

IN THE REPUBLIC OF SINGAPORE

SINGAPORE MEDICAL COUNCIL DISCIPLINARY TRIBUNAL

[2020] SMCDT 4

Between

Singapore Medical Council

And

Dr Lum Yang Wei

... Respondent

FOUNDATIONS OF DECISION

Administrative Law — Disciplinary Tribunals

Medical Profession and Practice — Professional Conduct — Suspension

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Singapore Medical Council

v

Dr Lum Yang Wei

[2020] SMCDT 4

Disciplinary Tribunal — DT Inquiry No. 4 of 2020
A/Prof Roy Joseph (Chairman), Dr Lydia Au and Mr Kevin Ng (Legal Service Officer)
26 March 2020

Administrative Law — Disciplinary Tribunals

Medical Profession and Practice — Professional Conduct — Suspension

22 May 2020

GROUNDS OF DECISION

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

Introduction

1. Dr Lum Yang Wei (“**Dr Lum**”), a registered medical practitioner, worked as a doctor at the Hospital A (the “**Hospital**”) at the material time. While on duty at the Hospital, he used his handphone to record a video of a female nurse while she was easing herself in a toilet. Dr Lum now faces one charge as follows:

“That you, Dr Lum Yang Wei, a registered medical practitioner under the Medical Registration Act (Cap. 174, 2014 Rev Ed), are charged that on 15 June 2017, you were convicted in Singapore of an offence of intruding upon the privacy of a woman (“Victim”) with the intention to insult her modesty, an offence punishable under section 509 of the Penal Code (Cap. 224, 2008 Rev Ed):

Particulars

- (a) On 19 February 2016, at or about 11.15am, at the handicap toilet at the visitor's lounge outside Ward A of Hospital A, you insulted the modesty of the Victim by placing your handphone under the toilet door with the video recording function turned on, thereby intruding upon the privacy of the Victim;
- (b) On or about 29 May 2017, you were charged in the State Courts with an offence punishable under section 509 of the Penal Code (Cap. 224, 2008 Rev Ed);
- (c) On or about 15 June 2017, you were convicted in the State Courts by the learned District Judge May Mesenas of the aforesaid offence and were sentenced to serve 6 weeks' imprisonment; and
- (d) The aforesaid conviction has not been set aside;

and that in relation to the facts alleged, you have thereby been convicted of a criminal offence implying a defect in character which makes you unfit for your profession within the meaning of section 53(1)(b) of the Medical Registration Act (Cap. 174, 2014 Rev Ed). (the "Charge")."

Background facts

- 2. At the Pre-Inquiry Conference on 25 October 2019, Dr Lum indicated he would plead guilty. Counsel for Dr Lum requested for time to make representations to the prosecution, and to obtain reports from Dr Lum's treating psychiatrist. At the Disciplinary Tribunal hearing on 26 March 2020, Dr Lum pleaded guilty to the Charge without qualification. An Agreed Statement of Facts ("ASOF") was tendered.

Disciplinary Tribunal ("DT") inquiry

- 3. In view of his criminal conviction and sentence and his plea of guilt to the charge against him, the DT found Dr Lum guilty as charged. He also confirmed the ASOF.

Submission on Sentence by the Singapore Medical Council ("SMC")

- 4. The SMC sought orders that:
 - (a) Dr Lum's registration in the Register of Provisionally Registered Medical Practitioners be suspended for a period of four (4) months;
 - (b) Dr Lum be censured;
 - (c) Dr Lum provide a written undertaking to the SMC that he will not engage in the conduct complained of and any similar conduct in the future; and
 - (d) Dr Lum pay the costs and expenses of and incidental to these proceedings, including the costs of solicitors to the SMC.

