

IN THE REPUBLIC OF SINGAPORE

SINGAPORE MEDICAL COUNCIL DISCIPLINARY TRIBUNAL

[2018] SMCDT 12

Between

Singapore Medical Council

And

Dr Leo Kah Woon

... Respondent

FOUNDATIONS OF DECISION

Administrative Law — Disciplinary Tribunals

Medical Profession and Practice — Professional Conduct — Suspension

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Singapore Medical Council

v

Dr Leo Kah Woon

[2018] SMC DT 12

Disciplinary Tribunal — DT Inquiry No. 12 of 2018

Dr Wong Sin Yew (Chairman), Dr Teo Boon See and Mr Ng Choong Yeong Kevin
(Legal Service Officer)

18 December 2018

Administrative Law — Disciplinary Tribunals

Medical Profession and Practice — Professional Conduct — Suspension

18 December 2018

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

INTRODUCTION

1. The Respondent is a medical practitioner of 16 years' standing. At all material times, the Respondent was employed as a plastic surgeon with Hospital A.

2. The Respondent faced two charges of having been convicted in the State Courts for two criminal offences, implying a defect in character which makes him unfit for the medical profession, for which he is liable to be punished under section 53(2) read with section 53(1)(b) of the Medical Registration Act (Cap 174) ("the Charges"). The two criminal offences for which the Respondent was convicted in the State Courts were:

- (a) one charge of unauthorised access to computer material punishable under section 3(1) of the Computer Misuse Act (Cap 50A, 2007 Rev Ed). This relates to the unauthorised access to Hospital A's Clinical Manager System (the "CM system") to obtain Ms A's personal information for the Respondent's own personal purpose; and
 - (b) one charge of unauthorised interception of computer service punishable under section 6(1)(b) of the Computer Misuse Act (Cap 50A, 2007 Rev Ed). This relates to the installation of keylogging software on Ms B's laptop computer to intercept Ms B's personal communications without her consent.
3. The Singapore Medical Council ("the SMC") proceeded on both charges.

BACKGROUND FACTS

The Charges

4. The Respondent faced the following two charges:

1ST CHARGE

- a. In relation to DAC-931632-2016: "That you, DR LEO KAH WOON, are charged that on 13th February 2017, while practising as a registered medical practitioner at Hospital A, you pleaded guilty to and was convicted of one charge of unauthorised access to computer material punishable under Section 3(1) of the Computer Misuse Act (Cap 50A, 2007 Rev Ed), which is an offence implying a defect in character which makes you unfit for the medical profession.... and that in relation to the facts alleged, you are thereby liable to be punished under section 53(2) read with section 53(1)(b) of the Medical Registration Act (Cap 174)" (**the "1st Charge"**); and

2ND CHARGE

- b. In relation to DAC-931634-2016: "That you, DR LEO KAH WOON, are charged that on 13th February 2017, while practising as a registered medical practitioner at Hospital A, you pleaded guilty to and was convicted of one charge of unauthorised interception of computer service punishable under Section 6(1)(b) of the Computer Misuse Act (Cap 50A, 2007 Rev Ed), which is an offence implying a defect in character which makes you unfit for the medical profession...and that in relation to the facts alleged, you are thereby liable to be punished under section 53(2)

read with section 53(1)(b) of the Medical Registration Act (Cap 174)." (the "2nd Charge").

DISCIPLINARY TRIBUNAL INQUIRY

The Pre-Inquiry Conference ("PIC")

5. At the PIC on 7 August 2018, the Respondent indicated he would plead guilty to the charges.

The Plea

6. At the hearing on 8 November 2018, the Respondent pleaded guilty to both charges.

The Agreed Statement of Facts (ASOF)

7. The Respondent and his ex-wife, Ms B were married in 2005. Their relationship started to sour sometime in December 2011 as the Respondent suspected that Ms B was having an extra-marital affair with one Mr C. On 26 September 2012, the Respondent asked Ms B to leave their matrimonial home (the "flat") after he suspected her of still having an extra-marital affair with Mr C. On 10 October 2012, Ms B commenced divorce proceedings against the Respondent. This led to very acrimonious divorce and ancillary (there were two youngchildren) proceedings. The divorce was only finalised with settlement of the terms of the divorce on 4 May 2015.

8. Prior to and in the course of the divorce proceedings, the Respondent committed various acts which led to the Respondent being charged in the State Courts and convicted of:

- (a) one charge of unauthorised access to computer material punishable under section 3(1) of the Computer Misuse Act (Cap 50A, 2007 Rev Ed); and
- (b) one charge of unauthorised interception of computer service punishable under section 6(1)(b) of the Computer Misuse Act (Cap 50A, 2007 Rev Ed).

