IN THE REPUBLIC OF SINGAPORE

SINGAPORE MEDICAL COUNCIL DISCIPLINARY TRIBUNAL

[2020] SMCDT 3

Between

Singapore Medical Council

… *Appellant*

And

Yip Man Hing Kevin

… *Respondent*

GROUNDS OF DECISION

Administrative Law — Disciplinary Tribunals

Professions — Medical profession and practice — Professional conduct – Suspension

TABLE OF CONTENTS

Singapore Medical Council
v
Yip Man Hing Kevin

[2020] SMCDT 3

Disciplinary Tribunal — DT Inquiry No. 3 of 2020
Professor Sonny Wang (Chairman), Dr Chan Wai Lim William, Mr Bala Reddy (Legal Service Officer)
7 February 2020 and 18 March 2020

Administrative Law — Disciplinary Tribunals

Medical Profession and Practice — Professional Conduct – Suspension

19 March 2020

GROUNDS OF DECISION

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

Introduction

1 Dr Yip Man Hing Kevin ("**Dr Yip**") faced a total of five charges of professional misconduct under section 53(1)(*d*) of the Medical Registration Act (Cap. 174) ("**MRA**"), pursuant to two amended Notices of Inquiry:

(a) The first amended Notice of Inquiry dated 4 February 2020 ("**1st NOI**") arose out of a complaint by one Mr P1 (the "**Patient**") dated 21 November 2013. The

two charges (the "**1st Charge**" and "**2nd Charge**") of the 1st NOI relate to insufficient medical leave being provided to the Patient.

(b) The second amended Notice of Inquiry dated 4 February 2020 ("**2nd NOI**") arose out of a complaint by the Singapore Medical Council ("**SMC**") dated 24 July 2013. The three charges of the 2nd NOI each relate to insufficient medical leave being provided to Mr P2, Mr P3, and Mr P4 respectively.

2 All five charges are premised on second limb of the test for professional misconduct in *Low Cze Hong v Singapore Medical Council* [2008] 3 SLR(R) 612 ("***Low Cze Hong***"), that is, that Dr Yip's conduct in providing insufficient medical leave to the patients demonstrated such serious negligence that it objectively portrays an abuse of the privileges which accompany registration as a medical practitioner.

3 Dr Yip elected to plead guilty to the 1st and 2nd Charge in the 1st NOI, and agreed to the remaining three charges in the 2nd NOI being taken into consideration for the purposes of sentencing ("**TIC Charges**").

4 After careful consideration, this Disciplinary Tribunal (the "**DT**") ordered that Dr Yip:

(a) be suspended for a period of **8 months**. (*Suspended for a period of 3 months for the 1st Charge and 6 months for the 2nd Charge, to run consecutively (i.e. 9 months), with an uplift of 3 months for the TIC Charges (i.e. 12 months), and with a 1/3 reduction for delay, resulting in a total suspension of* ***8 months***);

(b) be censured;

(c) give a written undertaking to the SMC that he will not repeat such conduct in the future; and

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

We now set out our reasons below.

The background facts

The charges

5 The 1st Charge concerned Dr Yip's conduct in giving insufficient medical leave to the Patient in relation to the Patient's right middle finger injury. The relevant parts of the 1st Charge are set out below:

> **(AMENDED) 1st CHARGE**
>
> That you **DR KEVIN YIP MAN HING** are charged that … you failed to exercise due care in the management of your patient, namely one **P1** (the "Patient"), in that you provided him with insufficient medical leave.
>
> **Particulars**
>
> …
>
> b) The Patient presented at the Clinic on 10 April 2012 with an injury to the right middle finger. On clinical examination, this was found to be a distal phalangeal tuft fracture with subungual hematoma of the right middle finger;
>
> …
>
> e) Given the nature of the Patient's occupation and his condition on 10 April 2012, medical leave should have been given to the Patient;
>
> …
>
> g) Given the nature of the Patient's occupation and his condition on 13 April 2012, medical leave should have been given to the Patient; and
>
> in relation to the facts alleged, you have been guilty of professional misconduct under Section 53(1)(*d*) of the Medical Registration Act (Cap. 174), in that your conduct demonstrated such serious negligence that it objectively portrays an abuse of the privileges which accompany registration as a medical practitioner.

6 The 2nd Charge concerned Dr Yip's conduct in giving insufficient medical leave to the Patient in relation to the Patient's left shoulder injury. The relevant parts of the 2nd Charge are set out below:

> **(AMENDED) 2nd CHARGE**
>
> That you **DR KEVIN YIP MAN HING** are charged that… you failed to exercise due care in the management of your patient, namely one **P1** (the "Patient"), in that you provided him with insufficient medical leave.
>
> **Particulars**
>
> …
>
> g) The MRI results dated 6 August 2012 revealed the following: a medical dislocation of the biceps tendon out of the bicipital groove, a likely partial tear of the subscapularis tendon, coraco-humeral and superior glenohumeral ligaments, as well as tendinopathy of the supraspinatus tendon;
>
> …
>
> i) During the arthroscopic surgery ("the Procedure") on 16 August 2012, the Patient was found to have a small degenerative labial tear which was subsequently debrided. His biceps tendon and subscapularis tendon were found to be intact, as was his rotator cuff on bursoscopy. The Patient was subsequently discharged on 17 August 2012;
>
> …
>
> m) Given the nature of the Patient's occupation and the requisite post-operative management of the Patient after the Procedure, medical leave should have been given to the Patient upon his discharge on 17 August 2012 and at the reviews on 22 August 2012, 29 August 2012 and 12 September 2012; and
>
> in relation to the facts alleged, you have been guilty of professional misconduct under Section 53(1)(*d*) of the Medical Registration Act (Cap. 174), in that your conduct demonstrated such serious negligence that it objectively portrays an abuse of the privileges which accompany registration as a medical practitioner.

The facts

7 The relevant paragraphs of the agreed statement of facts relating to the charges are as follows:[1]

[1] Agreed Statement of Facts dated 4 February 2020.

I. Introduction

1. Dr Yip Man Hing Kevin ("Dr Yip") is a registered medical practitioner. He was practising as an orthopaedic surgeon at Singapore Sports and Orthopaedic Clinic, Gleneagles Medical Centre, 6 Napier Road, #02-09/12, Singapore 258499 ("the Clinic") at the material time.

...

III. Facts pertaining to the 1st Charge of the 1st NOI

5. The Patient, a Singapore citizen, was working as a driver at Company A at the material time. The Patient presented at the Clinic on 10 April 2012 with an injury to his right middle finger. On clinical examination, this was found to be a distal phalangeal tuft fracture with subungual hematoma of the right middle finger.

6. Dr Yip treated the Patient with a splint and intravenous antibiotics, oral antibiotics, pain relief and anti-inflammatory medication, and subsequently scheduled him for a review on 13 April 2012. Dr Yip also issued a medical certificate ("MC") for the Patient for two days from 10 April 2012 to 11 April 2012, and certified the Patient fit for light duties for two days from 12 April 2012 to 13 April 2012. The Patient was absent from work from 10 April 2012 to 13 April 2012.

7. Treatment of a tuft fracture requires the distal interphalangeal joint to be immobilized for at least 2 weeks. Given the Patient's occupation as a driver and his condition as presented on 10 April 2012, medical leave of at least 2 weeks' duration should have been given to the Patient, and Dr Yip should not have certified the Patient fit for light duties from 12 April 2012 to 13 April 2012.

