilities and staff. The Prosecution alleged that these fees were “far in excess of and disproportionate to what [Dr Lim was] entitled to charge for the services [Dr Lim] rendered.”

2.13.2 The template for these charges is as follows:

“That you, DR LIM MEY LEE SUSAN ... did charge [the Patient], for radiotherapy facilities services and staff to the Patient from [dates], fees which were far in excess of and disproportionate to what you were entitled to charge for the services you rendered.

Particulars

(1) By way of invoice no. ... issued under [Dr Lim's Clinic], you rendered fees amounting to \$... for radiotherapy facilities and services rendered by radiotherapy staff as set out in the invoice, a copy of which is attached in [Sch A / ...].

...

(3) You subsequently, by way of a letter dated ... to the Permanent Secretary, Ministry of Health, Brunei Darussalam, offered to withdraw the invoice.

(4) For radiotherapy facilities and services rendered by radiotherapy staff, the fees of \$..., which were subsequently withdrawn, were excessive.

and that in relation to the facts alleged, you have been guilty of professional misconduct under section 45(1)(d) of the Medical Registration Act (Cap. 174)."

2.14 **Category D: Fees invoiced for third-party services (Charges 74 to 76 and 84 to 94)**

2.14.1 Charges 74 to 76 and Charges 84 to 94 relate to treatment rendered by Professor D, Dr E, Dr F, Dr G, Dr H, Dr I, Dr J and Dr K ("**the Third-Party Doctors**") to the Patient as part of the team of specialists assembled by Dr Lim and attending to the Patient's care.

2.14.2 Charges 74 to 76 allege that the fees which Dr Lim charged for services which she rendered together with Professor D, Dr E and Dr F were "far in excess of and disproportionate to what [Dr Lim was] entitled to charge".

2.14.3 For example, Charge 74 reads as follows:

"That you, DR LIM MEY LEE SUSAN, ... did charge [the Patient], for services rendered by you to the patient on 22 March 2005, fees which were far in excess of and disproportionate to what you were entitled to charge for the services you rendered.

- (1) By way of invoice no. 0010451/05/04 dated 15 April 2005 issued under Susan Lim Surgery ("the Invoice"), you *inter alia*, rendered fees amounting to \$78,600 (not inclusive of GST) for "*Inpatient Chest Tap*" and "*review*" purportedly carried out by you and Professor D on 22 March 2005 as set out in the Invoice [Sch A / 162].
- (2) Professor D reviewed the Patient and conducted the Procedure. He charged \$945 for services rendered.
- (3) For the services which you rendered with Professor D, the fees of \$78,600 were excessive.

and that in relation to the facts alleged, you have been guilty of professional misconduct under section 45(1)(d) of the Medical Registration Act (Cap. 174)."

2.14.4 Charges 84 to 94 allege that Dr Lim falsely represented to the Patient or the Patient's representatives that the fees charged by Dr Lim in the invoices cited represented fees due to the Third-Party Doctors.

2.14.5 For example, Charge 92 reads as follows:

"That you, DR LIM MEY LEE SUSAN, ... did charge [the Patient], fees for purported services rendered by [Dr J], for the period from 19 January 2007 to 20 January 2007, and falsely represented to the Patient and/or the Patient's representatives that such fees had been charged by and/or would be payable to Dr J when you knew or ought to have known that this was not true and in any event such fees were far in excess of and disproportionate to what you were entitled to charge for the services you rendered.

Particulars

- (1) By way of invoice no. GSP/INV/2007/0040 dated 16 April 2007 issued under Group Surgical Practice, you rendered fees on behalf of Dr J amounting to \$25,500 (not inclusive of GST) for a period from 19 January

2007 to 20 January 2007, as set out the invoice (*sic*) [Sch A /31].

- (2) You falsely represented to the Patient and/or the Patient's representatives that the above invoice represented fees due to Dr J, which you knew or ought to have known was not true.
- (3) For a similar period on 19 January 2007, Dr J did not render any invoice.
- (4) Such fees charged by you was unjustified in the circumstances, notwithstanding that you had subsequently, by way of a letter dated 1 August 2007 to the Permanent Secretary, Ministry of Health, Brunei Darussalam, offered to withdraw the invoice referred to at sub-paragraph (1) above.

and that in relation to the facts alleged, you have been guilty of professional misconduct under section 45(1)(d) of the Medical Registration Act (Cap. 174)."

2.15 **Category E: Conference cancellation (Charges 77 to 78)**

2.15.1 Charges 77 and 78 are in respect of fees charged by Dr Lim for cancellation of her scheduled attendance at conferences in order to attend to the Patient. It is alleged that these fees charged were "inappropriate and far in excess of and disproportionate to" the cancellation in question and the services rendered by Dr Lim.

2.15.2 For example, Charge 77 reads as follows:

"That you, DR LIM MEY LEE SUSAN, ... did charge [the Patient], fees for the cancellation of other professional commitments, specifically, a flight and conference in New York, United States ("the Cancellation Fees") which were inappropriate and far in excess of and disproportionate to the cancellation in question.

Particulars

- (1) By way of invoice no. SLS/INV/2007/0009 dated 9 April 2007 issued under Susan Lim Surgery ("the Invoice"), the Cancellation Fees amounted to \$78,000 (not inclusive of GST) as set out in the Invoice [Sch A / 20].
- (2) You subsequently, by way of a letter dated 1 August 2007 to the Permanent Secretary, Minister of Health, Brunei Darussalam, offered to reduce the fees charged by 25% which would then reduce the Cancellation Fees from \$78,000 to \$58,500.
- (3) The Cancellation Fees were in addition to the fees which you charged the Patient for services rendered as set out in the Invoice [Sch A / 20], amounting to \$450,000 (not inclusive of GST), which was subsequently reduced by 25% to \$337,500 by way of a letter dated 1 August 2007 to the Permanent Secretary, Ministry of Health, Brunei Darussalam.
- (4) For the cancellation in question, the Cancellation Fees of \$78,000 were inappropriate and excessive.
- (5) Further, even after reducing the Cancellation Fees charged by 25%, the fees of \$58,500 were still inappropriate and excessive.

and that in relation to the facts alleged, you have been guilty of professional misconduct under section 45(1)(d) of the Medical Registration Act (Cap. 174)."

2.16 **Category F: Fees for Clinical Management Conference (Charges 79 to 83)**

2.16.1 Charges 79 to 83 are in relation to fees charged by Dr Lim for co-ordinating and attending specialist clinical management conferences with Professor A to review and discuss the Patient's condition. The Prosecution alleged that Dr Lim's fees were "inappropriate and far in excess of and disproportionate to" the services rendered by Dr Lim in co-ordinating and attending these conferences.

2.16.2 Charge 79 reads as follows:

“That you, DR LIM MEY LEE SUSAN, ... did charge [the Patient] fees for attending and co-ordinating a specialist conference with Professor A for the period from 26 January 2007 to 30 January 2007 which was inappropriate and far in excess of and disproportionate to the services you rendered.

Particulars

- (1) By way of an invoice no. SLS/INV/2007/0007 dated 12 March 2007 issued under your clinic, Susan Lim Surgery (“the Invoice”), you rendered fees amounting to \$560,000 (not inclusive of GST) for the services set out in the Invoice [Sch A / 10-11].
- (2) For a similar period from 26 January 2007 to 29 January 2007, Professor A charged fees of £45,000 for services as set out in his bill dated 1 February 2007.
- (3) You subsequently, by way of a letter dated 1 August 2007 to the Permanent Secretary, Ministry of Health, Brunei Darussalam, offered withdraw (*sic*) the Invoice.
- (4) For the services rendered by you, the fees of \$560,000 which were subsequently withdrawn, were excessive.

and that in relation to the facts alleged, you have been guilty of professional misconduct under section 45(1)(d) of the Medical Registration Act (Cap. 174).”

2.17 Proceedings before the First DC

2.17.1 In anticipation of the evidential hearing before the First DC, the Prosecution and the Defence exchanged witness statements on 25 January 2010.⁴⁸

2.17.2 The evidential hearing before the First DC took place between 28 January 2010 and 8 April 2010.

⁴⁸ See PWS and RWS, both dated 25 January 2012.

2.17.3 In support of the Prosecution's case, the following witnesses gave evidence before the First DC:

- a. Dr BB1 gave evidence on 1 February 2010 and 2 February 2010 in respect of the letter dated 27 January 2010 issued by the Permanent Secretary of the MOHB which commented on Dr Lim's statement of facts prepared by her solicitors for the Disciplinary Inquiry;⁴⁹
- b. Dr F gave evidence on 2 February 2010 in respect of the treatment that Dr F had rendered to the Patient, the invoices that were issued to Dr Lim and Dr Lim's invoices to the Patient;⁵⁰
- c. Dr G gave evidence on 2 February 2010 in respect of the treatment that Dr G had rendered to the Patient, the invoices that were issued to Dr Lim and Dr Lim's invoices to the Patient;⁵¹
- d. Dr J gave evidence on 2 February 2010 in respect of the treatment that Dr J had rendered to the Patient, the invoices that were issued to Dr Lim and Dr Lim's invoices to the Patient;⁵²
- e. Professor PE-A gave evidence on 3 February 2010 in respect of Professor PE-A's expert report dated 17 July 2009⁵³ which set out Professor PE-A's opinion on the reasonableness of the fees charged by Dr Lim for services rendered to the Patient in 2007;
- f. Dr L gave evidence on 3 February 2010 in respect of his meeting with officials from the MOHB on 20 July 2007 and his subsequent meeting with Dr Lim;⁵⁴

⁴⁹ PWS 10

⁵⁰ PWS 4

⁵¹ PWS 5

⁵² PWS 8

⁵³ 1 CB 1, page 187 to 220

⁵⁴ PWS 1

- g. Professor D gave evidence on 9 February 2010 in respect of the treatment that Professor D had rendered to the Patient, the invoices that were issued to Dr Lim and Dr Lim's invoices to the Patient;⁵⁵
- h. Dr I gave evidence on 9 February 2010 in respect of the treatment that Dr I had rendered to the Patient, the invoices that were issued to Dr Lim and Dr Lim's invoices to the Patient;⁵⁶
- i. Dr K gave evidence on 9 February 2010 in respect of the treatment that Dr K had rendered to the Patient, the invoices that were issued to Dr Lim and Dr Lim's invoices to the Patient;⁵⁷
- j. Dr H gave evidence on 9 February 2010 in respect of the treatment that Dr H had rendered to the Patient, the invoices that were issued to Dr Lim and Dr Lim's invoices to the Patient;⁵⁸
- k. Dr E gave evidence on 7 April 2010 in respect of the treatment that Dr E had rendered to the Patient, the invoices that were issued to Dr Lim and Dr Lim's invoices to the Patient;⁵⁹
- l. Dr PE-B gave evidence on 7 April 2010 in respect of Dr PE-B's expert report dated 1 July 2009⁶⁰ which set out Dr PE-B's opinion on the reasonableness of the fees charged by Dr Lim for services rendered to the Patient in 2007; and
- m. Dr PE-C gave evidence on 8 April 2010 in respect of Dr PE-C's expert report dated 20 July 2009⁶¹ which set out Dr PE-C's opinion on the reasonableness of the fees charged by Dr Lim for services rendered to the Patient in 2007.

⁵⁵ PWS 2

⁵⁶ PWS 7

⁵⁷ PWS 9

⁵⁸ PWS 6

⁵⁹ PWS 3

⁶⁰ 1 CB 1, page 167 to 185

⁶¹ 1 CB 1, page 222 to 236

2.17.4 At the close of the Prosecution's case on 8 April 2010, then-counsel for Dr Lim, Mr Sundaresh Menon SC (as he then was), informed the First DC that he intended to make a submission that Dr Lim had no case to answer.⁶² The First DC gave directions for Defence submissions to be filed by 4 June 2010, with a reply from the Prosecution to be filed on 16 July 2010⁶³ and fixed a three-day hearing to receive oral submissions commencing on 29 July 2010.⁶⁴

2.17.5 On 28 May 2010, Dr DC1-C passed away. Associate Professor DC1-F was appointed on 9 July 2010 to fill the vacancy on the First DC created by the passing of Dr DC1-C.⁶⁵

2.17.6 On 29 July 2010, written submissions on Dr Lim's submission of no case to answer having been duly filed, the parties attended before the First DC to present their oral arguments on Dr Lim's submission of no case to answer. Although the purpose of the hearing fixed by the DC for 29 July 2010 and the following two days was for the First DC to receive the parties' oral submissions on the defence submission of no case to answer, the Chairman of the First DC informed the parties at the outset of the hearing on 29 July 2010 that:

"We have read the written submission and I understand from my colleagues in the panel that we have no further questions to raise. Does either party have anything else to add or submit before we deliver our decision at this stage?"⁶⁶

2.17.7 Counsel for the Dr Lim then asked the First DC to proceed with its initial indication to hear oral argument on the Defence submission of no case to answer, which the First DC did. However, after having made oral submissions, counsel for Dr Lim applied for the First DC to recuse itself on the grounds that the introductory statement by the Chairman showed that it had prejudged the Appellant's submission of no case to answer before hearing oral submissions as it earlier indicated that it would.⁶⁷

⁶² Tr. 08.04.2010 page 124/22 to 25

⁶³ *Lim Mey Lee Susan v Singapore Medical Council* [2012] 1 SLR 701.

⁶⁴ Tr. 08.04.2010 page 128/18

⁶⁵ *Lim Mey Lee Susan v Singapore Medical Council* [2012] 1 SLR 701 at [6]

⁶⁶ Tr. 29.07.2010 page 1

⁶⁷ Tr. 29.07.2010 page 57 to 61

2.17.8 The Prosecution did not object to the application made by Defence Counsel. Given that neither party was inviting the First DC to continue the hearing, the First DC recused itself.⁶⁸

2.18 The appointment of this Disciplinary Committee

2.18.1 By an email to members of the SMC on 3 September 2010, Ms SS2 (Senior Manager of the Professional Conduct and Professional Standards Division of the SMC) sought the approval of the SMC members to revoke the appointment of the First DC⁶⁹ as a consequence of its decision to recuse itself.

2.18.2 Further, by an email to the same SMC members on 13 September 2010, approval was sought for the appointment of this DC.⁷⁰ The composition of this DC was proposed as follows:

- a. Prof Tan Ser Kiat (Chairman);
- b. Prof C Rajasoorya;
- c. Dr Abraham Kochitty;
- d. A/Prof Koh Ming Choo Pearlie (Layperson); and
- e. Mr Vinodh Coomaraswamy SC (Legal Assessor).

2.18.3 The SMC accordingly appointed this DC on 14 September 2010.⁷¹ On 16 September 2010, the SMC informed the Appellant's solicitors of the appointment of this DC.⁷²

2.18.4 It is important to note that the SMC did not upon this DC's appointment supply to this DC any of the material before the First DC, including the Notice of Inquiry, the Charges, the witness statements, the transcript of evidence and the transcript of submission papers in this matter. All of those materials were provided to this DC only with the consent of both

⁶⁸ Tr. 29.07.2010 page 68

⁶⁹ *Lim Mey Lee Susan v Singapore Medical Council* [2012] 1 SLR 701 at [8]

⁷⁰ *Lim Mey Lee Susan v Singapore Medical Council* [2012] 1 SLR 701 at [9]

⁷¹ *Lim Mey Lee Susan v Singapore Medical Council* [2011] 4 SLR 156 at [14]

⁷² *Lim Mey Lee Susan v Singapore Medical Council* [2011] 4 SLR 156 at [14]

parties when it became apparent that this DC would have to determine this matter.