9. The Respondent's conviction on the two charges came to the attention of the SMC. The SMC then commenced disciplinary proceedings against the Respondent on two charges of having been convicted of an offence implying a defect in character which makes him unfit for the medical profession, for which he is liable to be punished under section 53(2) read with section 53(1)(b) of the Medical Registration Act (Cap 174) ("the Charges").

Facts pertaining to the 1st Charge

10. After suspecting that Ms B was having an affair with Mr C, the Respondent sought to identify Mr C's then wife, Ms A and find out all he could about her with a view to contacting her in the hope that Ms A would be able to convince Mr C to leave his family alone. However, the Respondent was not able to find reliable information in the public domain to contact Ms A.

11. On 7 November 2012 at about 12.15pm, the Respondent used the computer bearing workstation number GW84000633-0, which was located at Hospital A, to search for Ms A's contact details by accessing Hospital A's CM system. The CM system keeps the personal particulars and medical records (including hospital visits, drug allergies, etc.) of all the patients under Hospital A. Although the Respondent had access to the CM system for his work purposes, he did not have any authority to access such system for his own personal purposes.

12. Using the CM system, the Respondent successfully found two phone numbers of Ms A. The Respondent wrote down Ms A's residence and hand phone number, and passed Ms A's contact details to his sister and instructed his sister to call Ms A.

13. On 13 February 2017, the Respondent was charged in the State Courts of Singapore with one charge in DAC-931632-2016 as follows:

"You...are charged that you, on 7 November 2012 at or about 12.15 p.m., at Hospital A, did knowingly cause a computer bearing workstation number XXX to perform a function for the purpose of securing access without authority to data held in the CM computer system, to wit, by performing a search on one "Ms

A", and you have thereby committed an offence under Section 3(1) of the Computer Misuse Act, Chapter 50A (Rev Ed 2007)." ("the 1st Criminal Charge")

14. Subsequently, on 13 February 2017, the Respondent pleaded guilty to and was convicted of the 1st Criminal Charge, and was sentenced to a fine of S\$5,000.00.

15. The Respondent had therefore been convicted of an offence implying a defect in character which makes him unfit for the medical profession, for which he is liable to be punished under section 53(2) read with section 53(1)(b) of the Medical Registration Act (Cap 174).

Facts pertaining to the 2nd Charge

16. In or around September 2012, the Respondent installed a software "Aobo Mac OS X Keylogger 3.9.0"¹ (the "keylogging software") in his laptop, a Macbook Pro, which was shared between Ms B and himself. The keylogging software had features such as recording keystrokes, recording desktop screenshots by interval, recording websites visited and chat conversations, recording keystrokes typed in email content and secretly sending logs to email.

17. The Respondent did not inform Ms B that he had installed the keylogging software. The Respondent had set the keylogging software to capture the keystrokes of and take periodic screenshots when Ms B used the computer and send the information via email to his email account. With the keylogging software, the Respondent was able to gather information about email messages and instant messages sent out by Ms B using the laptop from different email accounts owned by her. The Respondent did not have Ms B's consent to intercept her personal communications.

18. Subsequently, after Ms B left the flat to stay with her parents, she brought along the laptop and continued to use it. As such, the Respondent was able to gather more information about Ms B's activities with the help of the keylogging software.

19. The Respondent subsequently used the information gathered in the divorce proceedings in the Family Justice Courts to explain the Respondent's concerns about issues relating to custody, care and control of the children.

20. On 13 February 2017, the Respondent was charged in the State Courts of Singapore with one charge in DAC-931634-2016 as follows:

“You...are charged that you, from sometime in September 2012 to sometime in November 2012, in Singapore, did knowingly cause to be intercepted, indirectly and without authority, communication from one Macbook Pro in the possession of one Ms B, to wit, by having the software “Aobo Mac OS X Keylogger 3.9.0” installed on the said MacBook Pro to retrieve email messages and instant messages sent by the said Ms B on the said MacBook Pro, and you have thereby committed an offence under Section 6(1)(b) of the Computer Misuse Act, Chapter 50A (Rev Ed 2007).” (“**the 2nd Criminal Charge**”)

21. Subsequently, on 13 February 2017, the Respondent pleaded guilty to and was convicted of the 2nd Criminal Charge, and was sentenced to a fine of S\$8,000.00.

22. The Respondent had therefore been convicted of an offence implying a defect in character which makes him unfit for the medical profession, for which he is liable to be punished under section 53(2) read with section 53(1)(b) of the Medical Registration Act (Cap 174).