5. The SMC submitted that the offence committed by Dr Lum was a serious one, and that it had wider consequences such as the erosion of public confidence in the medical profession.
6. The offence was egregious because Dr Lum had taken the video at the victim's place of work, and he was her co-worker. He had also admitted to the police that he had taken two videos of the victim on the day in question and had started taking such videos when he was working at another hospital previously.
7. SMC further submitted that Dr Lum's conduct fell short of that expected of medical practitioners. It violated the trust the public placed in the profession, and in order to preserve its standing and reputation, a sufficient deterrent had to be meted out such that Dr Lum knew not to repeat the misconduct, and the message to the profession was that acts of that nature would not be condoned or treated lightly.

The Mitigation by Counsel for Dr Lum

8. Counsel for Dr Lum agreed with the sentencing submissions of SMC and the orders requested. In mitigation, it was submitted that:
 - (a) Dr Lum was remorseful and had intended to, and did, at the earliest opportunity plead guilty.
 - (b) He had voluntarily embarked on a regime of treatment and rehabilitation to ensure he would not repeat his misconduct. He also used the time when he was unable to practice medicine to keep himself current and to improve himself professionally.
 - (c) Dr Lum not only had strong family support, but the support of the medical profession who were keen on giving him a second chance. He was able to complete his housemanship after his release from prison, made a full medical officer subsequently, and was offered employment at a hospital, pending the outcome of these proceedings.

Deliberation of the DT

Preliminary Point on Registration

9. To address a preliminary point, the SMC has confirmed to the DT that Dr Lum is at present still on the Register of Provisionally Registered Medical Practitioners. In

December 2017, after serving his prison sentence, he had been given permission to perform his housemanship by the SMC. Counsel for Dr Lum has also confirmed that Dr Lum has not practised medicine since completing his housemanship on 28 February 2019.

Finding on The Charge

10. Having found Dr Lum guilty as charged, and with Dr Lum agreeing unconditionally to the facts as set out on the ASOF, the DT is of the view that the misconduct committed by Dr Lum is serious. He, with a degree of premeditation, decided to film the victim while she was in a lavatory relieving herself. The victim had, and was entitled to, the full expectation of privacy. Dr Lum invaded her privacy.
11. In *Singapore Medical Council v Dr Leo Kah Woon* [2018] SMCDT 12 at [44], the court pointed out:

“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.”

Simply put, doctors are held to a higher level of personal conduct than the general public. That being so, the DT finds the misconduct of Dr Lum not only a serious, it implies a defect in character making him unfit for his profession.

Sentencing Considerations

12. The DT categorizes this case as one of sexual misconduct. While Counsel for Dr Lum has proffered the submission that according to the psychiatrist report, their client’s inappropriate filming behaviour was not sexual in nature but more a reaction to stress (“MP” Annex A at [16]), this stands in stark contrast to the Statement of Facts (“SOF”) when Dr Lum pleaded guilty in the State Courts. In the SOF, he admitted that prior to the incident in question, he had already started taking these types of videos because he was aroused by the uniforms of the nurses (“AB” Tab 2 page 12 at [10]). The main precedent relied upon by both the SMC and Counsel for Dr Lum is *Singapore Dental Council (“SDC”) v Dr Hoo Swee Tiang* (Disciplinary Inquiry Judgment dated 3

October 2018) (“*Dr Hoo Swee Tiang*”). This was also a case sexual misconduct, as indeed were the main cases cited by Counsel for Dr Lum.

13. Both the SMC and Counsel for Dr Lum agreed on the sentence to be meted out. It is incumbent on the DT to examine the requested sentence. The DT needs to consider if the sentence is proper and appropriate for the offence, and whether it is excessive or inadequate. For disciplinary inquiries into sexual misconduct cases, the relevant principle is whether the sentence meets the broader public interest requirements of upholding the standing and reputation of the profession, and preventing the erosion of public confidence in the profession, as set out in *Dr Wong Meng Hang v Singapore Medical Council* [2018] SGHC 253 at [23] (“*Dr Wong Meng Heng*”). The DT needs as well to consider specific and general deterrence as enunciated in *Singapore Medical Council v Dr Kwan Kah Yee* [2015] 5 SLR 201 [55] (“*Dr Kwan Kah Yee*”).

