IN THE REPUBLIC OF SINGAPORE

SINGAPORE MEDICAL COUNCIL DISCIPLINARY TRIBUNAL

[2019] SMCDT 5

Between

Singapore Medical Council

And

Dr Goh Pui Kiat

… Respondent

GROUNDS OF DECISION

Administrative Law — Disciplinary Tribunals

Medical Profession and Practice — Improper Conduct — Fine

Singapore Medical Council
v
Dr Goh Pui Kiat

[2019] SMCDT 5

Disciplinary Tribunal — DT Inquiry No. 5 of 2019
Dr Vaswani Chelaram Moti Hassaram (Chairman), Dr Teo Li-Tserng and Mr Muhammad Hidhir Bin Abdul Majid (Legal Service Officer)
3 May 2019

Administrative Law — Disciplinary Tribunals

Medical Profession and Practice — Improper Conduct — Fine

18 July 2019

GROUNDS OF DECISION

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

CHARGE

1. Dr Goh Pui Kiat appeared before the Disciplinary Tribunal ("**DT**") and pleaded guilty to the following amended Charge.

> "Charge
>
> That you, Dr Goh Pui Kiat, a registered medical practitioner under the Medical Registration Act (Cap. 174, 2014 Rev Ed) are charged that, on 25 April 2014, while in practice at Orchard M.D. Clinic and Surgery, Ngee Ann City Tower B #08-03, Singapore 238874 ("**Orchard MD**"), you accessed the computers of Orchard MD and copied confidential medical and personal data of 7,654 patients from Orchard MD without authorisation from Orchard MD and/or the owner of Orchard MD, Centre for Laser and Aesthetic Medicine Pte Ltd, and subsequently used the confidential medical and personal data of 769 of these

patients while in practice at GPK Clinic (Orchard), Ngee Ann City, Tower B #08-05, Singapore 238874; and that in relation to the facts alleged, you are guilty of such improper conduct which brings disrepute to your profession pursuant to Section 53(1)(*c*) of the Medical Registration Act."

AGREED STATEMENT OF FACTS ("ASOF")

2. The following were the agreed facts.

"**A. Introduction**

1. The Respondent, Dr Goh Pui Kiat [hereinafter referred to as "**the Respondent**"], is a registered medical practitioner specialising in aesthetic treatment. [The Respondent] used to practise at Orchard MD Clinic & Surgery Singapore ("**Orchard MD**") with the Complainant, Dr FW1.

2. Orchard MD provided general medical services as well as aesthetic treatments. It was owned by the Centre for Laser and Aesthetic Medicine Pte Ltd ("**CLAM**"). The registered directors and equal shareholders of CLAM were Dr FW1's wife, Ms FW2 and the Respondent's wife, FW3, although Dr FW1 and [the Respondent] were the de facto directors of CLAM at all material times.

B. CLAMS's patient and inventory database on Clinic Assist

3. CLAM kept, through Orchard MD, a patient and inventory database on its computers, using a clinic management software programme called Clinic Assist. Clinic Assist was developed by Assurance Technology Pte Ltd ("**Assurance Technology**").

4. Essentially, Clinic Assist enabled CLAM to collate a database of confidential clinic information ("**Confidential Information**") containing, among other things:
   (a) a comprehensive patient list;
   (b) the patients' personal information, including their contact details;
   (c) the patients' biodata, including their allergies and medical conditions; and
   (d) the patients' treatment history, including the fees charged and the medicines and/or drugs purchased.

C. Events leading up to the commencement of Suit No. 672 of 2015 ("Suit 672/2015")

5. In 2013, a dispute arose between [the Respondent] and Dr FW1 which led to the commencement of an earlier set of legal proceedings. Thereafter, a settlement agreement ("**the Agreement**") was concluded between the two doctors on 14 February 2014 to resolve the dispute following a successful mediation. Clause 10 of the Agreement provided that the parties were at liberty to set up any other business or clinics in any location in Singapore.

6. As permitted under Clause 10 of the Agreement, [the Respondent] subsequently set up his new clinic, GPK Clinic (Orchard) ("**GPK Clinic**"), two units away from Orchard MD. GPK Clinic was owned by [the Respondent] and FW3 through GPK Clinic (Orchard) Pte Ltd ("**GPKPL**"). FW3 did not work at GPK Clinic.

7. [The Respondent] also purchased the Clinic Assist software from Assurance Technology for his use in GPK Clinic.

8. On 25 April 2014, [the Respondent] copied Confidential Information of 7,654 patients from Orchard MD's computers to GPK Clinic's computers, with the assistance of Assurance Technology. This was done without informing Dr FW1 or Ms FW2 and without obtaining the authorisation of CLAM.

9. After GPK Clinic commenced operations on 19 May 2014, [the Respondent] referred to and used the Confidential Information of 769 former patients of his at Orchard MD to treat them when they saw him at GPK Clinic.

10. In response, Dr FW1 caused CLAM to commence Suit 672/2015 against [the Respondent], FW3 and GPKPL. One of the claims brought by CLAM against the Respondent was that he breached his duty of confidentiality to CLAM by "improperly copying, using, reproducing, disclosing and/or disseminating CLAM's information relating to its patients and its products".