2.19 The judicial review proceedings

2.19.1 On 17 December 2010, Dr Lim filed Originating Summons No. 1252 of 2010 (“OS 1252”) in the High Court seeking *inter alia*:⁷³

- a. A quashing order to quash the SMC’s decision to appoint this DC on the grounds of: (i) illegality under the MRA; and (ii) actual or apprehension of bias on the part of the SMC.
- b. A prohibiting order to prohibit the SMC from further initiating or pursuing any disciplinary action on the same complaint against Dr Lim on the ground of *Wednesbury* irrationality and on considerations of “unfairness, prejudice and oppression”.

2.19.2 On 26 May 2011, after a hearing, the High Court rejected the arguments advanced on Dr Lim’s behalf and dismissed her application.

2.19.3 Dissatisfied with the decision of the High Court, Dr Lim appealed against the High Court decision to the Court of Appeal. On 30 November 2011, the Court of Appeal also dismissed Dr Lim’s appeal.⁷⁴

2.19.4 This DC understands that Dr Lim’s judicial review proceedings received extensive coverage in the media. This DC anticipated that coverage and took a unanimous decision upon its appointment to sequester itself, to the fullest extent practically possible, from that coverage. This was to ensure that it could not be said that this DC’s decision in this inquiry, if this inquiry were permitted to proceed, took into account anything other than the evidence and submissions presented to it formally by the parties within the strict confines of the disciplinary inquiry process.

2.20 Dr Lim’s decision to not give evidence before this DC

2.20.1 While Dr Lim’s proceedings in the High Court and the Court of Appeal were pending, with the consent of the parties, this DC did not proceed with its inquiry. The only activity which this DC undertook was to convene the following Pre-Inquiry Conferences (“PICs”) to monitor the status

⁷³ *Lim Mey Lee Susan v Singapore Medical Council* [2011] 4 SLR 156 at [17]

⁷⁴ *Lim Mey Lee Susan v Singapore Medical Council* [2012] 1 SLR 701

of those proceedings: on 24 September 2010, on 11 November 2010, on 22 December 2010, on 18 April 2011, on 3 June 2011, on 27 June 2011 and on 2 December 2011.

2.20.2 At the PIC on 2 December 2011, Dr Lim's counsel informed this DC that Dr Lim's appeal to the Court of Appeal arising from OS 1252 had been dismissed. Dr Lim's Counsel further indicated that Dr Lim accepted the final ruling of the Court of Appeal and was prepared to proceed with the disciplinary inquiry before this DC.⁷⁵ Both counsel then informed this DC that the parties had agreed that this DC should proceed with this inquiry, not by hearing all the Prosecution witnesses afresh, but by receiving the transcripts of the evidence of the Prosecution witnesses from the First DC and continuing to the Defence case from that point, subject to this DC's asking for any particular Prosecution witness to be called afresh to present his evidence again. Dr Lim's counsel also indicated that Dr Lim was prepared to proceed to open her defence before this DC on the basis of the prosecution evidence adduced before the First DC.⁷⁶ This position was confirmed by a letter dated 6 January 2012 from Dr Lim's solicitors, Allen & Gledhill to this DC.⁷⁷ Dr Lim's counsel further indicated that Dr Lim would not submit to this DC that she had no case to answer if this inquiry proceeded on the transcripts of the Prosecution witnesses' evidence before the First DC and decided that it did not wish to hear afresh from any of the Prosecution witnesses.⁷⁸

2.20.3 A PIC was subsequently held on 16 January 2012 to give directions for the inquiry that was to take place.

2.20.4 At the PIC held on 16 January 2012, the legal assessor to this DC, Mr Vinodh Coomaraswamy SC ("**the Legal Assessor**") informed the parties that this DC had taken note of Dr Lim's decision to proceed before this DC on the basis of the evidence adduced before the First DC and to forgo the opportunity of cross-examining the prosecution witnesses again. The Legal Assessor went on to express this DC's anxiety to ascertain that Dr Lim appreciated the full consequences of her agreement⁷⁹ in that Dr Lim's decision: (a) deprived her current counsel of the opportunity to cross-examine the Prosecution witnesses according to his theory of the case, as

⁷⁵ Tr. 02.12.2011 page 1

⁷⁶ Tr. 02.12.2011 pages 1-5

⁷⁷ 1 PBDCS 1, page 1 at [2]-[3]

⁷⁸ Tr. 02.12.2011 page 5

⁷⁹ Tr. 16.01.2012, pages 2-5

opposed to the theory of the case which had been advanced by his predecessor and which had underpinned his predecessor's cross-examination; and (b) deprived her of the significant tactical advantage of cross-examining the Prosecution witnesses for a second time, before this DC, having had a preview from the proceedings before the First DC of those witnesses' responses in cross-examination.⁸⁰

2.20.5 Counsel for Dr Lim indicated at the 16 January 2012 PIC that Dr Lim was aware of the consequences of her decision but agreed to reconfirm this with her and write officially to this DC to confirm Dr Lim's position. This DC then went on at that PIC to make the provisional decision to call Dr Lim's defence, subject only to this point being confirmed.

2.20.6 By a letter dated 19 January 2012,⁸¹ Dr Lim's solicitors confirmed that Dr Lim had made her decision to proceed on the basis of the transcripts of the evidence adduced before the First DC with the benefit of legal advice and maintained her position.

2.20.7 Accordingly, by a letter from the SMC to the parties dated 31 January 2012, this DC conveyed its decision to confirm its provisional decision at the PIC on 16 January 2012 to proceed with the present inquiry "on the basis of the prosecution evidence adduced before the previous disciplinary committee and to proceed to the Respondent's case at the next tranche of hearing dates".⁸²

2.20.8 By a letter dated 28 February 2012, Dr Lim's solicitors informed the DC that Dr Lim was of the view that the evidence adduced by the Prosecution had not established any of the Charges against her. Dr Lim further indicated that she did not intend to call any evidence in her defence and wished to proceed to tender Closing Submissions to this DC.⁸³

2.20.9 Accordingly, at a final PIC on 14 March 2012, this DC gave directions for the parties to file their written closing submissions and fixed a 3-day hearing for the parties to deliver their oral closing submissions.⁸⁴

⁸⁰ Tr 16.01.2012 page 1/15 to 2/11; page 3/6 to 9; page 15/1 to 21; page 4/22 to 5/4

⁸¹ 1 PBDCS 2, page 3 at [2]-[3]

⁸² 1 PBDCS 3, page 5, para [3]

⁸³ 1 PBDCS 4, pg 6 at [2]

⁸⁴ Tr. 14.03.2012

2.21 Proceedings before this DC

2.21.1 Dr Lim tendered her closing submissions on 27 March 2012. The Prosecution tendered its closing submissions on 24 April 2012.

2.21.2 The parties then appeared before this DC to present their oral closing submissions over the course of 3 hearing days from 21 to 23 May 2012.

2.21.3 As a preliminary point, Counsel for Dr Lim raised the concern that this DC could be influenced by the media coverage of Dr Lim's legal proceedings in the High Court and Court of Appeal which coverage contained unfair and prejudicial statements and also by certain views of Dr Lim's case expressed by third parties and outside the strict confines of this inquiry process.⁸⁵ Counsel for Dr Lim asked this DC to put out of consideration such extraneous material. The Chairman agreed and assured him that this DC determine this case on, and only on, its merits and the material properly before this DC.⁸⁶

2.21.4 Counsel for Dr Lim went on to present his closing submissions on 21 May 2012 and 22 May 2012. Counsel for the Prosecution presented his closing submissions on 22 May 2012 and 23 May 2012. Counsel for Dr Lim made submissions in reply on 23 May 2012.

3. PROCEDURAL ISSUES

3.1 Which version of the MRA applies

3.1.1 As clarified by the High Court⁸⁷ in OS 1252, this DC is governed by the Medical Registration Regulations as they stood on 14 September 2010, the date on which this DC was appointed.

3.1.2 By parity of reasoning, this DC is also governed by the Medical Registration Act (Cap 174, 2004 Ed) as it stood on 14 September 2010.

3.2 This DC's approach on evidential matters

3.2.1 It is common ground that the provisions of the Evidence Act (Cap. 97) do not apply in these disciplinary proceedings.⁸⁸ As section 43(4) of the MRA⁸⁹ expressly provides:

⁸⁵ Tr. 21.05.2012 pages 5 to 7

⁸⁶ Tr. 21.05.2012 page 7

⁸⁷ *Lim Mey Lee Susan v Singapore Medical Council* [2011] 4 SLR 156; [2011] SGHC 133 at [83] – [96].

A Disciplinary Committee shall not be bound to act in any formal manner and shall not be bound by the provisions of the Evidence Act (Cap. 97) or by any other written law relating to evidence but may inform itself on any matter in such manner as it thinks fit.

3.2.2 Nevertheless, this DC is of the view that the Evidence Act (Cap 97) and the common law rules of evidence which survive the Act⁹⁰ are a useful guide in dealing with the evidential issues before this DC if only because they crystallise the thinking of Singapore's courts and legislature on where to strike a fair evidential balance between the Prosecution and the accused in criminal proceedings. This DC accepts that it should not treat a respondent to disciplinary proceedings any less fairly than a criminal court would treat a criminal accused.

3.3 Burden and standard of proof

3.3.1 We accept, and it is common ground,⁹¹ that the legal burden of proof in respect of each element of each of the 94 charges against Dr Lim rests on the Prosecution throughout. We accept also, and it is further common ground, that the Prosecution must discharge its legal burden of proof beyond reasonable doubt.⁹² This is the result of the well-established analogy between professional disciplinary proceedings and criminal proceedings. Our task, therefore, on each of the 94 charges preferred against Dr Lim is to determine whether the Prosecution has proved beyond reasonable doubt each element of that charge such that Dr Lim is guilty of professional misconduct on that charge.

3.3.2 "Beyond reasonable doubt", however, is not the same as a standard of absolute certainty.⁹³ This standard obliges a tribunal to find the respondent not guilty if one or more reasonable doubts remain after it has applied its mind to the evidence, to the relevant legal and ethical principles

⁸⁸ MRA ss 43(4) to (8); MRR ss 23(4)(d) to (e)

⁸⁹ As the MRA stood on 14 September 2010, the date of this DC's appointment.

⁹⁰ The Evidence Act is a comprehensive code which repeals all inconsistent rules of evidence at common law. This is not to say, however, that the common law of evidence has no place in Singapore's law of evidence. The Evidence Act does not repeal all common law rules of evidence, it merely repeals those that are inconsistent with the rules of evidence set out in the Act. Common law rules which are not inconsistent with the Evidence Act are therefore not repealed by the Evidence Act.

⁹¹ Prosecution's Closing Submissions at [69]; Respondent's Closing Submissions at [22];

⁹² Prosecution's Closing Submissions at [69] – [70]; Respondent's Closing Submissions at [23].

⁹³ *Jagatheesan s/o Krishnasamy v PP* [2006] 4 SLR(R) 45 at [51]; Prosecution's Closing Submissions at [70].

and to the submissions presented to it. But it also permits a tribunal to reject doubts which “are merely fanciful”.⁹⁴

3.3.3 The parties differ, however, on where the evidential burden of proof lies and to what standard that burden should be discharged in relation to positive assertions put forward by Dr Lim, that is, where Dr Lim makes an assertion that is not merely the negative of a particular element of a particular charge against Dr Lim. One instance is Dr Lim’s assertion that she had a fee agreement which governs the subject-matter of the charges against her. The absence of a fee agreement is not an element of any charge against Dr Lim or of the Prosecution’s overall case against Dr Lim.

3.3.4 The Prosecution’s submission is that⁹⁵ because the absence of a fee agreement is not an essential element of any of the charges against Dr Lim, the burden of establishing the existence of a fee agreement rests on Dr Lim and that she must discharge that burden on the balance of probabilities.⁹⁶ Dr Lim’s submission is that it is the Prosecution’s burden to disprove beyond reasonable doubt every fact which arises from the evidence before the tribunal which is inconsistent with professional misconduct,⁹⁷ whether or not that fact is an essential element of a particular charge against Dr Lim. Further, Dr Lim submits, that burden falls on the Prosecution provided only that the respondent has discharged her evidential burden by pointing to sufficient evidence of that exculpatory fact – regardless of which party adduced that evidence – so as to give rise to a reasonable doubt which would if left unrebutted preclude a finding of guilt.⁹⁸

3.3.5 This point of difference between the Prosecution and Dr Lim is where the analogy between these disciplinary proceedings and criminal proceedings breaks down. Dr Lim’s submission accurately sets out the position at common law in a criminal prosecution where the accused asserts a positive defence for which only an evidential burden rests on the accused. An example is the defence of self-defence at common law. The Prosecution’s submission accurately sets out the position at common law in a criminal prosecution where the accused asserts a positive defence for which the law provides that the legal burden of proof rests on the accused. An example is

⁹⁴ *Teo Keng Pong v PP* [1996] 2 SLR(R) 890 at [68].

⁹⁵ Prosecution’s Closing Submissions at [72].

⁹⁶ Prosecution’s Closing Submissions at [77].

⁹⁷ Respondent’s Closing Submissions at [24].

⁹⁸ Respondent’s Closing Submissions at [25].

the defence of insanity at common law. The orthodox position is that Dr Lim's submission represents the general rule to which the Prosecution's submission is the exception. This is the natural consequence of the presumption of innocence.

3.3.6 In disciplinary proceedings under the MRA, the presumption of innocence naturally applies. However, there is no allocation by common law or by express or implied statutory provision of the legal burden of proof for certain defences as there is in criminal proceedings. The position which applies in these disciplinary proceedings, therefore, is the general rule at common law: provided that there is sufficient evidence, by whomever adduced, on any particular fact in issue to raise a reasonable doubt about Dr Lim's guilt, it is for the Prosecution to disprove that fact, and it must do so beyond reasonable doubt.

3.4 Evidential value of the witness statements of Dr Lim and her witnesses

3.4.1 By a letter dated 28 February 2012 from Allen & Gledhill to the SMC, Dr Lim informed this DC that the "Defence is of the view that the evidence adduced by the Prosecution has not established any of the Charges against her. As such, the Defence does not intend to call any witnesses and would like to proceed to tender Closing Submissions to the Disciplinary Committee".⁹⁹

3.4.2 The Medical Registration Regulations (Rg 1, 2000 Rev Ed) ("MRR") contemplates the importance of having witness evidence confirmed on oath and tested under cross-examination. Thus, for instance, Regulation 23(4)(e) of the MRR provides:

(e) both the Council's solicitor and the practitioner or his counsel may cross-examine witnesses of the other party after the evidence-in-chief has been completed and each party may re-examine their witnesses after the cross-examination;

3.4.3 Dr Lim's counsel accepted in the course of oral closing submissions that the lack of cross-examination meant that the material in the witness statements of Dr Lim and her other witnesses did not have sufficient weight to stand by itself as positive evidence of the matters asserted therein.