The Submission on Sentence by the SMC

23. SMC submitted that there were certain aggravating factors in the present case that warranted the imposition of a period of suspension:

- (a) Firstly, the dishonesty of the Respondent in relation to both offences;
- (b) Secondly, the fact that the offence in the 1st Charge involves the unauthorised access of a system storing patient medical records, amounts to a breach of patients' medical confidentiality, and privacy in personal data. The breach is even more egregious as it relates to a restructured hospital containing millions of patient medical records;

- (c) Thirdly, the fact that the offence in the 2nd Charge took place over a prolonged period of around two months during which the Respondent would have intercepted Ms B's communications on multiple occasions;
- (d) Lastly, the seniority and standing of the Respondent.

24. SMC sought a suspension of at least six to eight months, censure and an undertaking that the Respondent will not engage in the same or similar conduct in future. They were not seeking a financial penalty given that there was no profit motive nor any direct financial gain for the offences in question.

The Submission on Sentence by the Respondent and Mitigation

25. The Respondent submitted that a fine of S\$10,000 would be adequate as:
- (a) The Respondent's actions in relation to both Charges did not cause any harm. Specifically, in relation to the 1st Charge, the Respondent did not use any medical information that would have been available on the CM system.
 - (b) This is not a case in which there is a need for further specific deterrence, since there is a very low chance of the Respondent re-offending. The underlying conduct is an aberration arising from the difficult personal circumstances which are now behind him, and for which he has been fully dealt with by the criminal court.
 - (c) There was little impact on the standing of the medical profession, as implicitly acknowledged by the SMC in relation to the complaint made by Mr C, since this case essentially arose out of a domestic and private affair with little connection to the Respondent's medical practice.
 - (d) Further, because of the domestic and private nature of the offence, the principle of general deterrence is not engaged in this case.

DELIBERATION BY THE DT

26. The SMC premised its initial sentencing submissions mainly on dishonesty being present in both charges. The Respondent on the other hand, put forward the view that this was essentially an act based on an illegality with extensive mitigating circumstances. It is noted that the Respondent was charged with having been convicted of offences implying a defect in character making him unfit for the medical profession. It appeared to the DT that the charges, at the least, had to do with a lack of integrity. The initial written submissions of the SMC and the Respondent thus raised the questions:

- (a) In professional body disciplinary proceedings, is there a distinction between dishonesty and a lack of integrity?
- (b) If there is such a distinction, what is it and whether there should be a difference in the severity of the sanction that is to be imposed?

27. The DT called upon both counsel to make further submission on the questions posed, which SMC and Respondent did.

The Further Submissions by the SMC and Respondent

28. In its further submission on sentencing, SMC submitted that the cases of disciplinary proceedings against doctors did not appear to make a clear distinction between dishonesty and a lack of integrity. However, drawing parallels with disciplinary proceedings against members of the legal profession, SMC submitted that a suspension for a significant period was warranted due to the egregiousness of the Respondent's conduct, even if the DT was minded to find that he did not act dishonestly but had acted with a lack of integrity.

29. The Respondent, in its further submission, was of the opinion that even if there was a lack of integrity, it had to be viewed in light of circumstances that were so extenuating that his actions did not imply any serious defect in character making him unfit for his profession. The Respondent went on to submit that even if dishonesty was made out, it was a factor not of itself determinative of a suspension order.

30. The DT next conducted a brief examination of the concepts of dishonesty and a lack of integrity in the context of professional body disciplinary proceedings.

31. Under the 2002 edition of the Singapore Medical Council Ethical Code and Ethical Guidelines (“2002 ECEG”), a doctor in Singapore needs to, amongst other things, maintain the highest standards of moral integrity and intellectual honesty¹. This is set out to ensure that patients and the public are able to trust doctors. Doctors have been disciplined for breaching the Ethical Code and the Guidelines.

32. In the March 2018 UK Court of Appeal judgement of *Solicitors Regulation Authority v Wingate and another* [2018] 1 WLR 3969 (the “Wingate” case), Lord Justice Jackson in delivering the judgement said that “an enduring feature of professional codes of conduct is that they set higher standards for their members than the general norms of society” [62]. Though that case was dealing with professional disciplinary proceedings of UK solicitors, the DT believes the principle, in view of the 2002 ECEG, is nonetheless relevant for doctors in Singapore as well.

33. The first question is whether or not there is a distinction between dishonesty and a lack of integrity? In its further submissions, the Respondent was of the view that the two concepts were related but ultimately different. The SMC, while it did not think there was a clear distinction between dishonesty and a lack of integrity in medical disciplinary proceedings, did draw a distinction between dishonesty and a lesser conduct described as “falling below the required standards of integrity, probity and trustworthiness” in cases involving solicitors.