D. High Court's decision in respect of Suit 672/2015

11. On 21 October 2016, the High Court gave its oral Grounds of Decision and found, inter alia, that [the Respondent] was liable for breach of confidentiality with regard to the unauthorised copying and use of the Confidential Information. It also ordered that information relating to patients who had not seen [the Respondent] at GPK Clinic be deleted from GPK Clinic's computers and/or other electronic devices, or destroyed if the information was in hardcopy.

12. The High Court judge held that it was clear that the Confidential Information belonged to CLAM. While [the Respondent] was entitled to have access to the information by virtue of his position as a doctor employed by CLAM and as a de facto director of CLAM, he did not have the right to copy the Confidential Information and use the same for GPK Clinic without permission, even if it was for purposes of being able to follow up on his patients' treatments.

13. In the circumstances, it was held that [the Respondent], who possessed the Confidential Information, owed a duty of confidence to CLAM and he breached this duty by using the Confidential Information for the purposes of GPK Clinic.

14. This portion of the decision was not appealed against.

15. Both the High Court and the Court of Appeal made no finding of dishonesty on the part of [the Respondent].

16. In the premises, [the Respondent's] actions amount to improper conduct which brings disrepute to his profession, pursuant to Section 53(1)(*c*) of the Medical Registration Act (Cap. 174, 2014 Rev Ed)."

SUBMISSIONS ON SENTENCE BY THE SINGAPORE MEDICAL COUNCIL ("SMC")

Precedents and recent incidents of unauthorised leaks

3. The Counsel for the SMC relied on the case of *Singapore Medical Council v Kwan Kah Yee* [2015] 5 SLR 201 and the decision of the Court of Three Judges in *Wong Meng*

Hang v Singapore Medical Council and other matters [2018] SGHC 253 in seeking a deterrent sentence.

4. The Counsel also reminded the DT of the recent cyber-attacks on the patient database of Singapore Health Services Private Limited ("**SingHealth**") and the unauthorised leak of medical information from the HIV Registry to underscore the importance of maintaining the security and confidentiality of digitised medical records. In the SingHealth cyber-attack in June 2018, cyber-attackers illegally accessed and obtained the personal particulars of around 1.5 million patients as well as the medical data of 159,000 patients. Reference was also made to the Public Report of the Committee of Inquiry into the cyber-attack which highlighted the importance of safeguarding confidential patient data.

5. In the HIV Registry's case, due to a medical practitioner's alleged failure to take reasonable care of the information from the Registry, the personal and medical information of thousands of Singaporeans and foreigners diagnosed with HIV came to be in the possession of an unauthorised person who subsequently disclosed the information online. The leak likewise caused widespread public disquiet and undoubtedly undermined confidence in the medical profession.

6. The DT cases in *Singapore Medical Council v Dr Leo Kah Woon* [2018] SMCDT 12 ("**Dr Leo**") and *In the Matter of Dr Singh Tregon Randhawa* [2011] SMCDC 2017 ("**Dr Singh**") were referred to by the Counsel to buttress their point that the medical profession has a duty to respect the security of medical databases.

7. In Dr Leo's case, the DT made reference to the introduction of the Personal Data Protection Act in 2012 to highlight that the securing of personal data had taken on a higher significance and importance and that a mere fine would not sufficiently deter likeminded doctors, other medical professionals, and for that matter, persons having access to any form of database containing personal information, from abusing the privilege and accessing such a database for purely his or her own personal reasons or benefit. The DT in Dr Leo's case agreed with the SMC that the recent SingHealth cyber-attacks was a timely reminder to everyone to treat cyber security with the utmost seriousness.

8. Disciplinary proceedings were brought against Dr Leo after he pleaded guilty and was convicted on two charges in the State Courts for offences under the Computer Misuse Act (Cap 50A, 2007 Rev Ed) implying a defect in character which makes him unfit for the medical profession. One of the charges involved unauthorised access to the data in the patient database of a hospital to obtain the information of the wife of a man whom he suspected was having an extra-marital affair with Dr Leo's wife, whilst the other charge alleged that he committed an unauthorised interception of computer service by installing a keylogging software on his wife's laptop to intercept her communications. Dr Leo was suspended for a period of three months, censured, asked to provide the usual undertaking and made to pay the costs of the DT proceedings.

9. Dr Singh pleaded guilty to six charges of professional misconduct for knowingly and intentionally accessing and reading the electronic medical records ("**EMR**") of two patients who were not his on various occasions without authorisation and consent, thereby violating the patients' confidentiality and the SingHealth Group's IT Security Policy. 74 other charges were taken into consideration. Dr Singh was previously in a relationship with each of the patients concerned but these relationships had ended acrimoniously. He had accessed the EMR of the first patient to find out the nature of her medical problem (fearing that she had a sexually transmitted disease), and had accessed the second patient's EMR to find out when she would have appointments at the hospital so he could avoid any confrontations with her. A financial penalty of $10,000 which was the maximum penalty then, together with the usual censure, provision on written undertaking and costs were imposed on Dr Singh.