⁹⁹ 1 PBDCS 4, page 6, para [2]

The submission advanced was that it could, however, serve as corroboration of other objective evidence before this DC:

“MR LEE: We would invite the DC to look at the [Respondent’s witness] statements, at least as a statement of the position of the respondent. Almost like a pleading.

And where the position that comes across in those statements is supported by the objective evidence that is admitted before this tribunal, we would ask the tribunal to give some weight to what has been stated in those statements.”¹⁰⁰

3.4.4 This position is consistent with Dr Lim’s closing submissions which presented arguments on her behalf, at least in respect of the fee agreement, without placing reliance on any of the material in the witness statements tendered on behalf of Dr Lim.¹⁰¹

3.4.5 Dr Lim’s decision not to call any evidence was a considered decision taken upon legal advice with knowledge of the consequences. One evidential consequence which Dr Lim accepts is that “there is no evidence from [Dr Lim] on [the] primary facts.”¹⁰² In other words, Dr Lim has chosen not to submit for cross-examination before this DC any evidence from herself or from her witnesses: (a) to advance her positive case in defence; or (b) to negate the inferences that can be drawn beyond reasonable doubt from the material before the DC. Of course, there is no question of Dr Lim even needing to advance a positive case or negate inferences unless the Prosecution first discharges its burden of proof to the required standard. But once that burden has been discharged, the result of Dr Lim’s decision in the light of her counsel’s submission, is that there is no positive evidence from Dr Lim or from her witnesses to negate the Prosecution’s case.

3.4.6 The conclusion, therefore, is that the witness statements of Dr Lim and of her witnesses remain material before this DC which this DC can take into consideration. However, as Dr Lim concedes, this material should be accorded weight only as corroboration: only if there is other objective evidence which has been tested by cross-examination before this DC with which this material is consistent.

¹⁰⁰ Tr 22.05.2012, 67/1 to 67/8.

¹⁰¹ Tr. 21.05.2012 page 47/1 to 47/11

¹⁰² Respondent’s Counsel’s Note at [108(d)].

3.5 Adverse inferences

3.5.1 The Prosecution, however, invites this DC to go further than that and to draw from Dr Lim's decision "the irresistible inference that there is no truth to the assertions made in the defence's witness statements"¹⁰³ and "that Dr Lim has no reasonable explanation against (sic) the Charges and that she is guilty of professional misconduct as alleged."¹⁰⁴

3.5.2 Dr Lim, on the other hand, asserts that Dr Lim's decision not to give evidence "is not proof that the primary facts before the DC are untrue"¹⁰⁵ and that it is no indication of her dishonesty or of her acknowledgment that she is guilty of professional misconduct.¹⁰⁶

3.5.3 This DC agrees with Dr Lim and declines the Prosecution's invitation. The DC, therefore, declines to use Dr Lim's decision not to call any witnesses as, in itself, giving rise to an adverse inference capable of supporting the Prosecution case either on any particular element of any charge or overall in respect of all 94 charges. In a case of this factual complexity, it appears to this DC that to do so would amount to an impermissible reversal of the burden of proof.

3.6 Additional material from Prosecution disallowed

3.6.1 In the Prosecution's Closing Submissions dated 24 April 2012, the Prosecution relied on the following additional documents for the first time ("the Additional Material"):

- a. The MOHS' published hospital bill sizes for the years 2010 and 2011;
- b. Printouts of the website for Dr Lim's main clinic (Susan Lim Surgery); and
- c. Professor PE-A's letter to the Straits Times Forum page.

3.6.2 By a letter dated 26 April 2012 from Allen & Gledhill, Dr Lim objected to the Prosecution's reliance on this Additional Material. This issue

¹⁰³ Prosecution's Closing Submissions at [83].

¹⁰⁴ Prosecution's Closing Submissions at [87].

¹⁰⁵ Respondent's Counsel's Note at [108(d)].

¹⁰⁶ Respondent's Counsel's Note at [108(f)].

was also canvassed in brief written submissions tendered by both Prosecution and Respondent and also orally in the course of each party's oral closing submissions.

3.6.3 Having heard and considered both parties' submissions, the DC disallows the Prosecution's attempt to rely on this Additional Material for the first time in its closing submissions. The DC accepts that it is not bound by the provisions of the Evidence Act (Cap 97) and is empowered by statute to inform itself on any matter in such manner as it thinks fit.¹⁰⁷ However, the question here is not one of evidence but of fairness. Dr Lim took her decision not to call any evidence on the premise agreed with the Prosecution that this DC would take into consideration only the evidence relied upon at the First DC. It would be unfair now to allow the Prosecution to undermine that premise.

4. **THE PARTIES' RESPECTIVE CASES ON MISCONDUCT**

4.1 **Test of "professional misconduct"**

4.1.1 It is common ground between the Prosecution and Dr Lim that in ascertaining what constitutes "professional misconduct", guidance should be sought from both the SMC Ethical Code and Ethical Guidelines ("the Ethical Code") and the decision of *Low Cze Hong v Singapore Medical Council*.¹⁰⁸

4.1.2 In *Low Cze Hong*, the Court considered the concept of "professional misconduct" under section 45(1)(d) of the MRA and said:

"[36]... The importance of maintaining the highest level of professionalism and ethical conduct has been duly acknowledged by the SMC in the Introduction of the SMC Ethical Code (at p 1):

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

¹⁰⁷ Section 43(4) of the MRA as it applies to these proceedings provides that "A Disciplinary Committee shall not be bound to act in any formal manner and shall not be bound by the provisions of the Evidence Act (Cap. 97) or by any other written law relating to evidence but may inform itself on any matter in such manner as it thinks fit."

¹⁰⁸ [2008] 3 SLR(R) 612

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.*

...

... The SMC has the role of promulgating the Ethical Code and Ethical Guidelines on acceptable professional practice and behaviour and has the responsibility to exercise its duty to discipline members of the profession who fail to uphold the high standards demanded by society.

This Ethical Code represents the fundamental tenets of conduct and behaviour expected of doctors practising in Singapore. The Ethical Guidelines elaborate on the application of the Code and are intended as a guide to all practitioners as to what SMC regards as the *minimum* standards required of all practitioners in the discharge of their professional duties and responsibilities in the context of practice in Singapore. It is the view of the SMC that *serious disregard or persistent failure to meet these standards* can potentially lead to harm to patients or bring disrepute to the profession and consequently may lead to disciplinary proceedings.

[37] In summary, we accept . . . that professional misconduct can be made out in at least two situations: first, where there is an intentional, deliberate departure from the standards observed or approved by members of the profession of good repute and competency; and second, where there has been such serious negligence that it objectively portrays an abuse of the privileges which accompany registration as a medical practitioner.” [emphasis added]

4.1.3 It is only the first limb of *Low Cze Hong* which is relevant in the present case: has there has been an intentional, deliberate departure from the standards observed or approved by members of the profession of good repute and competency?

4.2 **“Professional misconduct” wider than “infamous conduct”**

4.2.1 It is clear from *Low Cze Hong*¹⁰⁹ that the modern concept of professional misconduct “plainly embraces a wider scope of conduct for which disciplinary action can be taken by the SMC” than the older test which it replaced of “infamous conduct in a professional respect”.¹¹⁰

4.2.2 The court in *Low Cze Hong* held at [26]:

“Likewise in Singapore, the Medical Registration Act (Cap 174, 1985 Rev Ed) was amended in 1998 (by Act 5 of 1997) where the phrase “infamous conduct in a professional respect” was substituted with the less flatulent phrase “professional misconduct”. During the second reading of the Medical Registration Bill (Bill 2 of 1997) on 25 August 1997, this amendment was explained thus (see Singapore Parliamentary Debates, Official Report (25 August 1997) vol 67 at col 1566 (Yeo Cheow Tong, Minister for Health)):

Today, doctors are disciplined only if they are convicted of any heinous offence, or are guilty of infamous conduct in a professional respect. This is too restrictive a definition of the offences for which disciplinary action can be taken by the [SMC]. The proposed amendments will allow the SMC to discipline doctors who have been guilty of any improper act or conduct which brings disrepute to his profession, or who have been guilty of professional misconduct. [emphasis added]

4.3 **The gist of the Prosecution case on misconduct**

4.3.1 Against that backdrop, we now consider the gist of the Prosecution’s case on the 94 charges against Dr Lim.

4.3.2 In relation to Category I charges, the Prosecution asserts the following:

- a. There is a limit on what a doctor can ethically charge a patient. Either:

¹⁰⁹ at [27]

¹¹⁰ Prosecution’s Closing Submissions dated 24 April 2012 at para [117]

- (i) A doctor, being a professional, is entitled ethically to charge a particular fee for her services only if it is fair and reasonable.¹¹¹
- or
- (ii) A doctor must not charge fees at a level “which brings disgrace to the standing of the medical profession”.¹¹²
- b. On either formulation, it is ultimately for the medical profession to determine for itself what are fair and reasonable fees for a particular set of services rendered by a particular doctor in a particular case to a particular patient; or to determine whether a particular level of fees charged brings disgrace to the standing of the medical profession.
- c. Any agreement between the doctor and the patient regarding the level of fees which the doctor is entitled to charge as a matter of contract is not determinative of this ethical issue.
- d. Each relevant invoice which Dr Lim rendered is detailed and bears a specific date, “sets out a specific description of the services rendered, identifies the date on which those services were rendered (with some invoices even referring to precise times of the day) and sets out a specific fee amount charged for those services”.¹¹³ Each invoice must therefore be considered on its own terms and alone in assessing the fairness and reasonableness of the fees comprised in that invoice.
- e. Each invoice comprises a claim for fees which is far in excess of and disproportionate to what Dr Lim ought to have charged for the services comprised in that invoice.

4.3.3 In short, the Prosecution submits that there is an ethical obligation on a doctor to charge her patient a fair and reasonable fee.

¹¹¹ Prosecution’s Closing Submissions, para 131.

¹¹² Prosecution’s Closing Submissions, para 115.

¹¹³ Prosecution’s Closing Submissions, para 3.

Alternatively, it is submitted that the overriding principle of the Ethical Code is to proscribe, upon sanction of a finding of professional misconduct, any conduct that brings disgrace to the standing of the profession¹¹⁴ and thereby detracts from the public's trust and confidence in the profession. The Prosecution submits therefore that a doctor does have an ethical obligation not to charge her patient fees at a level that brings the profession into disrepute, whether or not the practitioner has a fee agreement in place.¹¹⁵

4.3.4 In relation to the Category II charges:

- a. Quite apart from what is said above on the ethical obligation which binds a doctor when she charges fees for her services, it is also professional misconduct for a doctor to make a false representation when she charges fees for services.
- b. The plain wording of each Category II invoice constitutes Dr Lim's representation that the fees comprised in that invoice are the actual fees levied by the third-party doctor identified in the narrative of the invoice.
- c. That representation was false in that there was a significant element of markup applied by Dr Lim in the amounts comprised in each Category II invoice over and above the actual fees which those third-party doctors charged to Dr Lim which was undisclosed in each Category II invoice.
- d. In any event, Dr Lim's markup is not justifiable in that it is far in excess of and disproportionate to what Dr Lim ought to have charged for the additional services rendered by her over and above the third-party doctor's services comprised in that invoice.

4.4 **The gist of Dr Lim's case**

4.4.1 In relation to the Category I charges the gist of Dr Lim's case is as follows:¹¹⁶

¹¹⁴ Tr. 22.05.2012 page 82/4 to 83/5

¹¹⁵ Tr. 22.05.2012 page 116/10 to 117/20

¹¹⁶ Tr. 21.05.2012 page 21/15 to 22

- a. Dr Lim's starting point is that she had a fee agreement with the Patient ("the Fee Agreement") which arose via a course of dealing commencing from 2001 until May 2007¹¹⁷ pursuant to which:
- (i) the private office of the Sultan of Brunei received Dr Lim's invoices, checked the invoices and approved the invoices for payment in full;¹¹⁸ and
 - (ii) the Patient returned for more treatment from May 2007 onwards.
- b. The terms of the Fee Agreement, according to Dr Lim, were that the Patient agreed that Dr Lim was entitled to charge "sums well into six figures for a single [treatment] day's fees".¹¹⁹ In her witness statement, Dr Lim put the Fee Agreement on a different basis: as an express agreement with the Patient arising from conversations between Dr Lim and the Patient in which the Patient agreed that Dr Lim could charge between \$100,000 and \$200,000 per treatment day.¹²⁰
- c. Given that there was a Fee Agreement, according to Dr Lim, there can be no misconduct in the absence of wrongdoing by Dr Lim in arriving at that Fee Agreement with the Patient (such as abuse of relationship, dishonesty or fraud)¹²¹ or presumably in breaching the Fee Agreement in rendering her charges. In these circumstances, Dr Lim was entitled to set her fees at whatever level the Patient was prepared to pay.¹²² The quantum of the fees charged, it is said, cannot in and of itself give rise to misconduct.¹²³

¹¹⁷ Respondent's Closing Submissions at paras [41] to [81]; Respondent Counsel's Note dated 21 May 2012, paras [24] to [29]

¹¹⁸ Respondent's Closing Submissions at 42(vii).

¹¹⁹ Respondent's Counsel's Note, tendered 21 May 2012, para 28, page 14.

¹²⁰ TR. 21.05.2012 page 46/11 to 48/20

¹²¹ Respondent's Counsel's Note at para 1(b).

¹²² Respondent's Counsel's Note at para 1(c).

¹²³ Respondent's Counsel's Note at para 1(b).

- d. In this particular case, there was in fact no such misconduct in arriving at the Fee Agreement.
- e. The invoices which Dr Lim rendered were rendered in batches, with each batch of invoices covering a number of treatment days in a number of invoices. As a result, Dr Lim says, the invoices issued in any particular batch must be looked at holistically: by looking at “the global charge raised by [Dr Lim] on any occasion when the batches of invoices were produced.”¹²⁴ When that is done, it is submitted, the fee per treatment day is well within the Fee Agreement.
- f. In any event, Dr Lim submits, even if there were no Fee Agreement, this DC cannot import into Singapore’s code of medical ethics an ethical obligation on a doctor to charge her patient a fair and reasonable fee, or a fee which is not excessive¹²⁵ because the Prosecution and its expert witnesses were unable to agree on what is fair and reasonable or not excessive.
- g. Further, Dr Lim submits, when a doctor renders an invoice to a patient, that is nothing more than a request for payment and does not amount to “charging” the patient.¹²⁶ According to Dr Lim, the invoice constitutes merely the first step in a process of negotiation between doctor and patient to arrive at an agreed fee. It is therefore wrong to speak of professional misconduct arising simply from the act of making a request for payment by presenting an invoice, which is all that Dr Lim did in this case in relation to the Category I invoices.¹²⁷

4.4.2 In short, Dr Lim contends that: (a) she had a Fee Agreement with the Patient and charged in accordance with that agreement, thereby *ipso facto* precluding a finding of professional misconduct; and (b) in any event, even if there was no Fee Agreement, there is no ethical obligation which limits what a doctor can charge her patient to a fair and reasonable fee or to a fee which is not excessive.