34. In the UK, after a period of uncertainty if there was such a distinction², the Wingate case earlier this year lent clarity to the disciplinary proceedings landscape (at least for UK solicitors). The case made clear that dishonesty and a lack of integrity were not synonymous. They were distinct concepts.

¹ Ethical Code and Ethical Guidelines of the Singapore Medical Council [3. Ethical Code]

² *Solicitors Regulation Authority v Malins* [2017] 4 WLR 85

35. The clarity is important as it is generally accepted that, at least where solicitors are concerned, the sanction for a finding of dishonesty is a striking off. In *Law Society of Singapore v Ravindra Samuel [1999] 1 SLR*, this was articulated as much. However, the case did allude to a possibility of a lesser sanction such as a suspension, if it was found the solicitor did not lack the necessary character and trustworthiness attributes of a legal practitioner. CJ Yong Pung How in that case set out the following sentencing principles in disciplinary proceedings [15]:

- (a) where a solicitor has acted dishonestly, the court will order that he be struck off the roll of solicitors;
- (b) if a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, he will nonetheless be struck off the roll of solicitors, as opposed to merely being suspended, if his lapse is such as to indicate that he lacks the qualities of character and trustworthiness which are necessary attributes of a person entrusted with the responsibilities of a legal practitioner.

36. In the very recent matter of *Wong Meng Hang v Singapore Medical Council [2018] SGHC 253* (“Wong”), the Court of Three Judges set out the general rule in disciplinary hearings against doctors that:

“... misconduct involving dishonesty should almost invariably warrant an order for striking off where the dishonesty reveals a character defect rendering the errant doctor unsuitable for the profession: see Chia Choon Yang at [39]. This would typically be the case where dishonesty is integral to the commission of a criminal offence of which the doctor has been convicted, or where the dishonesty violates the relationship of trust and confidence between doctor and patient. In our judgment, exceptional circumstances would have to be shown to avoid its imposition in such circumstances.” [72]

37. The DT next looked at each concept.

Dishonesty

38. A simple meaning of dishonesty is a “lack of integrity, with a disposition to defraud or to deceive”³. Further definitions include “untrustworthy, and therefore tending to cheat people”⁴. In *Law Society of Singapore v Chia Choon Yang [2018] SGHC 174*,

³Merriam-Webster Dictionary <https://www.merriam-webster.com/dictionary/dishonesty> retrieved 29 November 2018

⁴Black’s Law Dictionary 10th ed 2014

the Court of Three Judges held at [15] that the case necessarily involved dishonesty given the Respondent in that case had asserted a fact or state of affairs he knew was untrue, and that the document in question could well have been relied upon because of his false assertion of a fact.

39. In giving clarity to the concept of dishonesty, the Court of Appeal in *Wingate* articulated honesty as “*a basic moral quality which is expected of all member of society. It involves being truthful about important matters and respecting the property rights of others. Telling lies about things that matter or committing fraud or stealing are generally regarded as dishonest conduct...Because dishonesty is grounded upon basic shared values, there is no undue difficulty in identifying what is or is not dishonest.*” [93]

Lack of Integrity

40. Integrity on the other hand is less easy to articulate and rather more vague. It is defined as “moral soundness; the quality, state or condition of being honest and upright”⁵. Another apt definition of integrity” is the “firm adherence to a code of moral or artistic values”⁶. By not adhering to the code, or by breaching it, raises the question of whether there is lack of integrity.

41. Turning to *Wingate* again, Lord Justice Jackson described integrity in the following terms:

“[A]s a matter of common parlance and as a matter of law, integrity is a broader concept than honesty...In professional codes of conduct, the term “integrity” is a useful shorthand to express the higher standards which society expects from professional persons and which the profession expects from their own members...The underlying rationale is that the professions have a privileged and trusted role in society ... Integrity is a broader concept than honesty, and connotes adherence to the ethical standards of one’s own profession. It involves more than just mere honesty...The duty to act with integrity applies not only to what professional persons say, but also what they do.” [95 to 101]

⁵ Black’s Law Dictionary 10th ed 2014

⁶ Merriam-Webster Dictionary <https://www.merriam-webster.com/dictionary/integrity> retrieved 29 November 2018

42. The DT accepts that there is difference between dishonesty and a lack of integrity. The question then is, in relation to the two charges the Respondent faces, whether he acted with a lack of integrity or acted dishonestly.

Application of a lack of integrity to this case

43. In considering what the Respondent did, as a doctor adhering to an ethical code, would an ordinary reasonable person think that he lacked integrity?