Factors relied on by Counsel for the SMC

10. In this case, the Counsel observed that the Respondent had not expressed any remorse for his actions and it did not appear that he recognised the gravity of his offence. In his written statement, the Respondent denied any misconduct on his part or that he had been unprofessional in any way. He also denied having brought disrepute to the medical profession by his conduct. Despite the above observation, in proposing the sentence, the Counsel had taken into account the fact that the Respondent had pleaded guilty at the earliest opportunity, that there was no harm caused to any patient as a result of his actions and accordingly, the Counsel had not sought the imposition of a higher sentence against the Respondent.

11. As regards the nature of the offence, the Counsel pointed the DT to its seriousness which warranted a sufficiently deterrent sentence. The gravamen of the charge was that the Respondent intentionally accessed and copied the Confidential Information without authorisation for use in his own clinic. The Confidential Information related to a considerable number of patients (i.e. 7,654 patients). Whilst the 769 that followed up with him at his new Clinic were his patients, the remaining 6,885 patients could either be his own, Dr FW1's patients or patients who had visited the clinic but had not followed up after their last visit. As decided by the High Court in the civil suit brought against him in *Centre for Laser and Aesthetic Medicine Pte Ltd v Goh Pui Kiat* [2017] SGHC 72, the Respondent had no legal right to copy the Confidential Information and use it for GPK Clinic without permission, even if it was to enable him to follow up on his own patients' treatments (i.e. the 769 patients whom he eventually saw at GPK Clinic).

12. The Counsel also submitted to the DT that the Respondent's actions compromised the data security of the 7,654 patients and that his errant conduct thus fell short of the standard of care, integrity and conduct expected of medical practitioners and violated the unequivocal trust which the public placed in the medical profession. If the medical profession is to continue to preserve its reputation and standing in society, such professional lapses "*must be painstakingly policed and effectively deterred*". Accordingly, the sentence imposed must have sufficient deterrent effect to ensure that the Respondent does not repeat such misconduct and to signal to the profession that such misconduct is not to be condoned or treated lightly.

13. While the Counsel had referred to the cases of Dr Leo and Dr Singh, he was not seeking the imposition of a suspension against the Respondent as it would not be an appropriate sanction in the present case. Unlike Dr Leo, the Respondent was not charged or convicted for any criminal offences and unlike Dr Singh, the Respondent's intention, which the Counsel accepted, was to access and copy only the Confidential Information of those patients who he had been seeing at Orchard MD, and not the records of Dr FW1's exclusive patients. However, according to the Respondent, his understanding at the time was that it was not possible to separate the records of only his patients and the medical records had to be transferred in their entirety.

14. The Counsel also submitted to the DT that while the Respondent's unauthorised and copying of the Confidential Information is undoubtedly a serious offence, the SMC also recognised that the motive behind his misconduct differed from Dr Leo's and Dr Singh's. In those cases, the doctors misused confidential medical and personal information purely for their own personal agendas: in Dr Leo's case, it was to inform the patient of her husband's extra-marital affair, and in Dr Singh's case it was out of concern for his own health and to avoid harassment.

15. The Counsel also accepted that the Confidential Information was used (or intended to be used) by the Respondent for the continued medical care of his patients. However, the Counsel also contended that the Respondent's unauthorised access and copying of the Confidential Information was not purely in the interest of continued medical care and treatment; it was also motivated by a financial incentive.

16. Referring to the civil suit, the High Court at [54] noted that the Respondent did not need to resort to unauthorised access and copying of the Confidential Information. However, by doing so, it helped him to speed up the process of diverting his patients from Orchard MD to GPK Clinic and to persuade the patients to switch to GPK Clinic. The proper procedure would have been to obtain his patients' consent to transfer their Confidential Information to GPK Clinic and then to request Orchard MD to make the transfer, except that this would have taken the Respondent a longer time.

17. In short, the Respondent prioritised his own financial benefit over the importance of obtaining proper consent for the transfer of the Confidential Information from Orchard MD to GPK Clinic. Therefore, although a fine would be an appropriate sanction in this case, the quantum of the fine must be adequate to signify the utmost importance of ensuring the security of confidential medical information and to generally deter other medical practitioners from engaging in similar conduct. Accordingly, the Counsel submitted to the DT that a fine in the range of $20,000 to $30,000 would be appropriate and sufficiently deterrent.

18. In determining the appropriate sentence, the DT was urged to take into account the Respondent's seniority as an aggravating factor. At the material time (in April 2014), he was a medical practitioner of 23 years' standing. A doctor of considerable experience

and seniority should be held to a higher standard of professional conduct as there was a higher expectation of more senior doctors that they would conform to the professional standards.

19. In conclusion, the Counsel submitted to the DT that the sentence that is appropriate and proportionate, taking into account the sentencing principles set out above, the seriousness of the offence as well as the wider consequences arising from the Respondent's actions with regard to the erosion of public confidence in the medical profession, should be as follows:

(a) a fine in the range of $20,000 to $30,000;
(b) that he be censured;
(c) that he provides a written undertaking that he will not engage in the conduct complained of and any similar conduct in the future; and
(d) payment of costs and expenses of and incidental to these proceedings, including the costs of solicitors for the SMC.

SUBMISSIONS BY RESPONDENT

Background on relationship between the Respondent and Dr FW1

20. By way of background, the Respondent's Counsel narrated that the Respondent and Dr FW1 used to practise together as partners in two medical clinics that they set up called 8-11 Clinic & Surgery ("**811 Clinic**") and Orchard MD which were operated by Medical Practice Consultants Pte Ltd ("**MPC**") and CLAM respectively.