8. On 13 April 2012, Dr Yip reviewed the Patient. Following this review, Dr Yip provided the Patient with medical leave for 13 April 2012, and certified the Patient to be fit for light duties for 14 days from 14 April 2012 to 27 April 2012 with the remark "Restrict Use of Rt Upper Limb". The Patient returned to work for the period from 14 April 2012 to 26 April 2012, save for 19 April 2012.

9. Treatment of a tuft fracture requires the distal interphalangeal joint to be immobilized for at least 2 weeks. Given the nature of the Patient's occupation as a driver and his condition as presented on 13 April 2012, medical leave of at least 2 week's duration should have been given to the Patient, and Dr Yip should not have certified the Patient fit for light duties from 14 April 2012 to 27 April 2012.

10. By virtue of the foregoing, Dr Yip is guilty of professional misconduct under section 53(1)(*d*) of the Medical Registration Act (Cap. 174) in that his aforesaid conduct amounts to such serious negligence that it objectively portrays an abuse of the privileges which accompany registration as a medical practitioner.

IV. Facts pertaining to the 2nd Charge of the 1st NOI

11. On 8 July 2012, the Patient sustained a left shoulder injury after trying to grab hold of the back of a lorry while at work. He presented at the Clinic three days later, on 11 July 2012.

12. The Patient was documented to have a reduction in shoulder movements due to pain. No physical examination for tenderness or instability was recorded, but an x-ray was ordered. The x-ray showed no body abnormality and no rotator cuff calcification.

13. Dr Yip treated the Patient with anti-inflammatory medication and analgesia, together with muscle relaxant medication. Dr Yip then certified the Patient to be fit for light duties from 11 July 2012 to 17 July 2012.

14. On 14 July 2012, Dr Yip reviewed the Patient, and subsequently referred him for physiotherapy at Clinic B,. The Patient underwent a total of 4 sessions of physiotherapy there from 24 July 2012 to 6 August 2012. The physiotherapist recommended further investigation of the Patient.

15. On 17 July 2012, either Dr Yip or a locum doctor under his charge and supervision reviewed the Patient, after which the Patient was certified fit for light duties from 18 July 2012 to 24 July 2012.

16. On 24 July 2012, either Dr Yip or a locum doctor under his charge and supervision reviewed the Patient, after which the Patient was certified fit for light duties from 25 July 2012 to 7 August 2012, with the remark "Restrict Strenuous Activities".

17. Although the Patient's next review was scheduled to be on 7 August 2012, the Patient presented himself to Dr Yip one day earlier on 6 August 2012. That day, the Patient underwent an MRI for his left shoulder. Again, Dr Yip certified the Patient fit for light duties, this time for 21 days from 8 August 2012 to 28 August 2012 with the remark "Restrict Strenuous Activities".

18. The MRI results dated 6 August 2012 revealed the following:
    a. A medial dislocation of the biceps tendon out of the bicipital groove;
    b. A likely partial tear of the subscapularis tendon, coraco-humeral and superior glenohumeral ligaments; and
    c. Tendinopathy of the supraspinatus tendon.

19. On 10 August 2012, Dr Yip reviewed the Patient's MRI results with him. Dr Yip proceeded to schedule the Patient for arthroscopic surgery on 16 August 2012.

20. On 16 August 2012, the Patient underwent shoulder arthroscopic surgery (the "Procedure"). The Patient had to be administered general anaesthesia for the Procedure. During the Procedure, the Patient was found to have a small degenerative labial tear which was subsequently debrided (i.e. cleaned up). As his biceps tendon and subscapularis tendon were found to be intact, as was his rotator cuff on bursoscopy, no other procedures were required.

21. One day after the Procedure, on 17 August 2012, the Patient was discharged. He was not prescribed any hospitalisation leave or MC. Instead, the Patient was certified to be fit for light duties from 8 August 2012 to 28 August 2012.

22. Dr Yip conducted a post-operation review on 22 August 2012. After that, either Dr Yip or a locum doctor reviewed the Patient again on 29 August 2012. The Patient was then certified to be fit for light duties for 15 days from 29 August 2012 to 12 September 2012, with the remark "Restrict Strenuous Activities". Dr Yip subsequently reviewed the Patient again on 12 September 2012.

23. The Patient was absent from work for the entire period from 16 August 2012 to 12 September 2012.

24. Given that the Patient worked as a driver and had just undergone a procedure that required general anaesthesia, and needed extensive rehabilitation to mobilise his shoulder to regain motion after the Procedure, he should have been given medical leave of at least 4 weeks' duration upon his discharge on 17 August 2012, or at the reviews on 22 August 2012, 29 August 2012, or 12 September 2012. Dr Yip should not have certified the Patient fit for light duties on those occasions.

25. By virtue of the foregoing, Dr Yip is guilty of professional misconduct under section 53(1)(*d*) of the Medical Registration Act (Cap. 174) in that his aforesaid conduct amounts to such serious negligence that it objectively portrays an abuse of the privileges which accompany registration as a medical practitioner.

The procedural history

8 When these proceedings began, Dr Yip was subject to a separate DT inquiry (Ref. No SMC 14.6/ 2011-129) (the "**First Inquiry**") relating to his treatment of a different patient, Mr P5. As with the present case, the nub of the allegations of misconduct in that inquiry was that Dr Yip had failed to ensure that adequate sick leave was given to Mr P5.

9 This DT granted Dr Yip's application on 19 April 2017 to adjourn the present proceedings pending the outcome of the First Inquiry.

10 On 28 March 2018, the DT in the First Inquiry convicted Dr Yip of the charges brought against him and imposed a 5-month suspension term on him.

11 Both Dr Yip and the SMC appealed against the DT's decision. In Originating Summons No 8 of 2018 ("**OS 8**"), Dr Yip appealed against his conviction and sentence on the ground that the conviction was "unsafe, unreasonable and contrary to the evidence" within the meaning of section 55(11) of the MRA, and that in any case, the sentence was manifestly excessive. The SMC cross-appealed against the sentence in Originating Summons No 9 of 2018 ("**OS 9**") on the ground that the sentence was, among other things, manifestly inadequate.

12 On the application of Dr Yip's Counsel on 23 July 2018, these proceedings were further deferred pending the resolution of the appeals in OS 8 and OS 9 at the High Court.

13 On 23 April 2019, the Court of Three Judges ("**C3J**") in *Yip Man Hing Kevin v Singapore Medical Council and another matter* [2019] SGHC 102 ("***Kevin Yip No. 1***") dismissed Dr Yip's appeal in OS 8 and allowed the SMC's appeal in OS 9. The C3J increased Dr Yip's suspension term to 8 months.

14 With the appeals fully resolved, this DT hearing took place on 7 February 2020. We heard the address on sentence by Counsel for the SMC as well as the mitigation plea by Dr Yip's Counsel.

The parties' submissions on sentence

The SMC's submissions

15 The SMC sought a total suspension of 10 months against Dr Yip. This was based on a sentence of 6 months' suspension for each charge, to run consecutively (i.e. 12 months), with a 1/6 reduction for delay.

16 Additionally, the SMC sought the usual consequential orders against Dr Yip – a censure from the DT and for Dr Yip to give a written undertaking not to repeat such conduct in

the future; and for Dr Yip to pay the costs and expenses of this DT inquiry, including the legal costs incurred by the SMC.

17 In arriving at a global suspension term of 10 months, Counsel for the SMC advanced the following arguments:

(a) A suspension sentence was warranted in the present case, based on the "harm-culpability matrix" laid down by the C3J in *Wong Meng Hang v SMC* [2019] 3 SLR 526 ("***Wong Meng Hang***").[2] Based on the matrix, the harm done was "not low"[3] and Dr Yip's culpability was "medium" if not "high"[4] with the result that the suspension threshold had been crossed.[5]

(b) A starting point of 4 months' suspension per charge was justified based on an application of 2 sentencing precedents: *Kevin Yip No. 1* and *SMC v Wong Him Choon* [2016] 4 SLR 1086 ("***Wong Him Choon***"). Like *Kevin Yip No. 1*.