1st Charge

44. In the 1st Charge, the Respondent accessed Hospital A's CM system to look for the contact details of an individual for very personal reasons. It had nothing to do with his professional work, and nothing to do with the care of a patient. It would not take very much to realise that such access and use of the information, even under the circumstances the Respondent was facing on the domestic front, is not allowed unless duly authorised. In fact, it is illegal and a criminal offence. As a doctor adhering to a professional ethical code, the Respondent is held to a much higher standard than a member of the general public, even in his personal life. Having integrity then, is acting according to those standards, regardless of the circumstance, so that the public would inherently continue to trust doctors. In this instance, the Respondent had also crossed the line of professional integrity by wrongfully accessing the data in the CM system entrusted to him as a medical practitioner working in Hospital A.

2nd Charge

45. For the 2nd Charge, the Respondent installed software on the laptop he shared with Ms B, to intercept her email and messages. Whether the Respondent thought it justified to install the software because he owned the laptop is a moot point, as it is a crime to intercept the emails and messages of other people using that laptop. It was not denied that he installed the keylogging software surreptitiously to spy on his wife's internet and email activities. It was also admitted that he used the intercepted emails and messages in court proceedings to explain things to his advantage in court custody proceedings. The Respondent could have chosen not to install the software, and he could have chosen not

to use the intercepted emails and messages in the court proceedings. That he did so clearly displays a lack of integrity.

46. As the lack of integrity by the Respondent is plain, the next question is whether he was dishonest? While it could be said that all dishonesty connotes a lack of integrity, not all conduct lacking in integrity involves dishonesty. The distinction is important. Sanctions for dishonesty in professional disciplinary proceedings are typically severe, ranging from a period of suspension to striking off. As a lack of integrity could cover a wider spectrum of misconduct, so too the sanctions to be considered could be in the broader range, depending on the facts of the particular case.

Application of dishonesty to this case

47. In considering what the Respondent did, what he knew and his state of mind, would an ordinary reasonable person think that he was acting dishonestly?

1st Charge

48. The Respondent submitted that accessing the CM system data was done with the objective of contacting Ms A, in the hope he could see his children again and to salvage his family life.

49. The SMC submitted that there was dishonesty because there was no consent by Ms A to access her data, and there was a level of premeditation and preparation.

50. The DT cannot conclude that the Respondent had a misguided, yet noble, objective of trying his “desperate” best to restore his family or see his children again. There did not appear to be any evidence before the DT to support that assertion. On the contrary, in the relevant portion of the Statement of Facts of DAC-931632-2016 which the Respondent accepted after he pleaded guilty to the criminal charge, it states that “*The accused (i.e. the Respondent) sought to identify Mr C’s wife and find out all he could about her, with a view of contacting her.*” From the evidence before the DT, the Respondent’s state of mind appeared to be one where he wanted Ms A to know what her then-husband Mr C was doing. The email exchanges between Dr D (the sister of the

Respondent) and Ms A contained little or no indication of a person trying to salvage his marriage or family life. Also, as noted by the DT and pointed out by the SMC during the hearing on 8 November, the series of WhatsApp messages between the Respondent and his brother appeared to indicate that the Respondent seems to have moved on from his marriage.

51. The lack of consent, premeditation and planning in and of themselves do not automatically render an act dishonest. While it remains unclear what the Respondent's real objectives to wanting to reach out to Ms A were, the DT finds that there was no assertion of a fact or a situation to anyone by the Respondent that he knew to be untrue, and that there was no one cheated, deceived or defrauded in the process. The DT is thus of the view that while what the Respondent did was wrong, there was no element of dishonesty involved in the 1st Charge.

52. Of significance as well is the fact that dishonesty was not integral to the criminal charge forming the basis of the 1st Charge. The Statement of Facts to support the criminal charge also did not allude to any element of dishonesty.

2nd Charge

53. For the 2nd Charge, the SMC submitted that the motive of the Respondent was insidious, as he intended to use, and "knowingly" intercepted, the messages in order to influence the course of the divorce proceedings. Again, the SMC contended that there was no consent by Ms B for the Respondent to install the software on the laptop, that there was planning and premeditation involved, and that the software tracked Ms B's emails and messages for a period of time. All this, they submitted, amounted to dishonest conduct.

54. The Respondent countered that it was a shared laptop purchased by him and that he loaded the keylogging software because he suspected that his wife might be cheating on him. Also, the duration of the interception of the emails and messages was beyond his control as Ms B took the laptop with her when she left the matrimonial home.

55. The Respondent was undoubtedly undergoing a stressful period in his personal life. Under circumstances the Respondent was facing, some people may resort to gathering “evidence” against their spouse, and subsequently using it. Were the acts of installing the software, intercepting the email and messages, and using the information gathered, dishonest?