21. The Respondent commenced a High Court action, Suit No. 1023/2013 against Dr FW1 when in or about October 2013, he found out that Dr FW1 and his wife, Ms FW2, had set up a company called Company A and were diverting patients of their clinics into buying the products of Company A by selling them in their clinics instead of the products of the clinics and making secret profits. The legal action commenced by the Respondent was settled through mediation and Dr FW1 and Ms FW2 signed the Agreement with the Respondent's wife, FW3, and the Respondent. Their wives were included as signatories because while Dr FW1 and the Respondent were the directors and shareholders of MPC, their wives were the directors and shareholders of CLAM.

22. Counsel submitted to the DT that by then the relationship between the Respondent and Dr FW1 had broken down irretrievably and they decided to end their partnership, sell their existing clinics and open separate new clinics of their own. This was stipulated in Clause 10 of the Agreement which expressly provided as follows:

> "10. The Parties shall be entirely at liberty to setup any other business or clinics in any location in Singapore. For the avoidance of doubt, none of the Parties shall make any allegations or make any claim in respect of diversion of patients/customers from MPC or CLAM."

23. As the Respondent did not want any dispute with Dr FW1 about diversion of patients to GPK Clinic, Clause 10 was included in the Agreement. Since the Settlement Agreement expressly allowed the Respondent to set up and operate a new clinic, sometime at the end of February 2014 he incorporated a company called 8-11 Clinic (Orchard) Pte Ltd and applied for a Medical Licence to operate a clinic under the name "*8-11 (Orchard) Clinic & Surgery*". He chose this name since he had invented the name of the original "*8-11 Clinic & Surgery*" located in Yishun. He was also the sole licensee of 8-11 Clinic & Surgery from its inception in 1994 till its closure in 2015.

24. However, the issuance of the Respondent's new clinic's Medical Licence was delayed because Dr FW1 had complained to the Ministry of Health's Licensing Department over the Respondent's use of "*8-11*" in the name of his new clinic. Although the complaint was totally unwarranted, the Respondent renamed his company to GPKL and his new clinic GPK Clinic so that the issuance of his medical licence could be expedited. The Respondent then commenced practice at GPK Clinic on 19 May 2014.

25. On 5 May 2014 Dr FW1 commenced High Court Suit No. 473/2014 ("**S 473/2014**") on behalf of MPC (the company that operated 8-11 Clinic) against the Respondent, alleging, inter alia, that the Respondent was "*passing off*" GPK Clinic as 8-11 Clinic. The Respondent succeeded in striking off S 473/2014 and Dr FW1 was ordered by the Court to pay costs to the Respondent. When the Respondent set up GPK Clinic, like many other doctors in many clinics in Singapore, he purchased Clinic Assist which Orchard MD also used to store the Confidential Information.

26. The Confidential Information was readily available to all staff of Orchard MD as well as the Respondent as he was a *de facto* director of CLAM and a doctor practising in Orchard MD. He fully expected all the patients who had been seeing him at Orchard MD to follow him to GPK Clinic for continued treatment and thus, it was important for him to have the Confidential Information of his patients for the purpose of their continued treatment.

27. He only wanted to copy the Confidential Information of his patients but the Clinic Assist software was such that both Dr FW1's and the Respondent's patients were all entered by the staff in the patients' listings as and when they first came to Orchard MD. Their names remained in the patients' listing even if they no longer attended Orchard MD. Both doctors' patients were contained in the listings and there was no creation of separate patients' listings for each doctor. Thus when the Respondent requested Assurance Technology to copy the Confidential Information, the entire patients' listing containing both doctors' patients was copied. As the two were never at the clinic on the same day as they worked on alternate days, both shared the Confidential Information of all patients without restrictions.

28. On 3 July 2015 Dr FW1 commenced S 672/2015 against GPKPL, the Respondent's wife, FW3, and the Respondent for alleged breaches of duties including the copying of the Confidential Information. After a trial before Judicial Commissioner Chua Lee Ming ("**JC Chua**") (as he was then), JC Chua dismissed all the claims made against FW3, GPKPL and the Respondent except for the claim relating to the copying of the Confidential Information. In respect of this claim, JC Chua decided that the Respondent was entitled to retain all records of patients of Orchard MD who had started to see him at GPK Clinic. He however ordered that the records of any patients who had not seen the Respondent were to be deleted and this was done on 9 November 2016.

29. Neither the Respondent nor Dr FW1 appealed against the decision relating to the copying of the Confidential Information. The Court of Appeal in *Centre for Laser and Aesthetic Medicine Pte Ltd v GPK (Clinic)(Orchard) Pte Ltd and others and another appeal* [2017] SGCA 68 therefore did not disturb JC Chua's decision on this issue.

Respondent's Mitigation

30. Counsel for the Respondent submitted to the DT that the Respondent honestly believed that since Clause 10 of the Agreement allowed him to open a new clinic, he was entitled to use the Confidential Information of his patients who had been seeing him at Orchard MD to treat these patients when they followed him to GPK Clinic for treatment, particularly since the Confidential Information was at all times available to him at Orchard MD. It was unfortunate for him that his understanding of Clause 10 was held to be erroneous by the High Court and the Court of Appeal.