(c) The aggravating factors in this case justified an uplift of 2 months per charge. In particular:

(i) Dr Yip's pattern of conduct called for the strict application of the sentencing consideration of specific deterrence, as he is a repeat offender who committed the same type of misconduct multiple times over a prolonged period.

(ii) The nature, number and severity of the TIC Charges, as well as their similarity to the 1st and 2nd charges which Dr Yip is pleading guilty to, are to be regarded as aggravating the offences proceeded with.

[2] *Wong Meng Hang*, at [30] – [32].

[3] SMC's Further Sentencing Submissions dated 7 February 2020, at para [6].

[4] SMC's Further Sentencing Submissions dated 7 February 2020, at para [8].

[5] SMC's Further Sentencing Submissions dated 7 February 2020, at para [10].

(d) Any individual suspension term imposed for the 1st and 2nd charges should run *consecutively* as Dr Yip's actions in each charge related to different types of injuries that he attended to on different occasions.

(e) The delay in prosecution justified a 1/6 reduction in aggregate suspension because although there was delay on SMC's part, the present proceedings had also been delayed substantially due to Dr Yip's dilatory conduct in making multiple adjournment requests.

Dr Yip's submissions

18 Dr Yip's Counsel submitted that the appropriate sentence to be imposed is *a fine* and related orders. The arguments were as follows:

(a) Under the harm-culpability matrix, there was *no harm* caused to the Patient, and Dr Yip's culpability was low, with a result that only a fine was merited in the circumstances.

(b) Even if Dr Yip's culpability is considered to be of a "medium" level, the lower end of the sentencing range (i.e. 3 months' suspension) was an applicable starting point. The present case lacked the aggravating factors present in *Wong Him Choon*, and the injuries suffered by the Patient were much less severe than in *Kevin Yip No. 1*. Further, in the present case, Dr Yip had followed up with the Patient's employer on the Patient's salary concerns, and pleaded guilty at an early juncture.

(c) There were no aggravating factors in this case. In particular,:

(i) General deterrence did not apply as the medical profession has been well apprised of the issues regarding adequate medical leave since 2013.

(ii) Specific deterrence did not apply as Dr Yip has demonstrated a low propensity to re-offend. His prescribing of light duties was motivated by a treatment philosophy that he genuinely believed in, and he has taken steps to improve his practice. Further, *Kevin Yip No.* 1 should not be regarded as a relevant antecedent as the material events in that case occurred around the same time as the events giving rise to the charges.

(iii) The TIC Charges did not merit a harsher sentence because they were only brought on 3 cases out of a total of 86 cases audited by the Ministry of Health, and the SMC's expert, Dr PE1 conceded that his judicious use of light duties resulted in good outcomes for all 3 cases.[6] Dr PE1's only concern on whether the short medical leave provided allowed employers not to report the incidents to MOM was not borne out in the present case, as all 3 cases were reported to MOM by the respective employers at the material time.

(d) Finally, the present case had strong mitigating factors, such as:

(i) The inordinate delay by the SMC in instituting proceedings against him, which has caused prejudice and distress to him. As the delay of more than 3 years between Dr Yip's submission of his letter of explanation and the issuance of the Notices of Inquiry against him is comparable to the lengths of delay in *Ang Peng Tiam v Singapore Medical Council* [2017] 5 SLR 356 ("***Ang Peng Tiam***") and *Jen Shek Wei v SMC* [2018] 3 SLR 943 ("***Jen Shek Wei***"), it was fair to *halve* the period of suspension that was to be imposed on Dr Yip.

(ii) Dr Yip is a caring doctor who acts in his patients' best interests, as seen from four testimonials from past patients.

[6] 2AB, pages 164 to 165, 167.

(iii) Dr Yip gives back to the community and has made charitable contributions both locally and overseas.

Our decision on sentence

19 We begin with the general principles guiding sentencing in medical disciplinary proceedings, which are uncontroversial.

General sentencing principles

20 The overarching consideration in sentencing is that the sentence must be *just and fair* in light of all the circumstances of the case (*Ang Peng Tiam* at [89]).

21 When determining an appropriate sentence, it is important to remember the C3J's observations in *Singapore Medical Council v Kwan Kah Yee* [2015] 5 SLR 201 ("***Kwan Kah Yee***") at [50] that sanctions in medical disciplinary proceedings serve two functions:

(a) first, to ensure that the offender does not repeat the offence so that the public is protected from the potential severe outcomes arising from the actions of errant doctors; and

(b) second, to uphold the standing of the medical profession.

22 With the above principles in mind, we turned to consider what would be appropriate sentences for the 1st and 2nd Charges.

Suspension

23 We first assessed the seriousness of the offences disclosed in the 1st and 2nd Charges based on the "harm-culpability" matrix laid down by the C3J in *Wong Meng Hang*.

24 Counsel for the SMC contended that in the present case, the harm was "not low" and Dr Yip's culpability was "at least medium if not 'high", whereas Dr Yip argued that there was "no harm", and Dr Yip's culpability was "low".

Harm / Culpability	Slight	Moderate	Severe
Low	Fine or other punishment not amounting to suspension	Suspension of 3 months to 1 year	Suspension of 1 to 2 years
Medium	Suspension of 3 months to 1 year	Suspension of 1 to 2 years	Suspension of 2 to 3 years
High	Suspension of 1 to 2 years	Suspension of 2 to 3 years	Suspension of 3 years or striking off

25 Based on the matrix, we found that the harm done in each charge was *slight* whilst Dr Yip's culpability for each charge was *medium*, with the result that a suspension term of between 3 months to 1 year was warranted.

Harm

26 The issue before us was: *what harm*, if any, was caused to the Patient as a result of Dr Yip depriving him of sufficient medical leave?

27 In considering the issue of harm caused, the following remarks made by the C3J in *Wong Meng Hang* itself (at [30(a)]) on what harm is, bears repeating:

> Harm refers to the type and gravity of the harm or injury that was caused to the patient and indeed to society by the commission of the offence. It should

> also be noted that the more direct the connection between the specific type of harm that has been occasioned and the misconduct in question, the weightier a consideration this will be. **The harm in question can take various forms, including bodily injury, emotional or psychological distress,** even serious economic harm, increased predisposition to certain illnesses, **loss of chance of recuperation or survival**, and at the most severe end of the spectrum, death. **Regard may also be had to the potential harm that could have resulted from dangerous acts of misconduct, even if it did not actually materialise on the given facts.** In accordance with the position taken in criminal cases (see *Neo Ah Luan v PP* [2018] 5 SLR 1153 ("*Neo Ah Luan*") at [67]), potential harm should only be taken into account if there was a sufficient likelihood of the harm arising; it would plainly not be appropriate to consider every remote possibility of harm for the purposes of sentencing. [Emphasis added]

28 We are guided by these observations. Harm could be physical as well as *emotional*, and regard may be had to *potential harm* that had a sufficient likelihood of happening, even if such harm might not have materialised.

29 In the present case, we accept that no *direct physical* harm was caused to the Patient. As regards SMC's submission that harm could be *inferred* from the Patient's absence from work – it was not clear to us *what* harm should be inferred from this. In our view, the absence from work may have stemmed from the pain of the injuries themselves, and may not be attributable to any failure by Dr Yip's to provide sufficient medical leave for those injuries *per se*.