¹²⁴ Respondent’s Closing Submissions at para 307.

¹²⁵ Respondent’s Closing Submissions at para 225.

¹²⁶ Respondent’s Counsel’s Note at para 56.

¹²⁷ Respondent’s Counsel’s Note at para 1(d).

4.4.3 In relation to the Category II charges, the gist of Dr Lim's case is as follows:

- a. There was no false representation: each Category II invoice does not state that the fees comprised in that invoice were for and only for defraying the fees charged by the third-party doctor;
- b. There is no evidence that Dr Lim knew or ought to have known that this representation was false; or
- c. There is no evidence that the party who received and processed the invoices was misled;

and

- d. Insofar as it is alleged that the markups were not a fair or reasonable charge or were an excessive charge, Dr Lim repeats the submissions on the Category I charges.

4.5 **There is an ethical limit to what a doctor can charge a patient**

4.5.1 We accept the Prosecution's submission that a doctor is subject to an ethical limit on the level of fees which she can charge her patient.

4.5.2 Ordinarily, every person who sells her services to the public has a right to fix the price for those services by reference to what the market can bear or even by reference to what a particularly affluent buyer of those services can bear. But it is one of the essential hallmarks of a profession that a member of a profession who sells her professional services to the public accepts an ethical obligation to limit what she can charge for those services to what is a fair and reasonable fee for those services. This is true in the legal profession where a client reposes trust and confidence in his lawyer to safeguard his legal interests. This is all the more true in the medical profession where a patient reposes trust and confidence in a practitioner to cure, protect against or palliate illness. This ethical obligation to limit what a doctor may charge a patient is essential and exists to safeguard the interests of the patient, of the public and of the profession.

4.5.3 It matters not whether one states that ethical limit in positive terms as mandating a fee which is fair and reasonable; or in negative terms as proscribing a fee which is excessive. An ethical limit on fees is an intrinsic aspect of a profession which is honourable, as the medical profession is, and which is entrusted by society with the significant privilege of self-regulation, as the medical profession has been.

4.5.4 As the SMC's Ethical Code and Ethical Guidelines says:

“While the profession must adhere to the laws governing society and its practice, it must also be self-regulating, as society at large does not have the necessary knowledge or the experience of medical practice to make determinations on professional matters. This self-regulation must be vigorously and fairly pursued so that the profession continues to enjoy the trust of society. Failure to do so could result in civil authorities taking action to reduce or even remove the profession's right of self-regulation and may lead to the imposition of external regulation on the profession.”¹²⁸

4.5.5 It will always be a difficult question in any particular case whether that ethical obligation has been breached and if so, whether the breach amounts to professional misconduct. But that is not a reason to deny the existence of such an obligation. Given the very serious consequence of having been found by one's peers to have breached this obligation and to have committed professional misconduct by having done so, it is no doubt the case that one's peers will be slow to find a breach or to find professional misconduct in marginal cases.

4.5.6 We accept the Prosecution's submission that the level at which a practitioner can be said to have breached this obligation and to have misconducted herself professionally arising from that breach must be based on the judgment of her peers, taking into account certain objective criteria.¹²⁹ These objective criteria will be drawn from all the circumstances of the case and will obviously include: (a) the nature of the medical and other services rendered and the time spent by the practitioner in rendering them; (b) any specific demands made by the patient of the doctor; (c) any special relationship of trust and confidence between the practitioner and the patient;

¹²⁸ SMC's Ethical Code & Ethical Guidelines, Introduction, para 2, page 1.

¹²⁹ Tr. 22.05.2012 at page 77/2 to 8

(d) the practitioner's special training, skills and expertise; (e) the practitioner's professional standing and seniority; (f) the fees generally charged for comparable services by other doctors of similar training, skills, expertise, standing and seniority; (g) any opportunities which the doctor had to forgo as a result of rendering the services in question; and (h) the circumstances of urgency under which the services are rendered.

4.5.7 We do not, however, accept that the affluence of the patient is an objective criterion which can legitimately be taken into account in setting or assessing what is a fair and reasonable fee. It is ethically legitimate, and indeed something to be encouraged, for a doctor to charge an indigent patient a fee which is less than a fair and reasonable fee, or even to waive a fee, simply because the patient is indigent. It is not ethically legitimate for a doctor to charge a rich patient more than a fair and reasonable fee simply because that patient is rich.

4.5.8 Dr Lim submits that the analogy with the legal profession is not apt because lawyers are subject to an express ethical limit on what they can charge whereas doctors are not subject to any such express ethical limit.¹³⁰ We reject that submission. An ethical limit on fees in the legal profession preceded the express rule to that effect.¹³¹ This shows that the obligation, at least in the legal profession, is not rule-based but an essential and intrinsic part of the code of ethics for an honourable and self-regulating profession. It is no different in the medical profession.

4.5.9 We reject also Dr Lim's submission that, because modern medical practice structures permit non-doctors to have a proprietary stake in a medical practice, the issue of fees is a purely commercial decision, as opposed to a medical one, which in turn means that considerations of medical ethics cannot come into play.¹³² It may be true that a non-doctor who owns a stake in a medical practice and who makes a decision on fees cannot be subject to discipline by the medical profession and is subject only to the discipline of the marketplace. But that does not mean that a doctor who sets fees for her services should not be subject to professional discipline

¹³⁰ Respondent's Closing Submissions dated 27 March 2012, paras [206] to [250], Respondent Counsel's Note dated 21 May 2012, paras [93] to [96]

¹³¹ Prosecution's Closing Submissions at para 104 to 105.

¹³² Respondent Counsel's Note dated 21 May 2012, paras [98], Tr. 22.05.2012 page 40/1 to 41/18

by her peers. Nor does it mean that a doctor who implements a fee scale set by a non-doctor should not similarly be subject to discipline.

4.6 Ethical obligation even when there is a fee agreement

4.6.1 We now deal with the issue of the Fee Agreement. The Prosecution submission is that the ethical limit on the fee which a doctor can charge her patient applies even if there is a fee agreement. Dr Lim's submission is that there is a Fee Agreement and the Fee Agreement precludes misconduct; even if there is no Fee Agreement, there is still no ethical limit on what a doctor can charge her patient.

4.6.2 We accept the Prosecution's submissions. The ethical obligation to limit the fee which a doctor charges her patient applies even if there is a fee agreement between the practitioner and the patient. The objective of the ethical obligation is to safeguard and advance the interests of the patient, the public and the profession. These objectives remain to be safeguarded and advanced even if there is an agreement between the doctor and the patient on fees which is binding as a matter of contract law.

4.6.3 Such an agreement on fees would, no doubt, be added to the list of objective criteria to be considered in any particular case in determining where lies the ethical limit on what that particular doctor is ethically entitled to charge that patient. But in itself, a fee agreement cannot determine where that ethical limit lies or absolve the practitioner from compliance with the ethical obligation to charge up to but not beyond that ethical limit.

4.6.4 Dr Lim submits that a fee agreement must be conclusive on the ethical issues in the medical profession because there is no statutory power for the civil obligations arising from a binding fee agreement between a doctor and a patient to be set aside, relaxed or modified by reason of the doctor's professional misconduct in fixing the level of fees. There is such a statutory power in the case of the legal profession: lawyers' fee agreements are ultimately subject to the control of the court, which has the power to reopen a fee agreement and to fix the level of permissible fees in line with the lawyers' ethical obligations. The anomaly presented is that if a doctor who has a fee agreement with his patient is found guilty of professional misconduct in relation purely to the quantum of fees charged under that fee agreement, that fee agreement will nevertheless remain binding as between the patient and the doctor as a matter of the law of contract in the absence of a statutory power to modify it. But the anomaly is illusory: if it is

professional misconduct for a doctor to charge a patient fees at a particular level, it is all the more so professional misconduct for a doctor to seek to hold the patient to those fees and to recover those ethically impermissible fees through the law of contract.

4.7 No fee agreement

4.7.1 Dr Lim alleges that she charged her fees in accordance with her contractual entitlement pursuant to a fee agreement reached with the Patient via a course of dealing from 2001 until the Patient's unfortunate death in 2007.¹³³ The terms of the Fee Agreement, according to Dr Lim, were that the Patient agreed that Dr Lim was entitled to charge "sums well into six figures for a single day's fees".¹³⁴ Alternatively, the terms of the fee agreement were put on the basis of two conversations Dr Lim had with the Patient in which the Patient is said to have agreed that Dr Lim was entitled to charge between \$100,000 and \$200,000 per treatment day.¹³⁵

4.7.2 If it were our view that a fee agreement fixed the ethical limit on what a doctor can charge her patient and therefore *ipso facto* precluded a finding of professional misconduct, then we would have to be satisfied beyond reasonable doubt that the Prosecution is correct in alleging that no Fee Agreement exists. However, in view of our finding that this ethical obligation exists and applies whether or not there is a fee agreement, it is strictly speaking not necessary to make a finding whether the Fee Agreement exists.

4.7.3 However, in case it is necessary, we find beyond reasonable doubt that no express Fee Agreement exists for the reasons set out in the following paragraphs.

4.7.4 Insofar as the Fee Agreement is express, Dr Lim's initial position is that the Fee Agreement was reached in, and is evidenced by, a conversation between the Patient and Dr Lim in 2007.¹³⁶ In that conversation, Dr Lim is said to have told the Patient that the average charges would be \$100,000 to \$200,000 per day. The Patient is said to have agreed to this but

¹³³ Respondent's Closing Submissions at paras [41] to [81]; Respondent Counsel's Note dated 21 May 2012, paras [24] to [29]

¹³⁴ Respondent's Counsel's Note, tendered 21 May 2012, para 28, page 14.

¹³⁵ TR. 21.05.2012 page 46/11 to 48/20

¹³⁶ Dr Lim's witness statement at [65 (e)]; Dr Lim's letter to the Complaints Committee dated 4 February 2008, para [10] to [16].

at the same time to have asked Dr Lim why she was worrying about fees and to have appeared offended at the issue of fees being raised at all such that it was thereafter not possible to have a detailed discussion on fees.

4.7.5 The DC does not have the benefit of any direct evidence of any weight on the Fee Agreement either from the Patient, who has sadly passed away, or from Dr Lim, whose statements in her witness statement are not on oath and have not been tested by cross-examination.

4.7.6 Even taking this conversation at its highest, it does not amount to an agreement on fees but merely to an acquiescence to an estimate on fees and a refusal to discuss fees further.

4.7.7 It is no doubt for this reason that Dr Lim's Counsel's Note, a written distillation of Dr Lim's closing submissions, made no reference to the Fee Agreement arising from an oral agreement but instead asserted a Fee Agreement arising from a course of dealing¹³⁷ comprising: (a) the consistent payment of Dr Lim's fees from 2001 to 2006¹³⁸ at a level "far beyond what would be charged in an ordinary doctor-patient relationship";¹³⁹ and (b) the Patient's affirmation of the fee agreement by repeatedly returning to be treated by Dr Lim in 2007 with full knowledge of the invoiced fees.¹⁴⁰

4.7.8 In the absence of direct evidence of the Fee Agreement, this DC must consider whether there is other objective evidence of the Fee Agreement in the material before it. The first point, of course, is there are no documents which support Dr Lim's contention that the Fee Agreement exists. Quite the contrary: the MOHB has categorically denied the existence of this purported Fee Agreement.¹⁴¹ Even though the MOHB is not the complainant in these proceedings, it is clear that as the representative of the Government of Brunei, the party ultimately paying these invoices, they were dissatisfied with the quantum of fees levied by Dr Lim to the point that they sought the "intervention" of the MOHS.¹⁴²

¹³⁷ Respondent's Counsel's Note dated 21 May 2012 at [24].

¹³⁸ Respondent's Counsel's Note dated 21 May 2012 at [28].

¹³⁹ Respondent's Counsel's Note dated 21 May 2012 at [25].

¹⁴⁰ Respondent's Counsel's Note dated 21 May 2012 at [28].

¹⁴¹ PWS 10, page 91, para [8]

¹⁴² 2 CB 523 to 524

4.7.9 It is also the case that Dr Lim never mentioned this Fee Agreement to either the MOHB or to the Brunei High Commission in her various letters to them (offering reductions on her invoices) or in the course of her meetings with their representatives where they discussed the issue of her outstanding invoices.¹⁴³

4.7.10 We are also of the view that there can be no agreement by conduct. The mere fact that previous invoices for the Patient's treatment from 2001 to 2006 were rendered by Dr Lim and paid without qualification does not give rise to a Fee Agreement by conduct. The payment of these invoices is consistent with an invoice-by-invoice agreement, as each invoice was approved for payment and subsequently paid, that the quantum of each invoice was in order on the facts then known. That conduct in approving and paying each invoice does not give rise to an overarching binding agreement that future invoices can be rendered at a particular level of fees.

4.7.11 Accordingly, we find beyond reasonable doubt that there was no overarching Fee Agreement that contractually entitled Dr Lim to charge the fees which form the subject-matter of these proceedings.

4.8 Presenting an invoice is charging a fee

4.8.1 We also cannot accept Dr Lim's submission that a doctor presenting an invoice to a patient is not "charging" the patient a fee because the invoice is nothing more than a request for payment of the fee.¹⁴⁴ It is true that a doctor's invoice is a request for payment from the patient. But it is incorrect to characterise an invoice as a mere request for payment.

4.8.2 Any patient would be surprised, or even shocked, to learn that a doctor views her invoice as constituting merely the first step in a process of negotiation between doctor and patient to arrive at an agreed fee.¹⁴⁵ An invoice is not an offer by a doctor inviting a counteroffer by her patient. Whatever may happen when a consumer buys a second-hand car from a used car dealer, that does not, should not and must not happen when a patient buys medical services from a member of an honourable, self-regulating profession. To hold otherwise would undermine the relationship of trust and confidence between the profession and the public.

¹⁴³ PWS 10, page 91, para [8]

¹⁴⁴ Respondent's Counsel's Note at para 56.

¹⁴⁵ Cf, Respondent's Counsel's Note at para 1(d).

4.8.3 When a doctor presents an invoice to a patient, she represents to the patient:

- a. That the fee comprised in the invoice is a fair and reasonable fee for the services which are accurately described in that invoice and which services the doctor has in fact rendered to the patient either fairly and reasonably or upon the patient's informed instructions;
- b. That the fee comprised in the invoice is at the date of the invoice due and payable in full to the doctor;
- c. That the fee comprised in the invoice on and from the date of the invoice constitutes a debt due to the doctor; and
- d. That the doctor expects the invoice to be paid in full in accordance with the terms specified in the invoice.¹⁴⁶

4.8.4 No doubt it is true, as Dr Lim submits,¹⁴⁷ that the patient can challenge the invoice in terms of the nature of the services rendered, the quality of the services rendered, the quantum of the fee claimed or can even refuse to pay the invoice outright. And the patient can do all this even if the patient has a fee agreement with the doctor and even if the invoice is within the four corners of that fee agreement. And the mere fact that a patient does any of these things does not mean that the doctor is by that fact alone guilty of professional misconduct. But as soon as a doctor presents an invoice and throughout the time while those challenges are being mounted, and until those challenges are resolved, the representations set out above continue to underpin the invoice. Presenting an invoice on a particular date for a particular fee is therefore charging a fee on that date.