31. As regards dishonesty, although the High Court and the Court of Appeal both held that the Respondent's understanding of Clause 10 was erroneous, Counsel pointed out to the DT that what was utmost important was that despite allegations of fraud and dishonesty levelled against the Respondent by Dr FW1, both the High Court and the Court of Appeal made no finding of dishonesty on the part of the Respondent which was also an agreed fact in the ASOF (paragraph 15). Counsel urged that the DT should therefore bear in mind this fact and that the reason given by him for copying was to enable him to treat the patients who he had been treating at Orchard MD and who thereafter followed him to GPK Clinic for treatment. For this reason, the High Court made an Order permitting him to keep the Confidential Information of his 769 former patients who had followed him to GPK Clinic.

32. He also urged the DT to note that the agreed facts (at paragraph 9) confirmed that the Respondent only used the Confidential Information to treat these 769 former patients of his and that they were copied because it was not possible to copy the Confidential Information of only his patients and this fact was not challenged or disputed at the DT hearing.

33. Counsel pointed out to the DT that there was no evidence adduced at the High Court trial that showed that the Respondent had used the Confidential Information for any purpose other than for the purpose of treating his own patients. No allegation was made by Dr FW1 that the Respondent used the Confidential Information to try and get Dr FW1's patients to follow him to GPK Clinic. Further, the Respondent testified at the trial that although Clause 10 (as he understood it) allowed him to divert all patients of Orchard MD, he limited himself to only his own patients because of ethical

considerations which prevented him from diverting Dr FW1's exclusive patients as that would be wrong.

34. Counsel further submitted to the DT that the copying of the Confidential Information did not cause any harm to any patient. The only patients affected by the copying, and which benefitted from his conduct, were his 769 former patients who followed him to GPK Clinic. The operations of Orchard MD were not harmed in that the Confidential Information of all patients remained intact at Orchard MD and were still available to Dr FW1. Further, the physical hard copy records of all patients remained there. These included the hard copy records of the 769 patients who followed him to GPK Clinic.

35. Counsel also informed the DT that the Respondent had to institute proceedings in HC/OS 754/2016 to obtain records of his patients (i.e. those who had yet to see him at GPK Clinic). This substantiated the Respondent's belief that he had no doubt that if he had requested Dr FW1 for the records of patients who had followed the Respondent to GPK Clinic to be sent to him, Dr FW1 would have refused.

36. The Respondent also had to institute legal proceedings in HC/OS 690/2015 against Dr FW1 to obtain the patients' records of 8-11 Clinic & Surgery. The Order obtained by the Respondent on 13 October 2015 declared, inter alia, that the Respondent, as a former licensee of 8-11 Clinic & Surgery, was entitled to the electronic records of patients contained in the computer terminals.

37. Counsel further informed the DT that Dr FW1 had refused to hand over these records to the Respondent despite a Court Order dated 20 February 2017 in HC/OS 754/2016 (page 109 of the Agreed Bundle of Documents) relating to the distribution of the records of the patients of Orchard MD to Dr FW1 and the Respondent.

Submissions on Sentencing

38. The Respondent commenced private practice in 1994 and has had an unblemished career spanning 25 years. The only persons who have made complaints against him were Dr FW1 and Ms FW2. These complaints were part of a personal vendetta being waged by them against him which originated from the commercial dispute that erupted between them resulting in the breakup of the partnership.

39. The Respondent has pleaded guilty to the Charge at the earliest opportunity and has cooperated fully with the SMC.

40. The Respondent has accepted full responsibility for what he did despite the fact that he had no ill intention at all in copying the Confidential Information. At all times he acted honestly. He admitted that there was a breach of his duty of confidentiality to CLAM. For that reason, he did not appeal against that finding by the High Court and has pleaded guilty in the DT proceedings. He paid a substantial sum in damages to CLAM following the High Court hearing and an even greater sum following CLAM's appeal to the Court of Appeal. He also had to pay a substantial sum in costs to CLAM.

41. No patient or any other party had complained against the Respondent and no patient had been harmed in any manner by the Respondent. He was highly regarded by his patients as shown in the two written notes included in his submission, attesting to the treatment he rendered.

42. At the hearing, Counsel for the Respondent also informed the DT that a total of 756 patients out of the 769 patients who had seen the Respondent subsequently signed consent forms authorising the transfer of their medical records to the Respondent's GPK Clinic. Two consent forms signed in February and March 2017 were also exhibited in the Respondent's submission.

43. Counsel also submitted to the DT that there was absolutely no element of dishonesty on the part of the Respondent in relation to the act for which he has been charged. The breach of professional duty was technical in that although as a doctor practising at Orchard MD he was at all times privy to the whole of the Confidential Information of Orchard MD and it was fully accessible to him at all times, he "*failed to obtain the consent of Dr FW1, and presumably himself since he was also practising at Orchard MD*", to transfer the Confidential Information of patients who followed him to GPK Clinic. He also stated that "*Dr FW1 could not have refused to transfer the records of any patients who consented to the transfer to the Respondent*."

44. The Respondent maintained fully the confidentiality of the copied Confidential Information. No unauthorised person was provided with the Confidential Information

or any part of the same. It was not accessible to any unauthorised persons and was at all times kept secured in GPK Clinic. There was no possibility at all of any unauthorised person getting hold of the Confidential Information. It was not disclosed at all to any third party.