30 That said, we were also unable to categorically conclude, as Dr Yip's Counsel had, that *no harm* was done to the Patient at all.

31 In our view, Dr Yip's failure to issue sufficient medical leave to the Patient placed the Patient *at risk* of *both bodily and economic harm*, even if such risks did not materialise in the present facts. Further, there is the *emotional stress* that he could reasonably have been expected to suffer as a result of being exposed to the risk of such harm.

32 This *risk* of harm existed here because, as Dr Yip had certified the Patient fit for light duties, the Patient's employer retained a *right* to ask him to perform those light duties

at any time. Had the Patient *refused* to work, he was at risk of being declared absent without official leave (AWOL), and/or being denied salary for those days, thus suffering economic harm. The Patient himself expressed these concerns thus:[7]

> On the 15/10/2012 I went back to see DR KEVIN YIP, regarding the post-op pain I experienced. I also questioned him regarding my MC. He asked me "What happened?" I reply "MC changed to light duty, I will not be paid by the company."

33 On the flip side, had the Patient *complied* with any request for him to perform light duties, he would have *lost a chance to rest and recover* on those days, and taken on the *risk of exacerbating his injuries* whilst working. In this regard, we note Counsel for the SMC's point that had the latter risk materialised, they would have submitted for a much longer suspension term.

34 Short shrift was therefore given to Dr Yip's Counsel's submission that for the 2nd Charge, the Patient was "put in the same position" as if medical leave was given since his employer allowed him a paid absence in the end. The pure fortuity of this aside, the key fact is that the Patient always remained *at risk* of being called back by his employer for light duties during the relevant period – and this would not have been the case had medical leave been granted to him.

35 By being content to take the employers' word, and failing to issue sufficient medical leave to him, Dr Yip had left the Patient *entirely at the mercy of his employer's benevolence* during the periods where *light duties* were prescribed.

36 As for Dr Yip's Counsel's argument that the injury suffered by the Patient in the 1st Charge was minor and that the Patient had in fact gone back to work from 14 to 30 April 2012, we do not see how this shows that *no harm* was caused – the Patient *had* to go back to work because he did not have medical leave.

[7] Complaint letter against Dr Yip dated 21 November 2012.

37 We therefore find that for each of the charges, the Patient was harmed in that he was placed in harm's way; without the cover afforded by an MC, the Patient faced the risk of being called back for light duties, and risked economic and physical harm if he refused or complied respectively. Under the uncertainty of this luckless position, we find it reasonable to expect that some emotional stress, however slight, to have weighed on the Patient. Nevertheless, as these were not direct harm, and since none of the risks had materialised, we find that the harm done for each of the Charges to be in the *low* range.

Culpability

38 We found Dr Yip's culpability in respect of each charge to be *medium* as his conduct demonstrated a callous disregard for the Patient's welfare and interests, particularly his needs for rest and rehabilitation.

39 In *Kevin Yip No.1*, a suspension term was ordered for Dr Yip's failure to provide adequate medical leave to Mr P5. The C3J noted that "the most aggravating factor" in that case was Dr Yip's complete disregard for the patient's welfare and interest, and that such disregard:

> manifested itself throughout his post-operative treatment of the Patient when he failed to consider the Patient's multiple serious injuries as significant enough for sick leave, and perhaps most appallingly, when he failed to check on how the Patient was coping with light duties … despite claiming that he had prescribed the Patient light duties as part of the post-operative rehabilitation regime for the Patient.[8]

40 In the present case, Dr Yip's careless disregard for the Patient's welfare could likewise be seen from his failure to issue sufficient medical leave even though it should have been *obvious* that the Patient's injuries rendered him unfit to work as a driver.[9] His

[8] *Kevin Yip No.1*, at [93]

[9] SMC's Sentencing Submissions dated 5 February 2020, at para [27].

complete indifference towards the Patient's welfare can also be inferred from the fact that the medical leave issued was *significantly* less than the norm of medical leave to be issued:

(a) For the 1st Charge, the Patient had a subungual hematoma with tuft fracture for which he required at least 2 weeks' medical leave. Yet between the first consultation on 10 April 2012 and follow-up consultation on 13 April 2012, Dr Yip only gave 2 days of medical leave.

(b) For the 2nd Charge, the Patient required arthroscopic surgery on his left shoulder whilst under general anaesthesia. The Patient needed at least 4 weeks' medical leave post-operation, yet no medical leave was given to the Patient post-operation.

41 Dr Yip's Counsel submitted that Dr Yip's culpability was *low* as he had the Patient's best interests at heart, and his decision to certify the Patient as fit for light duties was borne of a genuine belief in prescribing light duties to assist in early rehabilitation.

42 We did not accept this argument for two reasons:

(a) *First*, it was seriously undermined by the fact that there was no evidence as to what efforts Dr Yip made in finding out what light duties were available for the Patient, or what arrangements were made for such duties when they were prescribed. One would expect evidence of some arrangements with the Patient's employer on, for example, what range of motions the Patient should or should not do on light duty. Instead, Dr Yip had here sought the employer's confirmation that the Patient would receive basic salary *if he chose to rest at home* while being certified fit for light duty.[10] If Dr Yip truly believed that

[10] Dr Yip's letter of explanation dated 13 June 2013 at pages 4, 5; 1AB, pages 35 and 36.

performing light duties was in the Patient's best interest, then it is remarkable that he would seek to confirm an arrangement where the Patient *would not do light duties* and be paid salary – a situation that ironically would seem neither in the Patient's nor his employer's interest.

(b) *Second*, while a belief in early rehabilitation was a good thing, such early rehabilitation could be achieved by a variety of means. When Dr Yip's Counsel raised a similar argument about his genuine belief in prescribing light duties to mobilise the injured area in *Kevin Yip No.1*, the C3J noted (at [96]) that the patient there could have *equally* mobilised himself while on *sick leave*. Here, Dr Yip continues to equate early rehabilitation with the prescription of *light duties* but has offered no reasons to support why he holds such a belief. In our view, if he had a genuine belief in his prescription of light duties for the Patient, he should be able to explain why.

43 While we note that Dr Yip did not *deliberately* depart from the standards reasonably expected of him, his conduct in respect of each of the charges nevertheless demonstrated a careless disregard for the Patient's welfare and interests, and, given that the conduct was not one-off for each charge, we assess his culpability to be medium for each charge.

44 Flowing from our finding that the harm done was slight and Dr Yip's culpability was medium, a suspension term was appropriate according to the harm-culpability matrix.

The length of suspension

45 We turned to consider the appropriate suspension lengths for each charge by comparison with relevant precedents.

46 In *Wong Him Choon*, the respondent doctor was convicted for giving his patient, a foreign construction worker, insufficient hospitalisation leave. In imposing a suspension term of *6 months*, the C3J considered aggravating factors such as the doctor's deliberate backdating of medical leave certificates to cover up a mistake, that he subjugated the patient's welfare in favour of the employer's interests, his alluding to improper considerations to justify the failure to grant sufficient medical leave, and his lack of remorse and attempts to blame on the patient for failing to adequately manage his post-operative care.

47 In the present case, we considered that the above aggravating factors in *Wong Him Choon* were not present on the facts. Notwithstanding this, we bore in mind that other aggravating factors placed the present facts in an equal or even more severe category than *Wong Him Choon*.[11]

48 In *Kevin Yip No. 1*, Dr Yip was convicted of 3 different charges of professional misconduct for failing to give sufficient medical leave thrice to his patient, a foreign construction worker. The patient had suffered from a right clavicle fracture, two to four lower rib fractures, a 1cm head laceration and a wrist contusion. The C3J held that the 3 charges merited a suspension of *4 months each* because of:

(a) Dr Yip's complete disregard for the patient's welfare and interest, evidenced by his failure to consider the patient's injuries as significant enough for sick leave, as well as his failure to check on how the patient was coping with the light duties.[12]

[11] *Kevin Yip No.1* at [95].