4.9 **Invoices were not rendered holistically**

4.9.1 Finally, on the material before us, we cannot accept Dr Lim's submission that the invoices she rendered were rendered holistically – in

¹⁴⁶ Dr Lim's invoices expressly say: "Kindly make crossed cheque payable within 30 days": CB1 245.

¹⁴⁷ Respondent's Closing Submissions at para 318.

batches to cover in the aggregate for each batch the total number of treatment days comprised in each batch.¹⁴⁸

4.9.2 Each of Dr Lim's invoices sets out a detailed narrative of the work done by Dr Lim or her team and then ascribes a fee for the work comprised in that narrative. Some invoices charge only a single fee for a single item of narrative. Other invoices charge several fees for several items of narrative covering services rendered over several days. But it is always the case that each item of narrative charges a separate fee for the services comprised in that narrative.

4.9.3 Given the way that the invoices are presented, the natural reading is that the amount which appears opposite a given item of narrative is the fee which Dr Lim charged for the services comprised in that narrative.

4.9.4 The manner in which Dr Lim drew up her invoices shows that Dr Lim was not charging a lump sum per treatment day or even per batch of treatment days but a specific fee for specific items of work described in the invoice narrative for that fee.

4.10 Enhanced costs of providing treatment

4.10.1 In addition to the Fee Agreement discussed above, Dr Lim also cites several reasons which justify her charging the Patient "enhanced costs".¹⁴⁹ These can be summarised as follows:

- a. Dr Lim being solely responsible for all the Patient's medical needs;¹⁵⁰
- b. The requirement that Dr Lim provide full-time care in non-hospital settings;¹⁵¹
- c. The Patient's refusal to remain in intensive care;¹⁵²

¹⁴⁸ Respondent's Closing Submissions at 307.

¹⁴⁹ Respondent's Closing Submissions, section D ("The enhanced costs of providing medical services to the Patient")

¹⁵⁰ Respondent's Closing Submissions, para [185]

¹⁵¹ Respondent's Closing Submissions, para [191]

¹⁵² Respondent's Closing Submissions, para [194]

- d. The requirement that Dr Lim provide services to the Patient when Dr Lim herself was recovering from major eye surgery;¹⁵³
- e. The requirement that Dr Lim be available whenever needed by the Patient;¹⁵⁴
- f. The requirement that Dr Lim be responsible for medical and third-party costs;¹⁵⁵
- g. The requirement that Dr Lim provide non-medical equipment;¹⁵⁶ and
- h. The opportunity cost suffered by Dr Lim as a result of agreeing to treat the Patient.¹⁵⁷

4.10.2 As stated above, we do not doubt that this Patient's expectations of the care that Dr Lim was to provide were exceptionally high. We also do not doubt that the quality of services provided by Dr Lim was excellent.

4.10.3 But that does not detract from the ethical obligation on a doctor to charge a patient a fee for her services which is fair and reasonable and not excessive given all the circumstances of the case. All the circumstances of this case, of course, include these factors identified by Dr Lim.

4.11 Expert evidence

4.11.1 The role of expert witnesses in these proceedings is to place before the DC evidence of the views of Dr Lim's peers on what she charged for her services, bearing in mind all the circumstances of the case. It is not the role of the expert witnesses in these proceedings to give evidence as to whether there is an ethical limit on what a doctor can charge her patient or, if such a limit exists, on whether Dr Lim's charges were so far beyond that ethical limit as to amount to professional misconduct. These latter two questions are the domain of the DC and not of the expert witnesses. The DC

¹⁵³ Respondent's Closing Submissions, para [195]

¹⁵⁴ Respondent's Closing Submissions, para [197]

¹⁵⁵ Respondent's Closing Submissions, para [199]

¹⁵⁶ Respondent's Closing Submissions, para [200]

¹⁵⁷ Respondent's Closing Submissions, para [201]

therefore disregards the Prosecution's expert witnesses' evidence on these latter two questions.

4.11.2 The Prosecution adduced evidence from three expert witnesses on the reasonableness of Dr Lim's fees:¹⁵⁸

- a. Professor PE-A, a doctor in public service but who sees a significant number of private patients (about 20 per cent of his patients are private patients in the National Cancer Centre) and runs a centre worth over \$100 million;¹⁵⁹
- b. Dr PE-B, who has been in private practice since 1993 with a practice at Gleneagles Hospital; and
- c. Dr PE-C, who has been in private practice since 2000, with a private practice at Mount Elizabeth Medical Centre.

4.11.3 All three of the Prosecution's expert witnesses are senior practitioners with significant experience in private sector billing practices. In particular, Dr PE-B has experience in treating members of the Brunei royal family and in co-ordinating treatment with other consultant specialists.¹⁶⁰

4.11.4 All three of the Prosecution's expert witnesses opined that Dr Lim's charges were excessive in the circumstances of the case.¹⁶¹ This was their unanimous opinion even taking into account Dr Lim's subsequent reduced fee of approximately \$12 million by her letter to the Permanent Secretary to the MOHB dated 1 August 2007.¹⁶²

4.11.5 Dr Lim's main criticisms of the Prosecution's experts are that:

¹⁵⁸ 1 CB 167 to 185 (Expert Report of Dr PE-B dated 1 July 2009); 1 CB 187 to 220 (Expert Report of Professor PE-A dated 17 July 2009); 1 CB 222 to 236 (Expert Report of Dr PE-C dated 20 July 2009)

¹⁵⁹ Tr. 03.02.2010, page 17/4 to 18/10

¹⁶⁰ Tr. 07.04.2010, page 178/15 to 179/2

¹⁶¹ Prosecution's Closing Submissions dated 24 April 2012 at para [221]

¹⁶² Tr. 03.02.2010, page 42/2 to 43/16 (Professor PE-A); Tr. 07.04.2010, page 166/20 to 168/18, page 172/12 to 173/11 (Dr PE-B) ; Tr. 08.04.2010, page 27/18 to 28/23 (Dr PE-C)

- a. The only admissible expert evidence would be from “properly qualified experts in relation to ethical issues arising out of a doctor’s charging practices”.¹⁶³
- b. There is a “startlingly large range” in the Prosecution’s experts’ assessment of the appropriate fee to be charged in the present case.¹⁶⁴
- c. The experts did not carry out an examination of “the actual services provided by the Practitioner such as to be in a position to express an opinion as to the amount that she was entitled to charge for those services”.¹⁶⁵

4.11.6 We are not persuaded by Dr Lim’s objections to the Prosecution’s experts’ evidence. Insofar as the Prosecution’s experts expressed views on ethical issues arising out of a doctor’s charging practices, we have disregarded those views as they were beyond the proper scope of expert evidence.

4.11.7 All three experts are senior practitioners with experience in dealing with private patients and opined on the reasonableness of Dr Lim’s charges. Their opinions and the reasons given for those opinions, both written and in oral evidence, are sufficient to establish beyond reasonable doubt that Dr Lim’s charges were far beyond what her peers would consider reasonable, taking all the circumstances into account. While it is true that the three experts had differing opinions on the range of fees that he would consider reasonable, all three experts were unanimous in their view that Dr Lim’s fees were beyond that range and unjustifiably so even taking into account the fact that the Patient in question was a VIP patient with unique demands on Dr Lim’s time and expertise.

4.11.8 Professor PE-A’s evidence can be summarised as follows:

¹⁶³ Respondent’s Closing Submissions dated 27 March 2012 at [255]

¹⁶⁴ Respondent’s Closing Submissions dated 27 March 2012 at [283]

¹⁶⁵ Respondent’s Closing Submissions dated 27 March 2012 at [252(i)]

- a. Dr Lim's total fees for a period of 6 months from January to June 2007 amounted to more than \$24 million. This amount is excessive.¹⁶⁶
- b. In his experience, even in the most expensive medical setting in Singapore, the estimated total bill for a similar period would be about \$2 million. In the case of palliative care, this amount should be even lower.¹⁶⁷
- c. Dr Lim's daily charges for monitoring the Patient in the Intensive Care Unit (ICU), which ranged from \$250,000 to \$450,000 per day were "very high".¹⁶⁸
- d. With reference to Invoice No. SLS/INV/2007/0034 dated 1 June 2007, Dr Lim billed an amount of \$250,000 for treatment on 14 May 2007 for "24-hrs Critical Care Monitoring in Intensive Care Unit". Doctors are generally expected to be readily available to their patients. It is not standard practice in Singapore for a doctor to bill a patient for 24 hours. A reasonable charge for a specialist to consult a patient in ICU would be around \$1,000.00. It is improper to charge a patient the full 24 hours.¹⁶⁹
- e. Contacting or coordinating with other doctors and specialists is part of a specialist's duties to their patients generally, to ensure that complete and adequate treatment is provided. Professor PE-A would not expect fees to be charged for carrying out such tasks. In the present case, Dr Lim's charges for referring to other consultants appear to be significantly higher than the consultation charges of the other doctors who provided the actual treatment.¹⁷⁰
- f. Dr Lim charged \$125,800 for services rendered on 19 January 2007 which included "*Flushing of Port-a-cath with Hep Saline – patency established*". A similar service is done at NCC by a

¹⁶⁶ 1 CB 188, para [5]

¹⁶⁷ 1 CB 188, para [6]

¹⁶⁸ 1 CB 188, para [7]

¹⁶⁹ 1 CB 188, para [8]

¹⁷⁰ 1 CB 189, para [12]

nurse and the charge is about \$50.00. Even if performed by a doctor, a reasonable charge would be \$200.00.¹⁷¹

- g. To provide some perspective on the figures, Professor PE-A cited the example of a complex procedure like head and neck surgery which takes about 8 to 10 hours or longer, the total professional fees would reasonably be about \$25,000.00 to \$30,000.00. In the present case, Dr Lim did not perform any surgical procedure.¹⁷²
- h. Dr Lim's comparison of her fees with that of Professor A's is inappropriate, given that he is an internationally known figure in the medical community. In any case, Professor A billed £45,000 for a period of 3 days from 27 to 29 January 2007 (£15,000 per day). This included flying into Singapore to examine the Patient and having to forgo attending to any of his other patients while he was in Singapore. Professor A's invoice was far less than the amount Dr Lim charged the Patient on a per day basis.¹⁷³
- i. In respect of the opportunity costs of missed conferences, reasonable cancellation charges may be claimable. However, such costs are "nonetheless limited".¹⁷⁴
- j. Even if Dr Lim reached an agreement with the patient for average fees of between \$100,000 to \$200,000 per day, "it would not obviate the need for Dr Lim to render fees that were reasonable".¹⁷⁵

4.11.9 Dr PE-B's evidence was as follows: "Dr Lim's daily professional fees appear to have gone far beyond the range of what I would consider to be reasonable".¹⁷⁶ Dr PE-B stated in the course of his oral evidence that:

¹⁷¹ 1 CB 189-190, para [13]

¹⁷² 1 CB 190, para [14]

¹⁷³ 1 CB 190, para [15]

¹⁷⁴ 1 CB 190, para [16]

¹⁷⁵ 1 CB 190, para [17]

¹⁷⁶ 1 CB 178, para [30]

- a. A range of \$10,000 to \$15,000 per day for professional fees of a senior practitioner was “a very generous formula” that contained a multiplier so as to give Dr Lim the benefit of the doubt.¹⁷⁷
- b. Whilst there is no established upper limit as to the charges a practitioner can render, the medical charges have to be commensurate with the services and within the framework of reasonableness, which takes into account the complexity of the medical problem, duration of professional contact, the type and extent of services.¹⁷⁸
- c. Even though Dr PE-B himself has had experience treating members of the Brunei Royal Family, he has never levied fees of the size rendered by Dr Lim for comparable services.¹⁷⁹

4.11.10 Like the other experts, Dr PE-C’s evidence was that Dr PE-C’s fees were “clearly excessive and disproportionate to what she should be entitled to charge for services rendered”.¹⁸⁰ Specifically, Dr PE-C opined:

- a. Dr Lim’s charges on a per day basis go up as high as \$450,000. Two examples are Invoice No. SLS/INV/2007/0031 which charged \$450,000 for services rendered on 11 May 2007 as well as Invoice No. SLS/INV/2007/0032 which charged \$450,000 for services rendered on 12 May 2007. Such a figure “cannot be justified, regardless of services rendered”.¹⁸¹
- b. By way of example, the costs for a complex surgical procedure like mastectomy and immediate breast reconstruction which takes an average of 6 to 10 hours would be about \$30,000. This includes hospitalisation charges and includes the fees of two surgeons. The surgeons’ fees would amount to approximately \$14,000.¹⁸²

¹⁷⁷ Tr. 07.04.2010, page 145/6 to 20; page 64/14 to 23

¹⁷⁸ 1 CB 171; Tr. 07.05.2010, page 49/2 to 5; 50/24 to 52/22

¹⁷⁹ Tr. 07.04.2010, page 178/15 to 179/22

¹⁸⁰ 1 CB 225, para [12]

¹⁸¹ 1 CB 223, para [5]

¹⁸² 1 CB 223, para [6]

- c. In this case, Dr Lim did not carry out any surgical procedure on the Patient and the scale of fees should accordingly be lower.¹⁸³
- d. In respect of consultation charges, even if a premium were to be imposed due to special circumstances, it would be difficult to justify anything beyond fees of \$1,000 to \$2,000 per day. This would include a situation where the doctor is attending to a patient in the ICU.¹⁸⁴
- e. In addition to charging for her own services, Dr Lim also billed for her employees, Dr B and Dr C, for the same or similar services rendered. In the absence of a satisfactory response, these charges are inappropriate and excessive.¹⁸⁵
- f. A comparison of Dr Lim's fees with that of Professor A's is also not accurate or correct. Professor A is widely acknowledged by the medical community to be one of the top oncologists in the world and no doctor in Singapore has a similar international reputation. Professor A had to fly to Singapore to treat the patient and could not attend to any of his other patients. In any case, his charge of approximately £15,000 per day is still significantly lower than some of Dr Lim's charges which ranged from \$250,000 to \$450,000 per day.¹⁸⁶

4.11.11 The test of professional misconduct is measured against that of a body of peers in the profession i.e. Professor PE-A, Dr PE-B and Dr PE-C. In the present case, whilst it is true that there is a range of fees that each expert opined would be reasonable, the experts are unanimous in reaching the conclusion that Dr Lim's fees were excessive and unjustifiably so even taking into account the fact that the Patient in question was a VIP patient with unique demands on Dr Lim's time and expertise.

4.11.12 We now address each category of Charges in turn.

¹⁸³ 1 CB 223, para [7]

¹⁸⁴ 1 CB 223, para [8]

¹⁸⁵ 1 CB 223, para [9]

¹⁸⁶ 1 CB 224, para [10]

5. **OUR FINDINGS ON THE CHARGES**

5.1 **Category A: Fees for Dr Lim's services (Charges 1 to 65)**

5.1.1 Category A comprises Charges 1 to 65 and is in respect of Dr Lim's fees for services rendered from 15 January 2007 to 13 June 2007.¹⁸⁷ Each charge deals with Dr Lim's invoices from her various clinics for treatment on a per day basis. We have analysed each charge with reference to:¹⁸⁸

- a. The description of services in the invoice;
- b. The invoiced amount; and
- c. The work done based on medical reports and records.