The Precedents

14. Although the case of *Dr Hoo Swee Tiang* concerns a dentist, the DT accepts that this case is a relevant precedent as it reflects how a fellow healthcare professional was dealt with by a medical-related disciplinary body. In 2016, Dr Hoo had been charged for outrage of modesty under section 354(1) of the Penal Code (Cap. 224, 2008 Rev Ed). The allegation was that he touched the victim on her thighs. He claimed trial, was convicted and sentenced to six weeks imprisonment by the State Courts. His appeal against the conviction was dismissed by the High Court in 2017. After an SDC disciplinary inquiry for which Dr Hoo claimed trial to as well, Dr Hoo was suspended for a period of six months and was placed on two years of supervision thereafter.
15. Counsel of Dr Lum also cited several other cases involving sexual offences: *Singapore Medical Council v Dr Tan Kok Leong* [2019] SMCDT 4 (“*Dr Tan Kok Leong*”); *Singapore Medical Council v Dr Lee Siew Boon Winston* [2018] SMCDT 4 (“*Dr Lee Siew Boon Winston*”); *Singapore Medical Council v Dr Ong Teng Kiat* (Disciplinary Tribunal Judgment dated 29 April 2015) (“*Dr Ong Teng Kiat*”); and *Singapore Medical Council v Dr E* (2007) (Unreported) (“*Dr E*”).
16. In the case of *Dr Tan Kok Leong*, he was convicted and ultimately sentenced to 54-months imprisonment for three outrage of modesty charges, and two charges of

administering stupefying drugs on the victim with the intent to commit the acts of outrage of modesty. He had touched the victim's private parts during a liposuction procedure and again during "recovery" at a local hotel and had administered stupefying drugs on the victim in order to carry out his acts. He had also taken and kept photographs of the victim's private parts, face and half-naked body. The DT there stated that Dr Tan's case "*would clearly plumb greater depths of depravity*"¹ compared to the case of ***Dr Lee Siew Boon Winston***. Dr Tan was subsequently struck off the medical register.

17. In the case of ***Dr Lee Siew Boon Winston***, he was convicted on two charges of outrage of modesty and later, one charge of making a fraudulent declaration. He was sentenced to 10-months imprisonment for the outrage of modesty offence and fined \$3000 for the fraudulent declaration charge. Dr Lee had, as part of his examination of the victim, on two occasions inserted his hand into her brasserie and touched her breast and nipple with the intent of outraging her modesty. He had also tried to procure a practising certificate under the Medical Registration Act ("MRA") by falsely declaring he was not, at the time of application, the subject of any inquiry or investigation by the police, a fact which he knew was not true. The DT for Dr Lee's case considered his conduct as "*properly among the worst conceivable under section 53(1)(b) of the MRA*"². Dr Lee was subsequently struck off the medical register.

18. In the case of ***Dr Ong Theng Kiat***, he was convicted of a charge of sexual assault on a minor, and a false declaration charge. He was sentenced to 10-months imprisonment for the sexual assault charge and fined \$4000 for the false declaration. Dr Ong had consensual sexual intercourse with a 14-year-old girl on two occasions. He had lied to the victim so as to encourage her to have sex with him. Dr Ong had also tried to procure a practising certificate under the MRA by falsely declaring he was not, at the time of application, the subject of any inquiry of investigation by the police, a fact which he knew was not true. Dr Ong was struck off the medical register subsequently.