[12] *Kevin Yip No.1* at [93].

(b) The fact that the patient had suffered multiple serious injuries in the face of which Dr Yip acted with callous disregard for the patient's welfare.[13]

49 In the present case, we found that like in *Kevin Yip No.1*, Dr Yip's conduct manifested a careless, and callous disregard of the Patient's interests in the face of his injuries as disclosed in each charge.

50 However, we accepted that the injuries disclosed in the 1st and 2nd Charge were less severe than the injuries in *Kevin Yip No. 1*. As the severity of the patient's injuries in *Kevin Yip No. 1* was a "central focus" of the case and a "significantly aggravating factor", a reduced suspension term per charge was warranted to account for the less severe injuries involved in the present case.

51 However, tilting back the balance is the fact that here, Dr Yip had failed to provide sufficient medical leave on *more than one occasion* for *each* charge:

(a) For the 1st Charge, Dr Yip reviewed the Patient 3 days after the first consultation on 10 April 2012, but instead of providing him with 2 weeks' medical leave, he only gave 2 days of medical leave and certified the Patient fit for light duties for 16 days.[14]

(b) For the 2nd Charge, Dr Yip reviewed the Patient on multiple occasions over 2 months *after* the arthroscopic surgery on 16 August 2012. Each time, Dr Yip failed to provide sufficient medical leave.

52 As Counsel for the SMC pointed out, each instance of misconduct here was not splintered into a separate charge as in *Kevin Yip No.1* where a 4 months' suspension

[13] *Kevin Yip No.1* at [94].

[14] Agreed Statement of Facts dated 4 February 2020 at para [6] and [8].

was ordered in respect of *each* charge on the failure to provide adequate sick leave in each *follow up consultation*.[15] We find that the sentence here must be adjusted significantly upwards to account for the *multiple* instances of Dr Yip failing to provide sufficient medical leave for *each* injury disclosed in each charge.

53 Finally, we observed that unlike in *Wong Him Choon*, another aggravating factor in the present case was the fact that Dr Yip's misconduct in the 2nd Charge was done in the face of an ongoing SMC complaint relating to a similar misconduct, which he was eventually convicted for.

54 We accept that Dr Yip is not strictly speaking a repeat offender in that he had not been convicted and sentenced by the DT in *Kevin Yip No. 1* when he committed the acts of misconduct in the present case.

55 Still, Dr Yip had committed the offences in the 2nd Charge despite *knowing* that he was facing a complaint for failing to issue sufficient medical leave to another patient. By the time Dr Yip first examined the Patient for his left shoulder injury on 11 July 2012, he had already been served a Notice of Complaint regarding the giving of insufficient medical leave for the patient in *Kevin Yip No. 1*. Yet despite being alive to the fact that his conduct was in question, he did not take steps to revise his practice or address any possible shortcomings to it but continued to show a careless disregard for the Patient in issuing insufficient medical leave.

56 In *Kwan Kah Yee*, the respondent doctor had improperly certified 2 deaths even though he was being *investigated* for a prior incident of improper death certification. The C3J considered this to be an aggravating factor, reasoning as follows (at [67]):

> Second, the DT had erred in considering that the Respondent was not a repeat offender on the basis that he had not been *sentenced* for the Prior Charge

[15] *Kevin Yip No.1 at* [23].

> when he committed the two acts of misconduct leading to the Charges. … **It is important to note that while the Respondent had not yet been formally charged with the Prior Charge when he falsely certified Patient's A and B's death certificates, he *was* on notice that he was under investigation for the prior offence. We considered this to be an aggravating factor and therefore took this into account when imposing the sentences we have set out at [61] above**. In any event, it was not evident to us how the Respondent could not be regarded as a repeat offender since the plain facts were that he had repeatedly issued false death certificates. There was simply no ambiguity in this. [Emphasis added].

57 Like in *Kwan Kah Yee*, Dr Yip's misconduct in the 2nd Charge was done despite him being *put on notice* that he faced a complaint for a *similar* misconduct which he eventually was convicted for. On the authority of *Kwan Kah Yee*, we likewise found this to be an aggravating factor.

58 Dr Yip's Counsel cited *Dr Gan Seng Eric* [2015] SMDC 1 ("***Dr Gan***") and *Dr Teh Tze Chen Kelvin* [2015] SMCDT 9 ("***Dr Teh***") for the proposition that prior antecedents which the doctor would not have been cognisant of at the material time should be *disregarded*. We did not place much weight on them. Whereas the present case involved Dr Yip committing *similar* misconduct to that disclosed in a prior complaint, the cases cited concerned antecedents which were *different* from the charges that were being proceeded with:

(a) In *Dr Gan*'s case, the DT did not give his antecedent much weight "as it concerned a charge of post-operative management of a patient and not informed consent".[16]

(b) In *Dr Teh*'s case, the DT noted that "it was not in dispute that the charges in the Respondent's earlier case and the instant case were quite different."[17]

[16] *Dr Gan*'s case, at [28].

[17] *Dr Teh*'s case, at [29].

59 As Dr Yip is *not* a repeat offender, his conduct must be considered *less aggravating* than a situation where a doctor was previously *convicted* for similar misconduct. However it is still a relevant aggravating factor that he had committed the misconduct for the 2nd Charge in the face of his prior complaint.

60 Drawing these threads together, we found that a starting point of 6 months' suspension for the 2nd Charge was fair and just in the circumstances.

61 The injury disclosed in the 1st Charge was less severe than the injury in the 2nd Charge. In *Kevin Yip No. 1*, the same suspension term was given for all three charges as, in our view, they all related to the same set of injuries. As the present charges each involved *different* injuries, the individual suspension terms should be adjusted to account for the relative severity of injuries involved in each charge.

62 To this end, if, as SMC suggested, the length of medical leave required testified to the severity of the injuries, then the shoulder injury in 2nd Charge which warranted at least *4 weeks*' medical leave was more severe compared to the 1st Charge, which warranted at least *2 weeks*' medical leave. Accordingly, we considered that the appropriate suspension term for the 1st Charge should be moderated downwards and a 3 months' suspension term was appropriate.

63 For completeness, we found that Dr Yip's guilty plea had minimal value as a mitigating factor. It was by no means early – by the time Dr Yip had pleaded guilty, *more than 2 years* had passed since the 1st and 2nd NOI had been served on him, and by that time he had already been found guilty of similar misconduct in *Kevin Yip No. 1* and had his appeal dismissed by the C3J.

64 Little mitigating weight was accorded to Dr Yip's general contributions to the medical profession and to society. In *Ang Peng Tiam*, the C3J rejected the view that an

offender's general good character or his past contributions to society (such as volunteer work and contributions to charities) can be regarded as a mitigating factor in so far as this rests on the notion that it reflects the moral worth of the offender (at [101]). Evidence of an offender's long and unblemished record might be regarded as a mitigating factor of modest weight to the extent that it allowed the court to infer that the offender's actions in committing the offence were "out of character" and that he was unlikely to re-offend (at [102]-[104]). As will be explained later, this was not the case here.

Consecutive sentences

65 With the starting suspension sentences of 3 months for the 1st Charge and 6 months for the 2nd Charge, we turned to how the individual sentences should run.