45. As a sentencing precedent, Counsel referred the DT to the case of *SMC v Dr R* (2018) SMCDT 11. In that case, Dr R failed to maintain the medical confidentiality of a patient, Mdm P. He received a telephone call from Mdm P's brother Mr B who claimed to be Mdm P's husband. Without verifying the identity of Mr B, Dr R issued a memo addressed to "*Ambulance staff/Police in Charge*". The memo contained Mdm P's confidential medical information. It was then passed to Mr B who was in reality P's brother. There were basic steps that Dr R could have taken to verify the caller's identity but he failed to do so. The memo was subsequently used in her application for a Personal Protection Order ("*PPO*") against Mdm P.

46. The DT in Dr R's case found that there was clearly harm caused to the complainant in the form of psychological and emotional distress. The information contained in the memo was highly sensitive and the disclosure of such sensitive information was irreversible and could not be undone. It could become a cause of potential harm to Mdm P. The DT also found that the misuse of the memo by producing it for the application for the PPO also contributed additional distress to Mdm P. The DT then ordered Dr R to, inter alia, pay a penalty of S$50,000, which decision is now on appeal.

47. Unlike Dr R's case, the Respondent did not disclose the Confidential Information to any third parties. At all times, the Confidential Information of those who were not his patients simply remained unused in his computer until they were deleted save for the Confidential Information of the 769 patients treated by him.

48. Distinguishing this case from Dr R's, Counsel for the Respondent submitted to the DT that Dr R had caused harm to a patient whilst the Respondent had caused no harm to any patient and only used the Confidential Information of 769 of his own patients who followed him from Orchard MD to GPK Clinic for the sole purpose of treating them. He did not copy the Confidential Information out of malice and did not profit at all from

the copying. There was also absolutely no possibility of the Respondent repeating this offence.

49. Weighed against the conduct of Dr R and the fact that Dr R had caused harm to a patient, Counsel for the Respondent urged that the DT sentence the Respondent as follows:

(a) pay a penalty of S$5,000;
(b) be censured;
(c) give a written undertaking to the SMC that he will not engage in the conduct complained of or any similar conduct;
(d) pay the costs and expenses of and incidental to these proceedings, including the work of the solicitors for the SMC.

DELIBERATIONS BY THE DT

Sentencing Principles Considered

50. In deciding the appropriate sentence, the DT considered the judicial authorities relevant to a case of this nature. In the decision of the Court of Three Judges in *Wong Meng Hang v Singapore Medical Council and other matters* [2018] SGHC 253 ("*Wong Meng Hang*"), the Court stated at [23] to [26] that in the context of disciplinary proceedings, broader public interest considerations are paramount and will commonly be at the forefront when determining the appropriate sentence that should be imposed in each case. These considerations include the need to uphold the standing and reputation of the profession and to prevent an erosion of public confidence in the trustworthiness and competence of its members.

51. The primacy of these public interest considerations means that other sentencing considerations, such as the offender's personal mitigating circumstances and the principle of fairness to the offender, do not carry as much weight as they typically would in criminal cases, and might even have to give way entirely if necessary in order to ensure that the interest of the public are sufficiently met: *Wong Meng Hang* at [180] citing the observations in *Ang Peng Tiam v Singapore Medical Council* [2017] 5 SLR 356 ["*Ang Peng Tiam*"].

52. In determining the appropriate sentence, another relevant sentencing objective is the need to punish the professional who has been guilty of misconduct. The Disciplinary Tribunal should also have regard to the applicability of general and specific deterrence to the facts of the case: Singapore Medical Council v *Kwan Kah Yee* [2015] 5 SLR 201 at [55], citing the observations made *in Tan Kay Beng v Public Prosecuto*r [2006] 4 SLR(R) 10 ("*Tan Kay Beng*") at [31]– [32] and [34]:

> "… Deterrence, as a concept, has a multi-faceted dimension and it is inappropriate to invoke it without a proper appreciation of how and when it should be applied. It is premised upon the upholding of certain statutory or public policy concerns or alternatively, upon judicial concern or disquiet about the prevalence of particular offences and the attendant need to prevent such offences from becoming contagious. Deterrence, as a general sentencing principle, is also intended to create an awareness in the public and more particularly among potential offenders that punishment will be certain and unrelenting for certain offences and offenders.
>
> 32. Deterrence however also has a more specific application. Specific deterrence is directed at persuading a particular offender from contemplating further mischief. This assumes that a potential offender can balance and weigh consequences before committing an offence. …
>
> 34. In sentencing a particular offender, both general and specific deterrence must be scrupulously assessed and measured in the context of that particular factual matrix before deciding exactly how and to what extent each should figure in the equation …"

53. We now turn to the various submissions on sentence by the respective parties.

Respondent's Plea of Guilt and Remorse

54. The Counsel for the SMC had submitted to the DT that the Respondent was not remorseful and did not appear to have recognised the gravity of his offence. From his written explanation (at [13] and [27] of Agreed Bundle of Documents, Tab 3, pages 32 and 39), we noted that this was the position he took at the early stage of the investigation following the complaint made against him by Dr FW1. The nature of the complaint of 24 October 2016 was much wider in that it was alleged that he had been guilty of professional misconduct for theft, unauthorised access and copying of confidential data resulting in breaches under the Private Hospitals and Medical Clinic Act (Chapter 248), the SMC Ethical Code Guidelines 4.2.3 and the Computer Misuse Act (Cap 50A). The Charge drafted in the Notice of Inquiry dated 24 January 2019 alleged that the Respondent had used data of the 7,654 patients and that he was investigated for a

possible offence under section 3(1) of the Computer Misuse Act (Cap 50A, 2007 Rev Ed) and administered a warning on 27 March 2018.