¹ *SMC v Dr Tan Kok Leong* [2019] SMCDT 4 at [66]

² *SMC v Dr Lee Siew Boon Winston* [2018] SMCDT 4 at [83]

19. The cases of Drs Tan, Lee and Ong all involved grave sexual offences, where each offender was jailed for a significant period. They were amongst the worse imaginable cases of sexual misconduct by doctors, and as such, they were all removed from the medical register. The DT agrees with submission of Counsel for Dr Lum that those cases can be distinguished from the present case, for their higher level of seriousness and reprehensible conduct of those doctors. Therefore, those three cases would not be as relevant to the DT as the case of *Dr Hoo Swee Tiang*.
20. For the case *Dr E*, he was convicted on two charges of insulting the modesty of two woman by filming up the skirt of both victims. Dr E also had two other charges, including one of filming a victim while she showered. He was sentenced to two-months imprisonment. The Disciplinary Committee subsequently suspended him for 24-months and fined him \$5000.
21. The sentence of 24-months suspension for Dr E is significant sanction. Like the present case, Dr E's case dealt with the offence of insulting the modesty of a victim, albeit with four charges in total compare to Dr Lum's single charge. The offence of insulting the modesty of a victim though, is of a lower degree of criminal culpability (i.e., a lower maximum sentence is prescribed in the Penal Code) compared with the offence of outrage of modesty or sexually assaulting a minor (which carries a higher maximum sentence in the Penal Code), a point the DT will expand on at [33]. Unfortunately, the case of *Dr E* is unreported (i.e. there was no written judgement issued). This DT is thus unable to ascertain the reasons for the 24-months suspension and the fine of \$5000, and why the suspension orders for the case of *Dr Hoo Swee Tiang* was so different from the case of *Dr E*.
22. Nevertheless, the case of *Dr E* can be distinguished from the present case as he faced four charges compared to the single one Dr Lum faced. The two-months imprisonment imposed on Dr E was more than the six-weeks Dr Lum had to served (although not significantly more). Also, as pointed out by Counsel for Dr Lum, Dr E was a specialist doctor of a consultant rank, whereas Dr Lum was just in the midst of completing his housemanship.

23. The DT concludes, however, that the case of *Dr E* is of limited utility as a sentencing precedent for the present matter, and it would be dangerous to rely on it without knowing the full facts of that case. It is noted that the DT in *Dr Tan Kok Leong* was also unclear as why the Disciplinary Committee in the case of *Dr E* (cited as *Disciplinary Inquiry for Dr B* (10 May 2007) (Unreported)) departed from the weight of precedent, and they too found it unsafe to rely on that decision as a sentencing precedent³.
24. A further survey by the DT of other case precedents in relation to sexual misconduct of doctors yielded the following:
- (a) *Disciplinary Inquiry for Dr A (1982) (Unreported)*: Dr A had been convicted of two charges of outrage of modesty. He had undressed a female patient, posed her body in certain postures, and taken photographs of her. Dr A was struck off the register.
 - (b) *Disciplinary Inquiry for Dr C (22 July 1998) (Unreported)*: Dr C was charged with insulting the modesty of a woman, by peeping into her vehicle while she was undressed. The disciplinary council in that case stated that it could not dismiss the matter as just a slight offence and had Dr C struck off the register.
 - (c) *Disciplinary Inquiry of Dr D (7 April 1987) (Unreported)*: This case concerned a dentist. He had touched a female patient's private parts and breast and was convicted for outrage of modesty. The Dental Board removed his name for the register for this.
 - (d) *In the Matter of Dr AAB [2008] SMCDC 2*: The doctor had engaged in a sexual relationship with a patient. He was suspended for two years.
 - (e) *In the Matter of Dr Kong Sim Guan [2012] SMCDC 6*: The doctor had engaged in a long-term sexual relationship with a patient under his care. He was suspended for three years and fined \$10,000.
 - (f) *In the Matter of Dr Wong Kee Miew [2014] SMCDT 6*: The doctor had misused his position to establish an improper sexual relationship with a patient under his care. He was given a two-year suspension.