66 The general principles on consecutive and concurrent sentences were set out in *Public Prosecutor v Raveen Balakrishnan* [2018] SGHC 148 as follows:

> The general rule of consecutive sentences for unrelated offences
>
> 39 I previously elaborated on the one-transaction rule in *Shouffee*, and it contemplates that **where two or more offences form part of a single transaction, all sentences in respect of those offences should in general run concurrently rather than consecutively** (at [27], citing *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 at [52]). The question of whether the various offences form part of a single transaction in turn depends on whether they entail a "single invasion of the same legally protected interest" (at [30], citing D A Thomas, *Principles of Sentencing: The Sentencing Policy of the Court of Appeal Criminal Division* (Heinemann, 2nd Ed, 1979) ("*Principles of Sentencing*") at p 53). In determining this, the proximities in time, place, continuity of action, and continuity in purpose or design all have utility (at [28] and [34]). The premise is that if there is a single invasion of a legally protected interest, then even if this might give rise to several offences, it is, in the final analysis, the violation of that single interest that is being punished and concurrent sentences would thus ordinarily suffice to reflect the seriousness of the offences. In effect, the one-transaction rule serves "as a filter to sieve out those sentences that ought not as a general rule to be ordered to be run consecutively" (at [27]). The rule ought to be applied in a commonsensical manner (at [40]), and indeed, in some situations it might be appropriate to impose

> consecutive sentences even if that would mean a deviation from the rule (at [45]). …
>
> 41 In my judgment, **as a general rule, a multiple offender who has committed unrelated offences should be separately punished for each offence, and this should be achieved by an order that the individual sentences run consecutively.** …
>
> [Emphasis added]

67 Bearing these principles in mind, the issue here was whether Dr Yip's misconduct disclosed in the 1st and 2nd Charge formed part of a *single transaction* or if they were *unrelated offences.*

68 In this regard, we could do no better than to refer to the lucid analysis of the C3J in *Kevin Yip No.1* on why the charges in that case were considered *separate and distinct* offences despite them relating to failures to issue sufficient medical leave for the same set of injuries on different occasions (at [91]-[92]):

> The next question is whether the individual sentences imposed in respect of each of the Charges ought to run consecutively or concurrently. In this connection, we find Ms Chang's argument to the effect that the three charges preferred against Dr Yip represented separate and distinct offences which merited separate sanctions persuasive. Let us elaborate.
>
> While, at first blush, it might appear that all three of the Charges pertained to the same type of failure by Dr Yip towards the same patient, that does not detract from the fact that **on each separate occasion, Dr Yip had a *distinct duty* to assess the patient based on the circumstances prevailing *at that particular point in time* and taking into account changes in the patient's condition when prescribing sick leave or light duties**. This point was underscored by the fact that, on the facts before us, the Patient's condition was indeed *changing* – the first follow-up review on 11 July 2011 involved checks for pneumothorax, removal of the sutures on his head laceration, and the discovery of an additional fracture of the Patient's sixth right rib. It matters not that, in the present case, these changes in the Patient's condition might have been immaterial from the perspective of the actual medical treatment prescribed – **the point remains that the doctor's duty to assess the patient's condition at each separate consultation is a f*resh and distinct duty* that arises each time he sees the patient. Viewed in this light, Dr Yip's failure to issue an appropriate duration of sick leave on each of the three occasions that he saw the patient was a *separate and distinct***

> **default, for which individual sentences ought to be imposed, and ought (in the circumstances) to run *consecutively*.**
>
> [Emphasis added]

69 The reasoning in *Kevin Yip No. 1* applied *a fortiori* in the present case, where Dr Yip's actions in the 1st and 2nd charges each concerned *different types of injuries* that he attended to on *separate occasions*. His failure to issue sufficient medical leave in relation to the middle finger injury in the 1st Charge and *months* later, for the shoulder injury in the 2nd Charge were separate and distinct defaults, the overall severity of which will not be sufficiently reflected by concurrent sentences. As was the case in *Kevin Yip No.1*, the sentences for the 1st and 2nd Charge should likewise run consecutively.

TIC Charges

70 In our view, a *3-month* increase in the overall sentence would be proper, as it would adequately take into account the TIC Charges. The TIC Charges aggravated the offences proceeded with insofar as they revealed a pattern of misconduct on Dr Yip's part to give insufficient medical leave, and called for the application of specific deterrence as a sentencing consideration.

71 In general, offences, which are to be taken into account in sentencing, should have the effect of increasing the sentence, which the court would otherwise have imposed for the offences actually proceeded with by the Prosecution. In *Suventher Shanmugam v Public Prosecutor*[18], a case which concerned multiple drug offences, the Court of Appeal made the following observations as regards charges taken into consideration (at [39]):

> First, the sentence was amply justified having regard to the second charge that was taken into consideration. **It is uncontroversial, as the Judge rightly noted, that outstanding offences which are taken into consideration for the purpose of sentencing are to be treated as**

[18] [2017] 2 SLR 115 at [39].

> **aggravating the offence or offences proceeded with**. This is especially so where the offences taken into consideration are similar to the principal offences. **The Judge was therefore right to consider that the appellant's sentence for the offence of unauthorised importation of cannabis should be enhanced on account of the offence for unauthorised importation of cannabis mixture that was taken into consideration.** [Emphasis added]

72 The reasons for why outstanding offences generally serve to aggravate the charges proceeded with was explained by the Court of Appeal in *Public Prosecutor v UI* [2008] 4 SLR(R) 500 ("***PP v UI***") as follows (at [36]-[37]):

> ...In Nigel Walker, *Aggravation, Mitigation, and Mercy in English Criminal Justice* (Blackstone Press Ltd, 1999) the practice relating to TIC offences is described ... as a practice "established by custom, not statute". It saves the Prosecution from the necessity of proving what can be a significant number of similar offences committed by the offender. The offender, conversely, is able to protect himself from being charged on a later occasion with the TIC offences. He can also be fairly sure that, despite the TIC offences being considered by the sentencing court, the increase in severity of his sentence for the offences proceeded with will be less draconian than the sentence which he would have received had the Prosecution proceeded with the TIC offences as well**.**
>
> **More often than not, when TIC offences feature in a case, the sentence for the offences proceeded with will have to be increased.** As Andrew Ashworth observed in his book, *Sentencing and Criminal Justice* (Cambridge University Press, 4th Ed, 2005) ("*Ashworth*"), "[t]he offences ... taken into consideration do not rank as convictions, but **the court is likely to increase the sentence [for the offences proceeded with] in order to take account of them**" (at pp 241-242). The TIC offences may, however, also have little or no impact on the sentence ultimately imposed for the offences proceeded with. ...
>
> [Emphasis added]

73 Finally, the Court stated that while it is *not mandatory* that a sentence be increased in the presence of TIC Charges, a sentencing court or tribunal must *justify* any decision not to consider the TIC charges as aggravating (at [38]):

> Section 178(1) of the Criminal Procedure Code does not mandate that where TIC offences are present, the court must increase the sentence which would normally have been imposed for the offences proceeded with in the absence of the TIC offences. But if there are TIC offences to be taken into account, the effect, in general would be that the sentence which the court would otherwise have imposed for the offences proceeded with would be increased (see *Sentencing Practice in the Subordinate Courts* (LexisNexis, 2nd Ed, 2003) at p 77. This is commonsensical as the offender, by agreeing to have the TIC

> offences in question taken into consideration for sentencing purposes, has in substance admitted that he committed those offences. This would *a fortiori* be the case where the TIC offences and the offences proceeded with are similar in nature (*eg.* if both sets of offences consist of sexual offences against the same victim). As Tay Yong Kwang J stated in *Navaseelan Balasingam v PP* [2007] 1 SLR(R) [2007] 1 SLR(R) 767 at [17]:
>
> > While it may be said that by admitting the charges taken into consideration, the [offender] had saved the court time and the Prosecution the trouble of proving those charges, the counterbalancing effect of having admitted such charges would be that the offender had committed many more similar offences and that fact must aggravate the charges proceeded with. The benefit to the offender would be his immunity from being charged or tried for the offences taken into consideration ... and he would therefore not have to face further punishment in respect of those offences.
> >
> > ...
>
> However, if the sentencing court decides not to consider the TIC offences as aggravating the offences proceeded with where it is clear from the former offences should be so considered and does not justify its decision in this regard, the only conclusion which can be reached by an appellate court is that the sentencing court erred in its treatment of the TIC offences.