56. Applying what constitutes dishonesty, was there knowledge by the Respondent that what he was doing involved deceiving or defrauding anyone, or that he was putting forward any facts or assertion which were untrue? The DT is of the view that it is not so clear cut. Strictly speaking, the Respondent did not, in a clear and unequivocal way, deceive, defraud or falsely assert facts. Therefore, the Respondent was not “technically” dishonest. However, by installing the keylogging software with the purpose of potentially gathering evidence against Ms B, and then knowingly using the evidence gathered in court proceedings, his conduct was rather flagrant.

57. In addition, as in the 1st Charge, dishonesty was not integral to the criminal charge forming the basis of the 2nd Charge. Similarly, the Statement of Facts to support the criminal charge also did not clearly indicate that dishonesty was integral to the charge.

Findings of the Disciplinary Tribunal

58. The DT deliberated the submissions, further submissions and oral submissions of the SMC and the Respondent at some length. For the 1st Charge, while the DT accepted that no actual medical records were accessed, and that there was no profit motive behind the act, it was clear that the Respondent wanted Ms A to know her husband (i.e. Mr C) was having an affair with the Respondent’s wife. It was not evident, as the Respondent contended, that he wanted to contact Ms A so that she could get Mr C to leave his (i.e. the Respondent’s) family alone. (R1 [14]) Whatever the motivation, the fact remains that as a member of a noble profession, he knew well enough that he should not have utilised the CM system to carry out his objective.

59. The 2nd Charge shows more clearly what the Respondent’s real motives were. In hiring a private investigator to conduct surveillance on his wife, including installing the keylogging software, it is clear he wanted to gather evidence against Ms B in the event of

divorce proceedings. While it is not uncommon for spouses, whose marriage is breaking down, to resort to such tactics, it is another thing when the means of doing so is illegal. To subsequently use the evidence so gathered brings the integrity of the Respondent to the lowest of levels.

60. Looking at the totality of his actions between the time he installed the keylogging software, to accessing the CM system, to using Ms B's emails and messages he intercepted for his own advantage in three separate instances during court proceedings, it is difficult to give the Respondent the benefit of the doubt that all this was a lapse of judgement as he contended.

61. The DT concludes that there is no clear evidence of dishonesty in the conduct of the Respondent. As stated earlier in this judgment though, the lack of integrity is clearly displayed by the Respondent, and to a somewhat appalling extent. A doctor is held in the highest esteem by the public because of his profession, and as such he or she is expected to "practise [one's] profession with conscience and dignity"⁷. While we do not expect all doctors to be the epitome of virtue, we should expect the conduct of doctors, professionally and privately, to exceed the standards expected of ordinary citizens. The actions of the Respondent would have tarnished the reputation of and trust in doctors to safeguard information related to their patients and indeed information for which they have domain over, and to act in a more measured and thoughtful way in conducting their personal affairs. To that extent, the Respondent is guilty of committing offences which imply a defect in character which makes him unfit for the medical profession.

Sentencing Principles

62. In Wong's case, the Court of Three Judges set out the principles of sentencing for medical misconduct [75(a)]:

- (a) To uphold confidence in the medical profession;
- (b) To protect the public who are dependent on doctors for medical care;

⁷ The Singapore Medical Council Physician's Pledge - Medical Registration Regulations 2010, Second Schedule

- (c) To deter the errant doctor and others who might be similarly disposed from committing similar offences; and
- (d) To punish the errant doctor for his misconduct.

63. Further, the court noted that for conduct lying outside of a doctor's professional responsibilities to a patient but which leads to a conviction for a criminal offence implying a defect of character which renders the doctor unfit for the medical profession, the appropriate sentencing ranges should be with reference to other cases involving similar circumstances. [36]

64. As the DT did not find that dishonesty was an integral part of the misconduct committed by the Respondent, the sanction of striking off would be inappropriate. The DT therefore turned next to examine if there were appropriate precedents, taking into consideration the Respondent's clear lack of integrity.

Sentencing Considerations

Precedents

65. The Respondent had submitted that there has been only one published case of a doctor who was involved in the unauthorised access of the Electronic Medical Records ("EMR") at the KK Women's and Children's Hospital. In *Singapore Medical Council Disciplinary Committee Inquiry for Dr Singh Tregon Randhawa 28 and 29 November 2011* ("Singh"), the doctor was charged with 80 counts accessing the medical records of persons not under his care. The SMC proceeded on six charges to which the doctor pleaded guilty to, and the remaining 74 charges were taken into consideration for the purposes of sentencing. He was convicted by the Disciplinary Committee ("the DC") and fined \$10,000. The DC was of the view that the doctor was not motivated by malice, and that he committed the acts out of a sense of desperation and self-protection. The DC held that his misconduct stemmed from him losing his sense of reason, forgetting his duty and obligations to the patients of the hospital.