55. At the Pre-Inquiry Conference held on 5 March 2019, the Counsel for the SMC informed the DT that the Charge dated 24 January 2019 would be amended to which the Respondent would plead guilty. The amended Charge he decided to plead guilty to was as set out in paragraph 1 above. The charge, as amended, alleged that he had only used the data of 769 out of the 7,654 patients and references to the investigations conducted and the warning administered were deleted. The Counsel for SMC agreed with the Respondent's Counsel that he indicated that he would plead guilty at the earliest opportunity.

56. In view of the above, the DT was of the view that the act of pleading guilty at the earliest opportunity based on the amended Charge was a factor to be considered in favour of the Respondent.

SMC's references to Singhealth and HIV Registry data leaks incidents

57. In relation to the cyberattacks on the Singhealth system and the data leak from the HIV Registry referred to by the Counsel for SMC, we are of the view that the Respondent's case did not fall into the same category as the above-mentioned cases. The Respondent was still assigned to work at Orchard MD on certain days even after he incorporated his new clinic on 19 February 2014. Unlike the Singhealth case, the Respondent already had access to the Confidential Information. This case was also distinguishable from the HIV Registry's case as the Respondent did not cause any of the Confidential Information to be disclosed to unauthorised third parties.

Case precedents cited by parties

58. The DT also considered the relevance of the two precedent cases involving Dr Singh and Dr Leo. We found that the two cases were distinguishable on the facts as the two cases involved breaches of doctor-patient confidentiality. In this case, the duty was owed to CLAM and as held by the High Court and agreed (in paragraph 13 ASOF), the Respondent who possessed the Confidential Information owed a duty of confidence to CLAM and he had breached this duty by using the information for the purposes of GPK Clinic. The Respondent did not appeal against this finding of the High Court. In any

event, the Charge the Respondent faced before the DT was not one of breach of confidentiality involving a doctor-patient relationship but the unauthorised access, copying and use of Confidential Information which did not belong to him. We also did not find reference to the case of Dr R by the Respondent's Counsel useful for the same above-mentioned reason.

Absence of dishonesty

59. Paragraph 15 of the ASOF stated that "*Both the High Court and the Court of Appeal made no finding of dishonesty on the part of the Respondent*". The absence of dishonesty was also not disputed by the Counsel for the SMC. However, we did not see how this assists the Respondent's case. Dishonesty was not an element of the Charge. Had there been dishonesty, the SMC would certainly have proceeded against the Respondent differently.

Absence of harm or leakage of information

60. Counsel for the Respondent also emphasised that the Respondent's act did not cause any harm to any of the patients and there was also no leakage of the Confidential Information. The DT also did not consider this to be a factor in his favour. In *Yong Thiam Look Peter v Singapore Medical Council* [2017] 4 SLR 66, the Court of Three Judges at [12] observed that where harm was not an element of a charge, the absence of such harm would generally be a neutral consideration and without any mitigating value. The Charge did not concern events that had caused harm and as such, the DT considered this a "*neutral*" factor. There was also no element of leakage in the Charge.

Respondent's unblemished record

61. The Counsel for SMC referred to the Respondent's seniority and years in practice as an aggravating factor whilst the Respondent's Counsel used the same and his unblemished record as a mitigating factor. On this issue, we note that in *Ang Peng Tiam*, the Court of Three Judges at [102] to [104] stated that an offender's long and unblemished record would be accorded "*modest*" weight if, and to the extent, such evidence fairly allows the court to infer that his actions in committing the offence were "*out of character*" and that therefore he is unlikely to reoffend. However, the mitigating weight will be readily displaced if overridden by other sentencing consideration, such as if the key objective is general deterrence.

THE DT'S FINDINGS

62. Whilst the Respondent is a first offender and has pleaded guilty at the earliest opportunity, this DT cannot ignore the fact that his actions were committed intentionally. The Respondent's failure to understand Clause 10 of the Agreement which has been held erroneous by both the High Court and the Court of Appeal did not assist him at all.

63. The DT also noted that the quantity of information involved was enormous. Confidential Information relating to 7,654 patients was involved, information which belonged to CLAM.