74 In the present case, the TIC Charges were summarised by Counsel for the SMC as set out below:

	2nd NOI Charges		
	1st Charge	**2nd Charge**	**3rd Charge**
Name of Patient	P2	P3	P4
Patient's Occupation	Marine trades worker	Marine trades worker	Grass-cutting and landscape maintenance worker
Patient's Injury	Segmental comminuted fracture of the right distal humerus and fracture of the distal radius	Fracture of the left tibial shaft	Fractures of the distal right fibula and medial malleolus with displacement

Procedure by Dr Yip	Closed reduction and K wire fixation of the right distal radius, and open reduction and internal fixation of the right elbow	Closed reduction and intramedullary nailing of the left tibia	Open reduction and internal fixation of the distal right fibula
Medical Leave Given	Total of one day despite there being a review one day after discharge	Total of two days over six months and 13 reviews	Total of two days over two months and five reviews

75 Dr Yip's Counsel argued that the TIC Charges did not merit a harsher sentence because:

(a) The TIC Charges were only brought on 3 cases out of a total of 86 cases audited by the Ministry of Health.

(b) The SMC's expert, Dr PE1 in fact "praised" Dr Yip's management of his patients and conceded that his judicious use of light duties resulted in good outcomes for all 3 cases.

(c) Dr PE1's only concern was whether the short medical leave provided allowed employers not to report the incidents to MOM such that the workers' workmen compensation would be forfeited – and in the present case, all 3 cases were reported to MOM by the respective employers at the material time.

76 In our view, good outcomes for all 3 cases, and the fact that workers were not being deprived of potential workmen's compensation by any non-reporting of their injuries by their employers, all go towards showing that any harm done in the TIC Charges was slight.

77 Slight harm disclosed in the TIC Charges may *reduce the severity* of any aggravation but did not answer the logically anterior question of whether the TIC charges should aggravate the charges proceeded with *in the first place*. In our view, the effect of having

admitted to TIC Charges meant that Dr Yip had committed *more* similar offences, which aggravates the charges proceeded with.

78 In this regard, we set out below the full context of Dr PE1's "praise" of Dr Yip's judicious use of light duties, wherein he observed a "disturbing trend" of Dr Yip applying the method to almost all cases:[19]

> A careful reading of the individual cases managed by Dr Yip clearly show that **judicious use of LD and minimal ML had achieved the rehabilitation of the injured works and enable them to resume their normal duties.** If the physician was given longer ML (> 3 days), the case would be deemed a worksite injury and the injured worker would have to return to his home country and there would be costs relating to workman compensation, insurance and repatriation. **Notwithstanding the apparent effectiveness of this approach, there was a disturbing trend of applying it to almost all the cases managed by Dr Yip. In at least two cases (Cases 53 and 70), the post-surgical approach of giving short ML and long LD did not seem appropriate.** [Emphasis added]

79 It is precisely this "disturbing trend" manifested in the TIC Charges that we find to be aggravating. We could not ignore the fact that, *similar* to the 1st and 2nd charges which Dr Yip is pleading guilty to, the TIC Charges meant that Dr Yip had given insufficient medical leave to *three* other foreign workers who suffered injuries in the course of their work.

80 In our view, the above TIC Charges are suggestive of a propensity to re-offend which cannot be displaced by virtue of Dr Yip's current improvements to his practice. Specific deterrence is directed at deterring the individual offender from re-offending, and whether it applies depends on whether the offender has a propensity to reoffend.[20] This propensity is discernible from the frequency of the behaviour – Dr Yip had committed multiple acts of similar misconduct. The principle of specific deterrence was therefore

[19] Expert report by Dr PE1 dated 21 May 2014, 2 AB, at page 164.

[20] *GCO v PP* [2019] 3 SLR 1402 [87].

raised on these facts. In the final analysis, we were satisfied that an overall uplift of *3 months'* suspension would be fair and just in the circumstances.

81 Having due regard to the totality principle, this Tribunal took a "last look" at the aggregate sentence of 12 months' suspension and were satisfied that it was not disproportionate to the overall culpability of Dr Yip for the 5 charges he was facing.

Inordinate delay

82 It was not disputed that there was an inordinate delay by the SMC in prosecuting the present case. The issue was what amount of discount should apply.

83 In their sentencing submissions, Counsel for the SMC proposed that the discount should be no more than a 1/3 reduction in sentence. In their further sentencing submissions, they reduced the discount to no more than 1/6 as the present proceedings were delayed substantially due to Dr Yip's multiple requests for adjournments.

84 Dr Yip's Counsel submitted that the discount should be 1/2 because of his suffering engendered from the delay of about 3 years and 2 months between the submission of further written explanation to the Complaints Committee on 5 December 2013 and the issuance of the 1st NOI on 28 February 2017. Dr Yip, who has had to bear the psychological burden of anxiety and stress from having the case hanging over his head since as early as May 2013 (when he received the Notice of Complaint by the Patient). The length of delay was comparable to the delays in *Jen Shek Wei* and *Ang Peng Tiam* where the sentences were halved.

85 Having regard to countervailing public interest considerations in this case, we found that a discount of 1/3 would be just in the circumstances. In coming to this decision, we bore in mind the following principles laid down by the C3J in *Ang Peng Tiam*, which were applied in *Kevin Yip No.1*.

86 First, the underlying reason for a sentencing discount for inordinate delay in prosecution of proceedings is one of fairness. As the Court stated in *Ang Peng Tiam* (at [111]):

> Fairness is the underlying rationale that explains the court's willingness to apply a discount in such circumstances. As noted in *Randy Chan* (at [23]) and *Tan Kiang Kwang* (at [20]), from the point of view of fairness to the offender, where there been inordinate delay in prosecution, the sentence should reflect the fact that the matter has been pending for some time, likely inflicting undue suffering on the offender stemming from the anxiety, suspense and uncertainty.

87 Second, the delay must not have been occasioned by the offender (at [114]):

> A sentencing discount will not be considered when the delay is occasioned by the offender himself: see Randy Chan at [32]-[33]. The underlying rationale for sentencing discounts to be applied in appropriate cases of delay is fairness to the offender. However, there will be no unfairness to the offender if, by virtue of his own conduct or of matters that are within his control, he chooses to prolong the process. He must, in such situations, suffer the consequences of his own decisions and actions.

88 Third, and finally, countervailing public interest considerations must be considered (at [118]):

> The underlying rationale of fairness to the offender which justifies the imposition of a sentencing discount in cases of delay may, on occasion, be offset or outweighed by the public interest which demands the imposition of a heavier penalty. In the context of disciplinary proceedings for professional misconduct, the relevant public interests that must be considered include the need to protect public confidence and the reputation.

89 In that light, we turn to the facts and circumstances of the present case. There was a delay of about *3 years and 2 months* between the submission of Dr Yip's further written explanation to the Complaints Committee on 5 December 2013 and the issuance of the 1st NOI on 28 February 2017.