66. In Singh's case, the DC appeared of the view that the doctor's actions were a lapse of judgement, and because this was the first case of its kind that came before a disciplinary

tribunal, a fine would suffice. The DC added that the case should not be construed as setting a benchmark or precedent, and that if a doctor had accessed the medical records of a patient not under his care he ought to be sanctioned with a suspension or striking off, where the misconduct was motivated by malice or profit.

67. There are several factors which distinguish this case from Singh's case:

- (a) There was no criminal charges laid against Singh. The Respondent here was charged and convicted in the State Courts for two criminal offences.
- (b) While there were 80 disciplinary charges levelled against Singh, they were for the unauthorised access to the EMR. Here, the Respondent had committed the additional element of intercepting the emails and messages of another person's illegally, and using them in court proceedings.
- (c) Where in Singh's case, the DC found no malice or a profit motive on the part of the doctor, the Respondent here did try to use the information he obtained illegally to his own advantage.

68. The DT is thus of the view that Singh would not be suitable precedent for this case. A heavy fine may have been appropriate had the Respondent's motive for the 1st Charge been sincere to salvage his marriage and reunite his family, and it was found to be a momentary lapse of judgement. However, seen together with the 2nd Charge, and the manner in which the Respondent used the emails and messages intercepted, a fine would not be appropriate to address the four objectives of sentencing set out in paragraph 62.

69. In particular, in relation to upholding the confidence of the public in doctors, imposing a fine would not be sufficient to redress the break of trust caused by the Respondent, when the public expects doctors to keep medical records confidential, be they personal information or details of medical treatment. The Respondent in his mitigation raised the point that there is little impact on the reputation on the medical profession as this was all essentially a private domestic matter. That argument misses the point that while it was a private matter, it wasn't kept as one, nor conducted as one. The database the Respondent accessed contained the personal and medical information of many members of the public, and for that reason the action of the Respondent has an impact on the ordinary citizen. The use of the intercepted emails and messages in court

hearings led the High Court judge in *ANB v ANC [2014] 4 SLR 747 [25]* referring the matter to the Attorney-General's Chambers for the possible commission of various crimes. This then put the whole episode into the public domain with the subsequent media coverage. There is thus a need for a significant sanction, to ensure that public confidence in the medical profession is not diminished.

70. As part of his mitigation, it was submitted that Mr C had filed a complaint with the SMC against the Respondent, on facts similar to those contained in the 1st Charge. The SMC Complaints Committee subsequently decided to issue a Letter of Advice dated 4 July 2014 to the Respondent. However, the Letter of Advice might have been the result of the limited context in which the complaint by Mr C was filed. The matter then escalated with the illegally obtained email and messages being used in court proceedings and the police being called in to investigate. Consequently, the Respondent was charged and convicted in the criminal courts. The whole scenario has therefore changed significantly, and the DT is unable to agree that the Letter of Advice is an implicit acknowledgement by the SMC that the 1st Charge has little impact on the standing of the medical profession.

71. With the introduction of the Personal Data Protection Act in 2012, the securing of personal data has taken on a higher significance and importance. Therefore, the DT is of the view that a mere fine would not go a sufficient way to generally 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 agrees with the SMC that the recent SingHealth cyber-attacks is a timely reminder to everyone to treat cyber security with the utmost seriousness.

72. The cases tendered by the Respondent to justify a fine of \$10,000 were of limited application and value, as the cases had more to do with the sale of hypnotic medication and a road traffic accident. In fact, in light of what the Court of Three Judges articulated in Wong's case, cases with similar facts as those cited by the Respondent may well have different sentencing outcomes in the future.

Other Guidance

73. This is a matter where there was no element of dishonesty involved, had more to do with the ethical behaviour of the doctor, where the breach of the expected ethical behaviour was significant but not so severe as to signal the need to consider a striking off. While not strictly applicable in the Singapore context, the DT took some reference from the UK General Medical Council's (GMC) Sanctions Guidance 2018 (the Guidance). The Guidance was developed for use by UK medical practitioners' tribunals, when considering the sentence to be imposed following a finding where a doctor's fitness to practise is impaired. The Guidance [19] includes:

Conduct in a doctor's personal life

56 Tribunals are also likely to take more serious action when certain conduct arises in a doctor's personal life, such as (this list is not exhaustive):
a. issues relating to probity – i.e. being honest and trustworthy and acting with integrity

74. It is thus clear, in the UK at least, that a doctor's personal conduct, in addition to his professional conduct, would have an impact on his fitness to practise. This is rightly so, as the expectations the public places on how doctors conduct themselves is higher. Any failure to meet those expectations may well result in a breach of trust and confidence the public has not only with that particular doctor, but as the medical profession as a whole.