5.1.2 In each aspect, we have given Dr Lim the benefit of every doubt.

5.1.3 Notwithstanding that, we find beyond reasonable doubt that Dr Lim charged fees which were grossly excessive and disproportionate to the services provided to the Patient for each treatment day comprised in each of Charges 1 to 65. We are further of the view, applying the test in *Low Cze Hong*, that this is professional misconduct in that it was an intentional, deliberate departure from the standards observed or approved by members of the medical profession of good repute and competency relating to charging for services. This is our finding whether or not there was a Fee Agreement.

5.1.4 In addition, we note that Dr Lim performed no surgical procedure in this period which would have engaged her considerable professional expertise and surgical skills. Dr Lim's role in this period was mainly providing palliative care, coordinating treatment by other specialists, and giving comfort and reassurance to the Patient, who was in the terminal stages of cancer and nearing the end of her life. Professor PE-A and Dr PE-C cited examples of complex surgical procedures which would justify the levying of higher medical fees. They both estimated the cost of surgical procedures that could take up to 10 hours as being in the region of about

¹⁸⁷ 1 PBI Tabs 1 to 65

¹⁸⁸ Schedule I to Prosecution's Closing Submissions

\$30,000.¹⁸⁹ In contrast, Dr Lim charged fees of up to \$450,000 per day for services which did not involve a comparable level of complexity and demands on Dr Lim's expertise as a surgical procedure. As an example, the invoices levied in Charge 1, which in aggregate amount to \$397,600, was for one day's worth of services which wholly disproportionate to the amount billed and not involving any form of surgical procedure.¹⁹⁰

5.1.5 The same analysis applies for each of the remaining Charges no. 2 to 65 as set out in Volume 1 of the Prosecution's Bundle of Invoices and amplified in Schedule I to the Prosecution's Closing Submissions.

5.1.6 Dr Lim raised as a factor justifying her fees her opportunity cost in acceding to the Patient's high expectations. However, all practitioners who deal with patients with especially high expectations have to make accommodations and adjust their schedules so that they can see and extend the normal level of care to all their other patients despite the additional demands placed on their time by one patient. In any event, it remains our view that the fees charged by Dr Lim were wholly disproportionate to the service she actually rendered even if one were to take her opportunity cost into account.

5.1.7 Having considered all the evidence, and for these reasons, we find beyond reasonable doubt that the fees comprised in Charges 1 to 65 were not fair or reasonable charges for the services rendered and were in fact far in excess of and disproportionate to the services rendered. We are further of the view that this is professional misconduct in that it was an intentional, deliberate departure from the standards observed or approved by members of the medical profession of good repute and competency relating to charging for services. This is our finding whether or not there was a Fee Agreement.

5.1.8 Having considered all the evidence, we find beyond reasonable doubt that in respect of each of Charges no. 1 to 65, Dr Lim is guilty of professional misconduct under section 45(1)(d) of the MRA.

¹⁸⁹ 1 CB 190, para [14] (Professor PE-A); 1 CB 223, para [6] (Dr PE-C)

¹⁹⁰ 1 PBI Tab 1

5.2 **Category B: Fees charged for Dr Lim's employees (Charges 66 and 67)**

5.2.1 Charges 66 and 67 are in relation to fees for services rendered by Dr Lim as well as employees of SLS, Dr B and Dr C. Dr B is a general surgeon while Dr C is a general practitioner. Charge 66 relates to services rendered from 19 April 2007 to 14 June 2007 while Charge 67 relates to services rendered from 10 May 2006 to 20 May 2006.

5.2.2 In Charge 66, the aggregate fees for Dr B and Dr C were \$222,500. For the same period, Dr Lim issued bills through SLS, GSP and CWM in the amount of \$14,157,000, which bore similar descriptions of services rendered. Even taking into account the discount of 25% given by Dr Lim, the total fees still amount to \$10,122,750.¹⁹¹

5.2.3 In light of the fact that Dr Lim had already issued invoices totalling \$14,157,000 for the services she and her staff provided, we find beyond reasonable doubt that the additional and separate charge of \$222,500 is grossly excessive. Even taking into account the reduction offered by Dr Lim by her letter to the MOHB dated 1 August 2007, the fees of \$166,875 were nevertheless inappropriate, far in excess of and disproportionate to the services rendered to the Patient.

5.2.4 The same reasons apply to Charge 67 which relate to a 9-day period in May 2006 (10, 11, 13, and 15 to 20 May 2006).

5.2.5 Further, we note that the invoices for Dr B and Dr C contained descriptions ("Professional Fees – Dr C" and "Professional Fees for B") which were the same words used by Dr Lim for invoices rendered in relation to services provided by other doctors who were not her employees.¹⁹² An objective reader of these invoices would not have appreciated that Dr B and Dr C were in fact employees of Dr Lim.

5.2.6 Having considered all the evidence, and for these reasons, we find beyond reasonable doubt that the Further Aggregate Fees, as defined in Charges 66 and 67, were not a fair or reasonable charge for the services rendered and were in fact far in excess of and disproportionate to the services rendered. We are further of the view that this is professional

¹⁹¹ Prosecution's Closing Submissions dated 24 April 2012, para [168]

¹⁹² Cf 1 CB 348

misconduct in that it was an intentional, deliberate departure from the standards observed or approved by members of the medical profession of good repute and competency relating to charging for services. This is our finding whether or not there was a Fee Agreement.

5.2.7 Accordingly, we find that in respect of the Category B charges, Dr Lim is guilty of professional misconduct under section 45(1)(d) of the MRA.

5.3 **Category C: Fees for Radiotherapy facilities and staff (Charges 68 to 73)**

5.3.1 Charges 68 to 73 are in respect of fees charged for services rendered for radiotherapy facilities and staff, which were alleged to be “far in excess of and disproportionate to what [Dr Lim was] entitled to charge for the services [Dr Lim] rendered.”¹⁹³

5.3.2 The invoices issued by Dr Lim for “Radiotherapy Facilities and staff” total \$1,605,000. All of these invoices were subsequently withdrawn by Dr Lim pursuant to her letter to the MOHB dated 1 August 2007.

5.3.3 Taking the invoices in February 2007 (Charge No. 68) and March 2007 (Charge No. 69) as examples, Dr Lim rendered an invoice for “Radiotherapy Facilities and Staff” for \$630,000 and \$245,000 respectively. For the period from 5 February 2007 to 9 March 2007, Dr I, the attending Radiation Oncologist at Mount Elizabeth Radiotherapy Centre who administered Radiotherapy to the Patient over 24 occasions rendered an invoice of \$7,200.¹⁹⁴ Mount Elizabeth Radiotherapy Centre rendered a bill for \$33,358.40 (before GST) for the entire duration of 5 February 2007 to 9 March 2007 for the use of its facilities.¹⁹⁵ In comparison, Dr Lim billed the Patient fees ranging from \$35,000 to \$45,000 per day for “radiotherapy facilities and staff”.

5.3.4 The radiation therapy referred to was carried out at the hospital for an hour on each of the days stated in the invoices. The invoices rendered by Dr Lim essentially reflect her charges for the services that Dr Lim and her staff provided by accompanying the Patient to the hospital and

¹⁹³ 2 PBI 68 to 73, Schedule I

¹⁹⁴ 2 PBI 68 (Invoice from Mount Elizabeth Oncology Centre dated 9 March 2007)

¹⁹⁵ 2 PBI 68 (Invoice from Mount Elizabeth Hospital dated 12 March 2007)

providing support. The actual mapping of tumour boundaries and administration of radiotherapy was carried out by Dr I.¹⁹⁶

5.3.5 Dr Lim explains that the work done by her and her team at these sessions were as follows:¹⁹⁷

“[Dr Lim] and her team would enter the radiation chamber with the Patient. [Dr Lim] and her team would undress and prepare the Patient, lift her onto the table, position her, leave the radiation room during the radiotherapy, watch her from the window to the room, return into the room thereafter, help the Patient up, dress the Patient and escort her out of the room, and back to her car.”¹⁹⁸

5.3.6 Further to the above, Professor PE-A also gave evidence that:¹⁹⁹

- a. He had issues with Dr Lim’s suggestion that she needed to help with the neural radiology planning for radiotherapy. He took the view that this is the responsibility of the radiation oncologist.
- b. In normal clinical practice, planning for the radiation to the brain and the spine is in the realm of expertise of the radiation oncologist. This is not in the realm of expertise of a general surgeon such as Dr Lim. It would be analogous to a radiation oncologist going to an operating theatre and suggesting he is going to help the general surgeon plan what she needs to do for a patient in an operating theatre and putting a charge on this.
- c. The task of positioning of the patient is also not Dr Lim’s responsibility as this has a direct bearing on the safety of the

¹⁹⁶ Tr. 22.05.2012, page 125/24 to 127/25 (Prosecution’s oral closing arguments)

¹⁹⁷ 2 CB 605-606 (See Dr Lim’s letter to the Complaints Committee dated 4 February 2008 at para [63]-[70] (“February Explanation”))

¹⁹⁸ 2 CB 606

¹⁹⁹ Prosecution’s Closing Submissions, para [208]

Patient. The positioning of the patient needs to be precise and it is the responsibility of the radiation oncologist and the radiation radiographers, based on the treatment planning that has been taken by the radiation oncologist. It should not be the responsibility of a person who is not in that field.

5.3.7 The same analysis applies to Charges No. 70 to 73.

5.3.8 In light of the evidence before the DC, we find beyond reasonable doubt that Dr Lim's fees of \$35,000 and \$45,000 per day for each of these sessions of radiotherapy was not a fair or reasonable charge and was far in excess of and grossly disproportionate to what she was entitled to charge under her ethical obligations for the services rendered. We are further of the view that this is professional misconduct in that it was an intentional, deliberate departure from the standards observed or approved by members of the medical profession of good repute and competency relating to charging for services. This is our finding whether or not there was a Fee Agreement.

5.3.9 Accordingly, we find beyond reasonable doubt that Dr Lim is guilty of professional misconduct under section 45(1)(d) of the MRA in respect of these charges.

5.4 **Category D: Fees for third-party doctors (Charges 74 to 76 and 84 to 94)**

5.4.1 Charges No. 74 to 76 and Charges No. 84 to 94 relate to treatment rendered by Professor D, Dr E, Dr F, Dr G, Dr H, Dr I, Dr J and Dr K ("**the Third-Party Doctors**") to the Patient, as part of the team of specialists attending to the Patient's care.

5.4.2 In respect of Charges No. 74 to 76, it is alleged that the fees which Dr Lim has charged for services that she rendered together with Professor D, Dr E and Dr F were "far in excess of and disproportionate to what [Dr Lim was] entitled to charge". These related to 2004 and 2005 invoices which have been paid. These invoices are not part of the false representation charges brought by the prosecution against Dr Lim. They do,

however, form part of the Prosecution's case against Dr Lim for overcharging.²⁰⁰

5.4.3 Charge No. 74 concerns Dr Lim's bill for \$78,600 for services carried out jointly with Professor D. Professor D, who reviewed the Patient and conducted the procedure, charged \$945 for his services (which Gleneagles Hospital billed on his behalf).²⁰¹ Dr Lim's fee of \$77,655 is not a fair and reasonable fee for the services rendered and is grossly excessive and wholly disproportionate to the services rendered.

5.4.4 The same analysis applies for Charges No. 75 and 76 which concern services carried out jointly with Dr E²⁰² and Dr F²⁰³ respectively.

5.4.5 We accordingly find that in respect of Charges 74 to 76, the Prosecution has established beyond reasonable doubt that Dr Lim charged fees that were not fair or reasonable and which were far in excess of and disproportionate to what she was entitled to charge the Patient.

5.4.6 We are further of the view that this is professional misconduct in that it was an intentional, deliberate departure from the standards observed or approved by members of the medical profession of good repute and competency relating to charging for services. This is our finding whether or not there was a Fee Agreement. Accordingly, we find beyond reasonable doubt that in respect of Charges No. 74 to 76, Dr Lim is guilty of professional misconduct under section 45(1)(d) of the MRA.

5.4.7 In respect of Charges No. 84 to 94, it is alleged that Dr Lim falsely represented to the Patient and/or the Patient's representatives that these invoices represented fees due to the Third-Party Doctors. In particular:

- a. Charges No. 84, 85 and 86 relate to services provided by Dr G, the anaesthetist,²⁰⁴
- b. Charges No. 87, 88, 89 and 90 relate to services provided by Dr H, the cardiologist;²⁰⁵

²⁰⁰ Tr. 22.05.2012 page 133/23 to 134/5

²⁰¹ PWS 2, pages 3 to 8 (Witness Statement of Professor D)

²⁰² PWS 3, pages 9 to 14 (Witness Statement of Dr E)

²⁰³ PWS 4, pages 15 to 19 (Witness Statement of Dr F)

²⁰⁴ PWS 5, pages 20 to 41 (Witness Statement of Dr G)

- c. Charge No. 91 relates to services provided by Dr I;²⁰⁶
- d. Charge No. 92 relates to services provided by Dr J;²⁰⁷ and
- e. Charges No. 93 and 94 relate to services provided by Dr K.²⁰⁸

5.4.8 Taking Charge 84 as an example, Dr Lim issued invoices which were captioned “Emergency Admission for Respiratory Distress/Dyspnoea – Professional Fees for Dr G” and which totalled \$589,100 for 7 treatment days between 15 May and 24 May 2006, Dr G charged fees of \$71,500. A reasonable reader of this invoice would have formed the impression that the charges comprised in the invoice were “for Dr G”, i.e. comprising fees charged by the third-party doctor in question, without mark-up. Dr Lim accepts that her invoices could have given this impression.²⁰⁹ This invoice, like all the others in Charges 84 to 94, was carefully worded and was detailed. We find that these invoices were drafted in order to be read in the way in which an ordinary reader would naturally read them.

5.4.9 Similarly for each of the other charges, Dr Lim issued invoices which read “Professional Fees for Dr”. In none of these invoices was there any express or implied reference to any input by Dr Lim herself, for example by reference to a “combined consultation” with the doctor in question.²¹⁰ In each of these cases, there was a significant undisclosed mark-up of fees which we find unjustifiable on the facts and evidence before us.

5.4.10 It was argued on behalf of Dr Lim that it was not possible to say that a false representation had been made without evidence from the recipient of the representation that she had been misled by it. We do not accept this submission. A representation is made if it is communicated to someone other than the maker of the representation. It is not in dispute that that occurred. A representation is false if it is untrue in point of fact. Dr Lim’s invoices made false representations.

²⁰⁵ PWS 6, pages 42 to 61 (Witness Statement of Dr H)

²⁰⁶ PWS 7, pages 62 to 73 (Witness Statement of Dr I)

²⁰⁷ PWS 8, pages 74 to 79 (Witness Statement of Dr J)

²⁰⁸ PWS 9, pages 80 to 87 (Witness Statement of Dr K)

²⁰⁹ 1 RWS Tab A at [194]

²¹⁰ 1 CB 462.