90 In terms of absolute lengths of time, SMC's delay in prosecuting Dr Yip's case is comparable to the delay in both *Ang Peng Tiam* and *Jen Shek Wei*. In *Ang Peng Tiam*, there was a time lag of *slightly less than four years* between Dr Ang's letter of

explanation on 19 July 2011 and its issuance of the NOI to Dr Ang on 22 April 2015. In *Jen Shek Wei*, there was a time lag of *about 3 years* between Dr Shek's letter of explanation on 2 August 2012 and the issuance of the Notice of Inquiry on 8 July 2015. In both cases, the Court found that the inordinate delay warranted a *halving* of the sentence of suspension imposed.

91 However, it is important to note that countervailing public interest considerations *were not* engaged in both *Ang Peng Tiam* and *Jen Shek Wei*. In *Kevin Yip No.1*, there was a time lag of *about 3 years and 5 months* between Dr Yip's letter of explanation on 29 June 2012 and the issuance of the Notice of Inquiry on 3 November 2015. The C3J took into account the need to protect the public interest in safeguarding the health and safety of workers and gave an overall sentencing discount of 1/3. As regards the public interest considerations, the C3J made the following comments (at [105]-[106]):

> 105 The SMC argued that the public interest in safeguarding the health and safety of workers was engaged, and we agree. Indeed, foreign transient workers like the Patient may be considered vulnerable patients, not least because they will almost invariably have no kin with them here in Singapore and are consequently largely dependent on their employers (and the healthcare professionals engaged by their employers). We note that the Ministry of Manpower and the Ministry of Health have jointly issued no fewer than three circulars – first on 19 June 2013, again on 7 July 2014, and most recently on 16 September 2016 – reminding medical practitioners of the need to exercise good clinical assessment so that workers' and their colleagues' health and safety are not jeopardised. We reproduce an extract of that last mentioned circular here:
>
> 1. In 2013, MOH and MOM issued a circular [footnote omitted] to medical practitioners to remind them that the issuance of adequate medical leave should be based on good clinical assessment and be commensurate with the nature and severity of the worker's injury, and that stern action would be taken against medical practitioners who did not do so.
>
> 2. Subsequently, acting on continual feedback received that some employers were still attempting to pressurise medical practitioners to shorten the prescribed duration of medical sick leave, a reminder [footnote omitted] was issued to medical practitioners in 2014. It reminded medical practitioners to follow the recommended practice, and that potentially errant medical

> practitioners would be referred to Singapore Medical Council (SMC) for investigation.
>
> 3. In May 2016, the Court of Three Judges allowed an appeal filed by the SMC against the decision of a Disciplinary Tribunal and convicted Dr Wong Him Choon (Dr Wong) of professional misconduct. Dr Wong was sentenced to 6 months suspension [footnote omitted]. SMC had earlier found that Dr Wong failed to exercise due care in the management of a patient by certifying insufficient medical leave and inappropriately certifying the patient fit for light duties.
>
> 4. We urge all medical practitioners to take note of the importance of the applicable standards of conduct and recommended practice in managing patients as stated in the 2013 Circular (refer to the Annex) and reminder circular in 2014. Medical sick leave given should be based on good clinical assessment and be commensurate with the nature and severity of the workers' injuries. ...
>
> 106 Lest a dry and arid technical (as well as literalist) argument be sought to be made that the circulars referred to in the preceding paragraph were issued after the events that are the subject of the present case had taken place, we would note that these circulars merely underscore what are timeless principles of common humanity which apply in an *a fortiori* manner to foreign transient workers such as the Patient ...

92 We find the same public interest considerations of safeguarding the health and safety of workers identified in *Kevin Yip No.1* to be engaged in the present case. Even though the Patient was not a foreign transient worker, blue-collar workers like himself may also be considered to be vulnerable patients in that they are likely to have little bargaining power against their employers and be dependent on the healthcare professionals engaged by their employers. It is important that doctors treat them in a way that is consistent with timeless principles of common humanity and not demonstrate an indifference or callous disregard to their welfare and interests. As so aptly put it in *Wong Him Choon* (at [4]):

> This case also – as we shall also elaborate upon below – concerns the important issue of *perspective*. In particular, the doctor must also be cognisant of *the patient's position and welfare*. And this entails placing himself or herself in the shoes of the patient, so to speak. In this regard, the following oft-cited advice from a father to his daughter in a famous novel ought to be noted (see

> Harper Lee, *To Kill A Mockingbird* (William Heinemann Ltd, 1960; reprinted in the New Windmill Series, 1966) at p 35):
>
> > First of all, … if you can learn a simple trick, Scout, you'll get along a lot better with all kinds of folks. You never really understand a person until you consider things from his point of view – … until you climb into his skin and walk around in it.

93 Taking into consideration the inordinate delay in the institution and prosecution of the proceedings, and balancing that against the relevant interests of protecting public confidence and the reputation of the profession, we consider that the aggregate sentence of suspension ought to be reduced by 1/3.

94 For completeness, we should add that it did not escape our attention that Dr Yip's *multiple* requests for adjournments of the Pre-Inquiry Conferences after the 1st NOI was issued – the necessity of each eloquently explained by his Counsel – nevertheless had the *overall effect* of delaying the expeditious resolution of these proceedings by over a year. That being said, we did not take into account any delay that may have been caused by Dr Yip in the sentence to be meted out. Ultimately, Dr Yip had not *contributed t*o the delay insofar as the 3 years and 2 months between the issuance of Dr Yip's letter of explanation and the issuance of the 1st NOI were concerned, and he was not seeking any additional sentencing discount on account of any delay that may have occurred after that.

95 Whilst this DT made no findings as to whether Dr Yip's overall conduct could be seen as dilatory, we observe that it is a matter of paramount importance that future DTs vigilantly safeguard against doctors who may be inclined to make repeated applications to the court in order to prolong the disciplinary proceedings against them and in turn the commencement of their sentence, as this has the effect of frustrating the efficient and expeditious conduct of DT proceedings.

96 In such cases, DTs may wish to have regard to rule 34(6) of the Medical Registration Regulations 2010 which states that the Chairman of a DT shall administer a *warning* to the practitioner and, where appropriate, his counsel if the DT is satisfied that the practitioner or his Counsel is hampering or attempting to hamper the progress of the inquiry.

97 Finally, in order that DT hearings can proceed smoothly and efficiently, it is incumbent upon Counsel to tender their documents and submissions in compliance with the timelines set by the DT for all hearings, and not at the 11th hour as it was done in this case – on just the day before the hearing.

Sentence imposed

98 Accordingly, this DT ordered that Dr Yip:

(a) be suspended for a period of **8 months**. (*Suspended for a period of 3 months for the 1st Charge and 6 months for the 2nd Charge, to run consecutively (i.e. 9 months), with an uplift of 3 months for the TIC Charges (i.e. 12 months), and with a 1/3 reduction for delay, resulting in a total suspension of* ***8 months***);

(b) be censured;

(c) give a written undertaking to the SMC that he will not repeat such conduct in the future; and

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

Publication of Decision

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

100 The hearing is hereby concluded.

Prof Sonny Wang Yee Tang Chairman	Dr Chan Wai Lim William	Mr Bala Reddy Legal Service Officer

Mr Philip Fong and Mr Sui Yi Siong (M/s Eversheds Harry Elias LLP)
for Singapore Medical Council; and
Mr Melvin See and Ms Michelle Lee (M/s Dentons Rodyk & Davidson LLP)
for the Respondent.