75. The DT thus considered the sanction of suspension.

76. The Western Australia State Tribunal in *Medical Board of Australia v Duck [2017] WASAT 28* ("Duck"), as cited by Wong [60], set out when a suspension of a medical practitioner might be appropriate:

Suspension

...

The proper use of suspension is in cases where the practitioner has fallen below the high standards to be expected of such a practitioner, but not in such a way as to indicate that the practitioner lacks the qualities of character which are the necessary attributes of a person entrusted with the responsibilities of a practitioner. That is, suspension is suitable where the Tribunal is satisfied that, upon completion of the period of suspension, the practitioner will be fit to resume practice.

[emphasis added; citations in original omitted]

77. In this case, the DT is of the view that the Respondent is clinically a good and competent doctor. It is further of the view the Respondent does possess the necessary qualities to be entrusted with the responsibilities of a medical practitioner upon completion of a period of suspension. This is in light of the various testimonials submitted by fellow professionals and patients in support of the Respondent, and the awards he has received.

78. A suspension would also convey to the public that the DT does not condone such behaviour and acts, even if they are related to matters in the private family domain. It will convey the message clearly that doctors are expected to conduct themselves with integrity and ethically both in their professional and private lives. A suspension would also serve as the appropriate punishment for the misconduct of the Respondent. Further, the suspension would well deter likeminded medical and other professionals who have access to large databases of personal information from abusing the privilege.

79. The DT therefore agrees with the SMC that a suspension is in order. The SMC has submitted that the appropriate length should be between six to eight months. However, that was premised on there being dishonesty on the part of the Respondent. The cases cited by the SMC to support a suspension were also of little relevance as they had to do with clear cases of dishonesty. As the DT concluded there was no dishonesty, but there certainly was a lack of integrity on the part of the Respondent, the length of suspension should be calibrated in accordance with the degree of the lack of integrity. That degree, in the view of the DT, while flagrant, was not as egregious as put forward by the SMC.

80. The UK Bar Tribunals & Adjudication Service Sanctions Guidance, Version 4 of 1 February 2018 (the BTAS Guide), is a guide applicable for barristers and UK Bar Standards Board (BSB) Licensed/Authorised Bodies (i.e. a company or law firm regulated by the Bar Standards Board). Under Section B “Behaving ethically”, the guide sets out a range of sanctions for errant barristers and BSB Licensed/Authorised Bodies convicted for various types of offences. Aside from convictions against barristers for drink driving, drug possession or supply, dishonesty, discrimination and harassment, and

sexual offences, the BTAS Guide provides that for convictions against a BSB Licensed/Authorised Body under e.g. data protection legislation (amongst others), if it brought the profession to disrepute, it could lead to sanctions as follows:

- a. (For) a conviction for a minor offence – Reprimand and low or medium level fine to a short suspension
- b. (For) a conviction for a more serious offence – A medium level suspension
- c. (For) a conviction for a serious matter, and/or amounting to an act of dishonesty – Revocation of license or authorisation to practise (or in exceptional circumstances, a long suspension)

81. The DT acknowledges that the BTAS Guide is meant for UK disciplinary tribunals hearing allegations of misconduct against UK barristers and Licensed/Authorised Bodies. However, for the conviction of offences other than those involving dishonesty, violence, sexual misconduct or the illegal sale of hypnotics, the DT found that the Guide did provide useful guidance and structure, i.e. the starting point of sanctions when considered against the degree of seriousness of the offence.

SENTENCE

82. The DT fully considered all the facts and circumstances and the respective submissions of both parties, including examining the available sentencing precedents and taking reference from relevant guidance. The DT believes that a short suspension sentence would be the most appropriate order. The Respondent is thus sentenced as follows for both the 1st Charge and the 2nd Charge:

- (a) That he be suspended for a period of **three (3) months**;
- (b) That he be censured;
- (c) That he gives a written undertaking to the SMC that he will not engage in the conduct complained of or any similar conduct; and
- (d) That he pays the costs of these proceedings, including the costs of the solicitors to the SMC.

83. The Respondent requested that the Grounds of Decision not be published. The DT has considered the request and orders that the Grounds of Decision be published with the

necessary redaction of the names of the persons (other than the Respondent's name) in this judgement.

84. The hearing is hereby concluded.

Dr Wong Sin Yew
Chairman

Dr Teo Boon See

Mr Ng Choong Yeong Kevin
Legal Service Officer

Ms Chang Man Phing and Mr Walter Yong (M/s WongPartnership LLP)
for Singapore Medical Council; and
Mr Lek Siang Pheng and Ms Andrea Gan (M/s Dentons Rodyk & Davidson LLP)
for the Respondent.