5.4.11 We find that the Prosecution has proved beyond reasonable doubt that Dr Lim falsely represented that the invoices rendered in each of Charges No. 84 to 94 were in respect of sums due to the third-party doctor identified therein, which was untrue. Further, the mark-up of fees by Dr Lim in each of these invoices was unjustifiably high and amounts on the facts of the case to a breach of the ethical obligation to charge a fee which is fair and reasonable.

5.4.12 We are further of the view that this is professional misconduct in that it was an intentional, deliberate departure from the standards observed or approved by members of the medical profession of good repute and competency relating to charging for services. This is our finding whether or not there was a Fee Agreement.

5.4.13 Accordingly, we find that Dr Lim is guilty of professional misconduct under section 45(1)(d) of the MRA for Charges No. 84 to 94.

5.5 **Category E: Conference cancellation charges (Charges 77 and 78)**

5.5.1 Charges No. 77 and 78 are in respect of fees charged by Dr Lim for cancellation of conferences which she was scheduled to attend. It is alleged that these fees charged were “inappropriate and far in excess of and disproportionate to” the cancellation in question.

5.5.2 In respect of Charge No. 77, Dr Lim billed cancellation fees in the amount of \$78,000 for the cancellation of other professional commitments, specifically, a flight and a conference in New York, the United States. This was subsequently reduced to \$58,500 by Dr Lim pursuant to her letter dated 1 August 2007 to the MOHB.

5.5.3 In respect of Charge No. 78, Dr Lim billed cancellation fees in the amount of \$180,000 for the cancellation of other professional commitments, specifically, a flight and a conference in France. This was subsequently reduced to \$135,000 by Dr Lim pursuant to her letter dated 1 August 2007 to the MOHB.

5.5.4 We note that:

- a. these cancellation charges are imposed in addition to Dr Lim's charges of \$450,000 (Charge 77) and \$158,000 (Charge 78) for services rendered.²¹¹
- b. We have no evidence of the costs and expenses which she incurred for the conferences, nor of the basis for the fees charged.²¹²

5.5.5 In both these charges, we find beyond reasonable doubt that the amounts billed are not fair or reasonable and are wholly excessive and disproportionate to the cancellation in question. While a practitioner can in principle bill a patient a reasonable amount for out-of-pocket and other reasonable costs of such cancellations, the amount that has been billed by Dr Lim in the present case far exceeds what could conceivably be appropriate.

5.5.6 We are further of the view that this is professional misconduct in that it was an intentional, deliberate departure from the standards observed or approved by members of the medical profession of good repute and competency relating to charging patients.

5.5.7 For these reasons, we find that the Prosecution has established this category of Charges beyond reasonable doubt and that Dr Lim is accordingly guilty of professional misconduct under section 45(1)(d) of the MRA.

5.6 Category F: Fees for Clinical Management Conference (Charges 79 to 83)

5.6.1 Charges 79 to 83 are in relation to fees charged by Dr Lim for organising specialist conferences with Professor A. It is alleged that these fees charged were "inappropriate and far in excess of and disproportionate to" the services rendered by Dr Lim.

5.6.2 Taking Charge No. 79 as an example, Professor A charged £45,000²¹³ for this conference. Professor A, an eminent oncologist with an impeccable international reputation, had to travel to Singapore for 3 to 4 days to see the Patient. This necessarily meant that he was unable to see any of his other patients during this period, no matter how long or how short

²¹¹ Prosecution's Closing Submissions dated 24 April 2012, paras [212] and [213]

²¹² Prosecution's Closing Submissions dated 24 April 2012, para [214]

²¹³ 2 CB 485

Professor A's actual consultation with the Patient was while in Singapore. Bearing in mind that Professor A, an internationally-eminent oncologist who was brought in for consultation on the Patient's treatment, charged only £45,000, Dr Lim's invoiced fee of \$560,000 is grossly excessive.²¹⁴ Dr Lim did not have to bear a similar opportunity cost for this same period. We note also that Dr I also attended this conference and charged \$1,200 for this attendance.²¹⁵

5.6.3 Another example is Charge 81, which relates to Dr Lim's invoice for \$560,000. These were Dr Lim's fees for attending and co-ordinating a specialist conference with Professor A.²¹⁶ There were other doctors who also attended this conference: Professor M, Dr I, Dr K and Dr G. For attending this conference, Dr K charged the sum of \$500.²¹⁷ Dr G charged a total of \$12,000 for attending the conference, as well as for close monitoring of the Patient at Royal Plaza on Scotts Hotel from 20 to 22 May 2006.²¹⁸ Dr Lim charged \$560,000 for attending and co-ordinating the conference, as well as an additional \$31,000 for each of Dr K's, Dr G's, Professor M's and Dr I's attendance.²¹⁹

5.6.4 On the evidence before us, we find that Dr Lim's fees were not fair or reasonable and were far in excess of what she was ethically entitled to charge. Some indication of this is what was charged by the other doctors who were also involved in the treatment of the Patient. We find beyond reasonable doubt that the level of fees billed by Dr Lim in this category are grossly excessive and inappropriate.

5.6.5 We are further of the view that this is professional misconduct in that it was an intentional, deliberate departure from the standards observed or approved by members of the medical profession of good repute and competency relating to charging for services. This is our finding whether or not there was a Fee Agreement.

5.6.6 For these reasons, we find that the Prosecution has established this category of Charges beyond reasonable doubt and that Dr

²¹⁴ 1 CB 254 to 255

²¹⁵ 2 CB 512

²¹⁶ 1 CB 374

²¹⁷ 2 CB 517

²¹⁸ PWS 5, at [19] to [20]; 2 CB 490

²¹⁹ 1 CB 376 to 377; 1 CB 380; 1 CB 375

Lim is accordingly guilty of professional misconduct under section 45(1)(d) of the MRA.

6. **CONCLUSION ON MISCONDUCT**

6.1.1 This DC accordingly finds unanimously that Dr Lim is guilty of professional misconduct in respect of all 94 of the charges that have been preferred against her.

6.1.2 This DC adds that it views Dr Lim's professional misconduct as being particularly serious. The fees charged by Dr Lim are unconscionable, whether viewed *per diem* or viewed holistically, whether viewed without the discount she offered or with the discount and after giving her the benefit of every doubt for the nature, scope and quality of her services. When a practitioner, particularly one of Dr Lim's experience and seniority, breaches so egregiously her ethical obligation to limit the fees she charges for her services to a fair and reasonable fee, it inevitably has a deeply corrosive effect on the relationship of trust and confidence that must subsist between the medical profession and the public.

7. **PENALTY**

7.1 **This DC delivers its decision on misconduct**

7.1.1 On 21 June 2012, this DC delivered to the parties its brief oral grounds of decision in this matter and gave directions for this DC to hear on 4 July 2012 oral submissions on the appropriate order to be made under section 45(2) of the Medical Registration Act (Cap 174, 2004 Ed) ("the Act"). This DC's intention, to which both parties consented, was to deliver its full written grounds of decision covering both misconduct and penalty after hearing submissions on penalty.

7.1.2 On 27 June 2012, Dr Lim asked that this DC deliver its written grounds of decision on misconduct before proceeding to the penalty phase. This DC acceded to Dr Lim's request. On 6 July 2012, therefore, this DC delivered to the parties in writing the partial written grounds of decision dealing with misconduct alone. These grounds are set out *ipsissima verba*²²⁰ in Sections 1 to 6 above.

7.1.3 For convenience, this DC has dealt with its decision on penalty by adding this Section 7 to the partial written grounds of decision delivered

²²⁰ Except for a typographical error corrected in paragraph 4.6.1.

to the parties on 6 July 2012 so that its full, reasoned grounds of decision on both misconduct and penalty appear in a single document.

7.2 Submissions on penalty

7.2.1 On 13 July 2012, as directed by this DC, the parties exchanged written submissions on the appropriate order to be made under section 45(2) of the Act. On 17 July 2012, both parties attended before the DC to make their oral submissions on penalty.

7.2.2 The DC has considered carefully the submissions of both the Prosecution and the Respondent, all the aggravating factors which this DC considers relevant, appropriately leavened with all of the mitigating factors which this DC considers relevant and all the precedents cited by the parties.

7.2.3 This DC now sets out in the following paragraphs its reasons and its decision.

7.3 Parties' submissions

7.3.1 The Prosecution's submission on the appropriate order to be made under section 45(2) of the Act is that the only appropriate order is an order heavier than a short suspension. A fine, a censure or even a short suspension, on their own, the Prosecution submits, are all inappropriate orders.²²¹

7.3.2 The Prosecution did not in its written submissions state how long any period of suspension should be. However, when asked during oral submissions, the Prosecution stated its view that the appropriate duration would be the maximum suspension of 3 years available under section 45(2)(b) of the Act. Further, although the Prosecution accepts that an order for Dr Lim's name to be removed from the register under section 45(2)(a) of the Act is an order that is open to this DC if it feels that the circumstances warrant it, the Prosecution confirmed on several occasions in oral submissions on 17 July 2012 that the Prosecution is not asking for an order of erasure.

7.3.3 The Prosecution's reasons for submitting that a suspension is the appropriate penalty are as follows:

²²¹ Prosecution Submissions on Sentence, para 3.

- a. The charges on which Dr Lim has been found guilty “are not petty offences nor is Dr Lim a mere novice medical practitioner. . . . They involve, as found by this DC, serious professional misconduct including egregious overcharging and making false representations in her invoices.”
- b. In relation to the Category I charges:
- (i) The precedents in disciplinary cases against both legal and medical practitioners in cases of egregious overcharging show that the appropriate order is, at minimum, a suspension.²²²
 - (ii) An order of suspension serves three purposes:²²³
 - 1. It sends a signal to the public about the standards of ethical behaviour that the profession sets for itself;
 - 2. It deters other doctors from engaging in similar misconduct; and
 - 3. It punishes the doctor concerned by preventing her from earning a livelihood from her profession during the period of suspension.
- c. In relation to the Category II charges:
- (i) The precedents in disciplinary cases against both legal and medical practitioners in cases of misrepresentation²²⁴ show that the orders made range

²²² Prosecution Submissions on Sentence, para 6 and 8.

²²³ Prosecution Submissions on Sentence, para 9.

²²⁴ Prosecution Submissions on Sentence, para 21.

from a censure and a fine²²⁵ to a four-year suspension²²⁶ and even a striking-off.²²⁷

- (ii) This DC's finding of guilt calls into doubt Dr Lim's integrity, probity and trustworthiness and is therefore particularly serious, and attracts the harshest sanction available.²²⁸
 - (iii) A finding of dishonesty "invariably mean[s] that the doctor will be removed from the register".²²⁹
- d. The Prosecution also relies on the following aggravating factors:
- (i) This is not a one-off or isolated case nor is it a case of marginal overcharging. Dr Lim's misconduct shows a systematic pattern of egregious overcharging over a significant period of time, in itself indicative of dishonesty.²³⁰
 - (ii) The Patient in this case was highly dependent on and trusting of Dr Lim.²³¹ Dr Lim's misconduct therefore amounts to a "flagrant abuse of trust . . . [and] necessarily calls for a more severe sanction."²³²
 - (iii) Dr Lim has shown a lack of integrity and probity in the conduct of her Defence:
 - 1. Her assertion that she voluntarily discounted her invoices is false: she did so to avoid disciplinary

²²⁵ Prosecution Submissions on Sentence, para 23: a doctor who through oral statements and statements on his website created a misleading impression as to his accreditation, qualification and expertise.

²²⁶ Prosecution Submissions on Sentence, para 24: a lawyer who misrepresented himself as a friend of a prisoner in order to gain access to the prisoner for a lawyer/client interview.

²²⁷ Prosecution Submissions on Sentence, para 25.

²²⁸ Prosecution Submissions on Sentence, para 16.

²²⁹ Prosecution Submissions on Sentence, para 18.

²³⁰ Prosecution Submissions on Sentence, para 28, 30 and 31.

²³¹ Prosecution Submissions on Sentence, para 33.

²³² Prosecution Submissions on Sentence, para 35.

- proceedings.²³³ As evidence of this, the Prosecution cites Dr Lim's offer in January 2009 for a letter of good standing from the Brunei Government in exchange for a waiver of all of her fees;
2. Her assertion of an oral fee agreement shifted over time and has been rejected by this DC;²³⁴
 3. Dr Lim has conducted her defence so as to defer for as long as possible a hearing on the merits of this case²³⁵ through reliance on technicalities and judicial review proceedings; and ultimately by failing to offer any of her witnesses for cross-examination before this DC, including herself.²³⁶
 4. Dr Lim has shown no remorse, "does not . . . recognise her ethical obligations as a doctor, . . . [and] does not appreciate the severity of her misconduct."²³⁷ She took the position that the Prosecution's evidence, on which this DC has found her guilty, established no case for her to answer. She also took the position, which this DC has rejected, that there is no ethical limit on what a doctor can charge her patient.²³⁸

7.3.4 Dr Lim's principal submission in mitigation is that "she genuinely did not understand that any ethical rule existed that prevented her from making requests for payment in accordance with what she understood her Patient was willing to pay for the exceptional services demanded, in sums that [the Patient] had for many years been more than happy to pay."²³⁹ As a

²³³ Prosecution Submissions on Sentence, para 37.

²³⁴ Prosecution Submissions on Sentence, para 40.

²³⁵ Prosecution Submissions on Sentence, para 43.

²³⁶ Prosecution Submissions on Sentence, para 42 - 45.

²³⁷ Prosecution Submissions on Sentence, para 51.

²³⁸ Prosecution Submissions on Sentence, para 48 and 49.

²³⁹ Respondent's Submissions on Mitigation, para 89.

result, Dr Lim submits that the appropriate penalty is not a suspension or a striking off but “a censure and fine.”²⁴⁰

7.3.5 The reasons for Dr Lim’s submission are as follows:

- a. Dr Lim accepts and takes seriously the ethical imperative to maintain the highest ethical standards.²⁴¹ She is a surgeon of the highest calibre. She has never been subject to any disciplinary proceedings at all,²⁴² whether arising from the quality of her medical services²⁴³ or from her charging practices. None of the over 18,000 patients she has treated under private fee agreements since 1995 has ever complained about any arrangements with regard to fees.²⁴⁴
- b. Dr Lim “did not [know] and could not have known about any . . . ethical obligation”²⁴⁵ to limit her fee to a fair and reasonable fee and therefore “did not deliberately set out to fix [her] rates knowing that she was not entitled to do so.”²⁴⁶
This is because:
 - (i) The Singapore Medical Association (“SMA”) did not mention any such ethical limit in its submissions to the Competition Commission of Singapore in 2010.²⁴⁷ Further, when the SMA’s guideline on fees was ruled anti-competitive, the SMA did not advise its members that, notwithstanding the absence of any such guidelines, members were nevertheless subject to an ethical limit on what they could charge.²⁴⁸

²⁴⁰ Respondent’s Submissions on Mitigation, para 91.

²⁴¹ Respondent’s Submissions on Mitigation, para 1.

²⁴² Respondent’s Submissions on Mitigation, para 85.