64. Whilst the Respondent wanted to copy only information relating to his own patients, when he found out he could not do, he still continued to copy or cause to be copied information which included information of patients that were not his, in order to be able to divert his own patients to his new clinic. In this regard, reference was made to the Judgment of JC Chua, wherein he stated at [54] that the Respondent would have been able to divert patients from his former clinic to his newly established GPK Clinic even without misusing the Confidential Information except that it would take him a longer time. By doing what he did, "*he accelerated the diversions of patients from Orchard MD to GPK Clinic.*"

65. JC Chua further stated that the improper conduct could have been avoided if the Respondent had made the effort to obtain the consent of CLAM to hand over the information relating to his patients after obtaining the patient's consent. The DT noted that at that point of time, the Respondent would have been able to determine who his patients were and could have approached them for consent. If CLAM refused to hand over the information even after the consent of the patients had been given, the Respondent could resort to the Courts for assistance in the same manner which he did in HC/OS 754/2016, including instituting contempt proceedings, if the other party refused to comply with the Court Order. We also noted that the Respondent's Counsel had in fact submitted to the DT that "*Dr FW1 could not have refused to transfer the records of any patients who consented to the transfer to the Respondent*". Despite that, the Respondent, instead, took the easy way out by copying the information without authorisation of its lawful owners.

66. We also considered the fact that the extent of the diversion was only confined to the patients who had seen him. Whilst that was the case, the fact remained that he had used the Confidential Information which belonged to CLAM in order to divert the 769 patients to his clinic. The fact that he had subsequently obtained the consent of 756 of the 769 patients to have their records transferred to his clinic in 2017 could not assist him as the misconduct had already been committed.

67. Whilst the Respondent's reason for diversion was to enable him to continue treating his patients, the mode in which he went about getting this was reprehensible. In this regard, we agreed with the Counsel for the SMC that the Respondent's conduct was not purely in the interest of continued medical care and treatment; it was also motivated by a financial incentive.

68. For completeness, the DT noted that section 53(1)(*c*) of the Medical Registration Act contained an element that the improper conduct must be one "*which in the opinion of the Disciplinary Tribunal, brings disrepute to his profession*". The Respondent has pleaded guilty on a Charge that on the day concerned, he had accessed the computers of Orchard MD and copied confidential medical and personal data of 7,654 patients without authorisation from Orchard MD and/or its owners and used the confidential medical and personal data of 769 of these patients for his own practice and that in relation to the facts alleged, he is guilty of such improper conduct which brings disrepute to his profession pursuant to section 53 (1)(*c*) of the Medical Registration Act ("**MRA**").

69. For the avoidance of doubt, this DT confirms that in its opinion, the conduct set out in the Charge and which has been admitted to by the Respondent is one which does bring disrepute to his profession.

70. We now come to the sentencing provision. Section 53(2) of the MRA provides as follow:

> "(2) For the purposes of subsection (1), the Disciplinary Tribunal may —
> (a) by order remove the name of the registered medical practitioner from the appropriate register;

(b) by order suspend the registration of the registered medical practitioner in the appropriate register for a period of not less than 3 months and not more than 3 years;
(c) where the registered medical practitioner is a fully registered medical practitioner in Part I of the Register of Medical Practitioners, by order remove his name from Part I of that Register and register him instead as a medical practitioner with conditional registration in Part II of that Register, and section 21(4) and (6) to (9) shall apply accordingly;
(d) where the registered medical practitioner is registered in any register other than Part I of the Register of Medical Practitioners, by order impose appropriate conditions or restrictions on his registration;
(e) by order impose on the registered medical practitioner a penalty not exceeding $100,000;
(f) by writing censure the registered medical practitioner;
(g) by order require the registered medical practitioner to give such undertaking as the Disciplinary Tribunal thinks fit to abstain in future from the conduct complained of; or
(h) make such other order as the Disciplinary Tribunal thinks fit, including any order that a Complaints Committee may make under section 49(1)."

71. Whilst both the Counsel for SMC and the Respondent were in agreement that the Respondent should receive the orders set out in section 53(2)(*f*), (*g*) and (*h*), the Counsel for SMC sought a penalty of between $20,000 to $30,000 while Respondent's Counsel proposed a sum of $5,000.

72. Having considered the facts of the case, the submissions presented, the case precedents on sentencing and weighing both the aggravating factors and the mitigating factors submitted on behalf of the Respondent in this case, this DT was of the view that the penalty proposed by the Respondent's Counsel would be overly lenient and would go against the legal principles enunciated by the Court of Three Judges. Whilst we are of the view that the Respondent is not likely to re-offend, such a penalty would not reflect the seriousness of the misconduct and the deterrence called for.

THE SENTENCE

73. In our view, the proposed range of penalty proposed by the Counsel for the SMC would be the appropriate one and the quantum to be imposed must be one which would serve as a general deterrence under the circumstances. Following *Tan Kay Beng*, such a deterrent sentence is necessary to create awareness among potential offenders that punishment will be certain and unrelenting for this type of offence. This is especially so in the present day and age when the digitisation of medical records and accessibility to these records is so pervasive.

74. With all the above considerations, the DT ordered that the Respondent:

(a) pay a penalty of $25,000;

(b) be censured;

(c) provide a written undertaking that he will not engage in the conduct complained of and any similar conduct in the future; and

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

PUBLICATION OF DECISION

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

76. The hearing is hereby concluded.

Dr Vaswani Chelaram Moti Hassaram
Chairman

Dr Teo Li-Tserng

Mr Muhammad Hidhir Bin Abdul Majid
Legal Service Officer

Mr Chia Voon Jiet, Ms Grace Lim and Mr Sim Bing Wen (M/s Drew & Napier LLC)
for Singapore Medical Council; and
Mr George Pereira (M/s Pereira & Tan LLC)
for the Respondent.