²⁴³ Respondent’s Submissions on Mitigation, para 86.

²⁴⁴ Respondent’s Submissions on Mitigation, para 1 and 2.

²⁴⁵ Respondent’s Submissions on Mitigation, para 12, 21 and 22.

²⁴⁶ Respondent’s Submissions on Mitigation, para 39.

²⁴⁷ Respondent’s Submissions on Mitigation, para 13 and 14.

²⁴⁸ Respondent’s Submissions on Mitigation, para 17.

- (ii) The ECEG also makes no express reference to any ethical limit on what a doctor can charge her patient.²⁴⁹
 - (iii) In July 2011, the MOHS made recommendations to doctors on how they should approach financial issues with their patients but made no mention of an ethical limit on what a doctor could charge her patient.²⁵⁰
 - (iv) As recently as November 2011, the SMA was consulting its members on what factors a doctor should be allowed to consider when determining her own fees and when excessive fees might constitute misconduct. This shows that the profession itself is not clear as to the ethical limit of what it is acceptable for a doctor to charge.²⁵¹
 - (v) Therefore, it is only the decision of this DC which “has identified, for this first time in Singapore, . . . an unwritten intrinsic ethical rule that has never previously been identified, let alone published, that limits the amount that a practitioner may charge her patient.”²⁵²
- c. This DC has made no findings about the margin by which Dr Lim’s fees exceeded her ethical obligation to charge a fair and reasonable fee²⁵³ bearing in mind the wholly exceptional medical services rendered²⁵⁴ and bearing in mind Dr Lim’s cost of providing those services.²⁵⁵ Therefore, this DC can take into account in imposing a penalty only the fact that that ethical limit has been transgressed but not the extent by which it has been transgressed, which remains wholly indeterminate.

²⁴⁹ Respondent’s Submissions on Mitigation, para 15.

²⁵⁰ Respondent’s Submissions on Mitigation, para 19.

²⁵¹ Respondent’s Submissions on Mitigation, para 18.

²⁵² Respondent’s Submissions on Mitigation, para 11.

²⁵³ Respondent’s Submissions on Mitigation, para 32.

²⁵⁴ Respondent’s Submissions on Mitigation, para 23

²⁵⁵ Respondent’s Submissions on Mitigation, para 25 to 26.

- d. There is no precedent for this case, not only because this DC has identified a new ethical rule but also because of the significant mitigating factors in (b) and (c) above.
- e. There has been no complaint by the Patient, her family or the MOHB.²⁵⁶ Dr Lim provided exceptional and extraordinary care and treatment to the Patient²⁵⁷ who made very high demands on Dr Lim, and prolonged the Patient's life on at least 4 occasions.²⁵⁸ The Patient voluntarily returned to Dr Lim for treatment knowing the level of fees which Dr Lim had been charging and would continue to charge,²⁵⁹ thereby leading Dr Lim to believe she could continue to charge those fees.²⁶⁰ The Patient had the freedom at any time to discharge Dr Lim as her principal physician but chose not to.²⁶¹
- f. Dr Lim was not guilty of any abuse of trust: she never insisted on payment of her fees, she never made any threats to the Patient to withhold services if fees remained unpaid.²⁶² Dr Lim did not insist on being paid the fees which this DC has found to be unconscionably high. Instead, she behaved responsibly and professionally by unilaterally discounting the amount sought in order to reach a commercial settlement.²⁶³
- g. Given that Dr Lim's 2007 bills have not been paid, Dr Lim's misconduct has caused no financial loss to the Patient or those responsible for paying for her medical care.²⁶⁴ Further, in connection with Dr Lim's misrepresentations, no harm has been caused because nobody has complained that they were misled by the bills.²⁶⁵

²⁵⁶ Respondent's Submissions on Mitigation, para 47 to 53.

²⁵⁷ Respondent's Submissions on Mitigation, para 59 to 63.

²⁵⁸ Respondent's Submissions on Mitigation, para 60.

²⁵⁹ Respondent's Submissions on Mitigation, para 43.

²⁶⁰ Respondent's Submissions on Mitigation, para 44.

²⁶¹ Respondent's Submissions on Mitigation, para 54 to 58.

²⁶² Respondent's Submissions on Mitigation, para 54 to 58.

²⁶³ Respondent's Submissions on Mitigation, para 64 to 67.

²⁶⁴ Respondent's Submissions on Mitigation, para 68.

²⁶⁵ Respondent's Submissions on Mitigation, para 69.

- h. The delay in the disciplinary process has caused much extraordinary stress to Dr Lim²⁶⁶ and has punished her sufficiently both reputationally and financially.²⁶⁷ While these proceedings have been pending, Dr Lim's life has been on hold and her clinics have struggled to survive to the point where she has had to inject fresh funds to allow them to continue.²⁶⁸
- i. Dr Lim has made significant medical contributions to the medical community in Singapore by: (a) bringing international credit to Singapore as a medical centre of excellence,²⁶⁹ and (b) also by the excellent care she has provided to her patients.²⁷⁰
- j. Dr Lim has made notable charitable and humanitarian contributions,²⁷¹ rendering medical assistance free of charge to the victims of the Bali bombing and to the indigent and making donations of money to worthy causes.

7.4 [This DC's decision on penalty](#)

7.4.1 We begin by citing an extract from the Court of Appeal's decision in *Low Cze Hong v Singapore Medical Council* [2008] 3 SLR(R) 612:

"86 Notwithstanding that the SMC Ethical Code does not enjoy statutory force unlike the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2000 Rev Ed), the SMC is charged under the Act to regulate the conduct and ethics of the medical profession. To this end, the SMC Ethical Code is an embodiment of the ethical values the SMC strives to inculcate in each member of the medical profession, and, in so doing, raise the overall standards of professional practice and conduct. In this connection, it is imperative for doctors to internalise the ethical responsibilities under the SMC Ethical Code and to duly perform them not just in letter, but in accordance with its spirit and intent.

87 In J K Mason, R A McCall Smith & G T Laurie, *Law and Medical Ethics* (Butterworths LexisNexis, 6th Ed, 2002), the writers comment (at para 1.36):

²⁶⁶ Respondent's Submissions on Mitigation, para 72.

²⁶⁷ Respondent's Submissions on Mitigation, para 77.

²⁶⁸ Respondent's Submissions on Mitigation, para 76.

²⁶⁹ Respondent's Submissions on Mitigation, para 78.

²⁷⁰ Respondent's Submissions on Mitigation, para 85.

²⁷¹ Respondent's Submissions on Mitigation, para 87 .

[O]ne of the most important roles of the [General Medical Council of the UK] has been to fill the gap in constraining such actions as are not actionable yet which would not be expected of the ethical practitioner.

We take this opportunity to commend the SMC in sending a strong signal that the ethical duties of a doctor must be adhered to at a level that is commensurate with the high level of trust and esteem that society reposes in the medical profession. The DC has illuminated, through its verdict and observations, a clear vision of the standards it expects from members of the medical profession in order for them to uncompromisingly maintain the highest standards of professionalism and ethical behaviour.

88 The medical profession is a historically venerated institution. Its hallowed status is founded upon a bedrock of unequivocal trust and a presumption of unremitting professional competence. The basic premise underpinning the doctor and patient relationship is that all medical practitioners will infallibly discharge their duties in the time-honoured and immaculate traditions of this singularly noble profession. Unfortunately, this is not always the reality. Regrettably, and indeed reprehensibly, a few doctors abuse what should be an inviolable relationship when they prescribe unnecessary treatment and/or overcharge. From time to time, professional lapses and incompetence surface. Needless to say, such errant conduct must be painstakingly policed and effectively deterred if the medical profession is to continue to rightfully occupy its unique position in society. All it needs is a few recalcitrant practitioners to diminish the stature and standing of a revered and respected institution. The SMC plays a pivotal role in ensuring it does not. It is heartening that the SMC has shown a determined and uncompromising attitude in this instance to maintain the highest standards so as to protect the public and to preserve the reputation of the profession. We hope that other disciplinary tribunals will be guided by this approach and continue to demand the highest professional standards from their colleagues.” [Emphasis added]

7.4.2 From this passage, the DC takes the following points:

- a. All doctors owe an ethical obligation to observe not just the letter but also the spirit and intent of the ECEG; and
- b. Doctors who charge beyond the ethical limit abuse what should be an inviolable relationship between the profession and the public.

7.5 Appropriate sanction

7.5.1 Having considered the parties' submissions, we agree that a penalty of a censure or of a financial penalty alone is wholly inappropriate in this case, both for the Category I and the Category II charges. We say this for the following reasons:

- a. Dr Lim says that she appreciated that she is subject to an ethical obligation to charge a fee which is fair and reasonable only when she was told of the decision of this DC on 21 June 2012. We reject this submission. The ethical obligation on a doctor to charge a patient a fee which is fair and reasonable is an intrinsic part of any profession including the medical profession. This ethical obligation is not only intrinsic to the profession but is also obvious to any ethical doctor. It is within the spirit and intent of the ECEG. In respect of each of the charges which are based wholly or partly on this obligation, we have found that Dr Lim intentionally and deliberately departed from the standards observed or approved by members of the medical profession of good repute and competency relating to charging for her services. Dr Lim's intentional and deliberate departure relates not just to the fact that she intentionally and deliberately rendered her invoices for the sums stated therein but also to Dr Lim's decision to render invoices comprising charges which were far in excess of and disproportionate to the services she rendered. We find also that Dr Lim's dealings with the MOHB after Dr L spoke to Dr Lim and after MOHB sought the intervention of MOHS in connection with Dr Lim's fees shows a consciousness that her fees had transgressed this limit.
- b. For the reasons given above and based on the expert evidence before this DC, Dr Lim breached by the widest and clearest margin her ethical obligation to charge fees which were fair and reasonable. The fees charged by Dr Lim were many multiples of what the expert evidence showed would have been a fair and reasonable fee. This is why we have found that Dr Lim's breach was not marginal but was egregious and warrants a finding of professional misconduct.

- c. It may be true that none of Dr Lim's patients have complained about her fees, making Dr Lim's invoicing practices in respect of the Patient an isolated case. However, the evidence before this DC in relation to the Patient shows a systematic pattern over a sustained period of time of charging fees which were far in excess of and disproportionate to the services she rendered to the Patient. In that sense, the breaches were not isolated incidents.
- d. Dr Lim's conduct in both the Category I charges and the Category II charges has shown a level of integrity, probity and trustworthiness which falls far short of what the profession and the public is entitled to expect of a doctor.
- e. The maximum permissible financial penalty under the Act as it stood at the date this DC was constituted is \$10,000. Such a financial penalty or a censure alone would be wholly disproportionate to the extensive damage done to the relationship of trust and confidence which must subsist between the profession and the public by Dr Lim's misconduct. Either penalty would send completely the wrong signal to the public about the standards which the profession sets for itself. Either penalty would also send completely the wrong signal to the profession about the standards which the public are entitled to expect of the profession.

7.5.2 While a censure and a financial penalty are not appropriate orders in themselves, the DC finds that they are both appropriately included in the overall penalty to be imposed.

7.5.3 The next question for the DC is whether the overall penalty should further include either erasure or a suspension. This DC would be minded to order erasure under section 45(2)(a) in addition to a financial penalty but for the following facts:

- a. While Dr Lim has been found to have made false representations in her invoices and to have intentionally and deliberately departed from her ethical obligation to charge fees which are fair and reasonable, this is not a case in which documents or other records were falsified. Further, there is no

allegation here that Dr Lim did not render any of the services for which the Patient was billed.

- b. Dr Lim did render exceptional care to the Patient. It is true that Dr Lim's services constituted essentially coordination of the Patient's overall medical care, providing palliative treatment and end-of-life management for a patient with advanced breast cancer and were not exceptional medical services. However, it is also the case that Dr Lim went above and beyond the call of duty in attending to the Patient's needs.
- c. We accept that Dr Lim is an exceptionally skilled doctor and also that she has brought credit to Singapore. We also take into account the testimonials produced to this DC from very senior doctors and also from patients. All of this satisfies us that it would not be appropriate to remove Dr Lim from the register.

7.5.4 That leads this DC to the conclusion that an order of suspension is appropriate in addition to a financial penalty of \$10,000 and a censure. The next question for the DC is the appropriate length of the suspension. The DC is satisfied that the maximum suspension of 3 years ought to be imposed. Any shorter suspension would suffer from all the same defects as a censure or a financial penalty alone. A suspension of 3 years is the minimum sanction necessary to restore the confidence in the profession which Dr Lim's misconduct has undermined. Only a suspension of the maximum three years will lead the public and the profession to understand that this degree of egregious overcharging is something which the profession feels is at the highest end of the spectrum of professional misconduct which falls just short of calling for erasure. This DC would not feel it had performed its duty if it left the public and the profession with anything other than that impression.

7.5.5 In closing, this DC wishes to say that there is no incompatibility between financial success and the practice of medicine. But that financial success must always be achieved within the profession's ethical norms.

7.6 Penalty imposed

7.6.1 This DC accordingly makes the following orders under section 45(2) of the Medical Registration Act (Cap 174, 2004 Ed):

- a. That Dr Lim be suspended from practice for a period of 3 years pursuant to section 45(2)(b) of the Act;
- b. That Dr Lim be ordered to pay a financial penalty of \$10,000, the maximum permissible under section 45(2)(d) of the Act as it applies to this DC;
- c. That Dr Lim be censured in writing pursuant to section 45(2)(e) of the Act;
- d. That Dr Lim be required to undertake, after her return to practice, to charge her patients no more than a fair and reasonable fee for her medical services pursuant to section 45(2)(f) of the Act; and
- e. That Dr Lim pay to the Singapore Medical Council the costs and expenses of and incidental to these disciplinary proceedings, including the First DC, such costs to include the fees, disbursements and other expenses of counsel for the Singapore Medical Council and the fees, disbursements and other expenses of the legal assessor appointed to this DC, pursuant to section 45(4) read with section 45(7) of the Act.

7.7 Publication of decision

7.7.1 We hereby order that the Grounds of Decision be published.

7.7.2 This hearing is hereby concluded.

Dated this 17th day of July 2012.

ANNEX A

| S/No. | Date | Bundle Reference | Description |
|--------------|-------------|-------------------------|---|
| 1. | 21.01.2010 | CB | Core Bundle |
| 2. | 21.01.2010 | PB | Prosecution's Bundle of Documents |
| 3. | 24.04.2012 | PBDCS | Prosecution's Bundle of Documents (Closing Submissions) |
| 4. | 25.01.2010 | PWS | Prosecution's Bundle of Factual Witness Statements |
| 5. | Various | PBA | Prosecution's Bundle of Authorities |
| 6. | 16.07.2010 | PBI | Prosecution's Bundle of Invoices |
| 7. | Various | RBD | Respondent's Bundle of Documents |
| 8. | 25.01.2010 | RWS | Respondent's Bundle of Witness Statements |
| 9. | 21.01.2010 | RBER | Respondent's Bundle of Expert Reports |
| 10. | Various | RBA | Respondent's Bundle of Authorities |
| 11. | 27.03.2012 | RBDCS | Respondent's Bundle of Documents (Closing Submissions) |