³ *SMC v Dr Tan Kok Leong [2019] SMCDT 4 at [58]*

25. Gleaning from the precedents of sexual misconduct cases involving doctors and dentists, it would appear that:
- (a) Striking off the register would be considered for egregious sexual misconduct, e.g. the conviction in the criminal courts for an offence of outrage of modesty involving the touching of private parts, the breast/nipple of female victims, the undressing of patients, taking photographs of drugged patients in various states of undress, taking photographs of their private parts, and for an offence of the sexual penetration of a minor;
 - (b) A suspension would be considered for a criminal conviction of insulting the modesty of a victim where there was no physical contact; an outrage of modesty where the physical contact is not on the private parts or the breast of the female victim; and for establishing or maintaining a sexual relationship with a patient. Generally, a lower level of culpability and seriousness of the misconduct would attract a short to medium term of suspension. Whereas the more serious type of misconduct, such as having a sexual relationship with a patient, would garner a longer-term suspension.
 - (c) A fine, as the main sanction, was not ordered in any of the cases surveyed. It would appear that a fine as the main sanction would not be appropriate, at least as a starting point, for sexual misconduct matters.
26. Of course, the above summary is a general overview and non-exhaustive, with each case turning on its facts. What the aggravating or mitigating factors were, and whether the primary sentencing objective of a particular case should weigh against any mitigation elements, would all have to be carefully considered. For example, where a striking-off is necessary to maintain the public confidence and trust in the medical profession, it could well override even strong mitigating circumstances.

The Sentencing Deliberations

27. Having examined the precedents, the DT next turns to the question - is the four-months suspension requested by both SMC and Dr Lum's Counsel appropriate and proper in light of the precedents, of Dr Lum's misconduct, of the objective of upholding the public trust of and confidence in the profession, and that of deterring the medical profession and Dr Lum from such future misconduct? The DT considered the main sanctions under the **MRA**. Under section 53(2), the DT has the power to order that the

name of the doctor be removed from the appropriate medical register (“**striking off**”); to suspend the doctor from the appropriate medical register for a minimum period of three-months and not more than three years (“**suspension**”); and /or impose a fine of up to \$100,000 (“**fine**”), amongst other orders that could be made.

Consideration of striking off

28. The DT first considered the sanction of striking off. In the case of *Dr Wong Meng Hang*, the Court of Three Judges stated that in deciding whether to strike a doctor off the register, the ultimate question was whether the misconduct was so serious it renders the doctor unfit to remain as a member of the profession⁴. The most relevant sentencing factor, for the purposes of this DT, was elucidated by the Chief Justice as follows⁵:

“When a doctor’s misconduct evinces a serious defect of character, striking off is likely to be appropriate. This might arise from conduct underlying a predicate criminal conviction which is harmful to the repute of the profession or incompatible with the offender remaining a member of it... as in the cases of Dr Ong (Theng Kiat) and Dr Lee (Siew Boon Winston) where sexual offences were committed.”

29. In the cases of *Dr Tan Kok Leong* and *Dr Lee Siew Boon Winston*, the respective doctors were convicted of three and two outrage of modesty charges each, under section 354 of the Penal Code. This offence carries an imprisonment term of up to two years for each charge, a fine, or caning, or a combination of the punishments. Dr Tan was also convicted on two charges of administering a stupefying drug on his victim, with the intent of committing the offence of outrage of modesty, under section 328 of the Penal Code. That offence carries a maximum sentence of up to 10 years imprisonment, and a fine or caning. As noted earlier, both doctors were struck off the register for the appalling misconduct.
30. In the case of *Dr Ong Theng Kiat*, he was convicted under section 376A of the Penal Code, on two charges of sexual penetration of a minor under 16, an offence carrying a maximum sentence of up to 10 years imprisonment, or a fine, or both. Dr Ong was struck off the register.

⁴ *Wong Meng Hang v Singapore Medical Council* [2018] SGHC 253 at [66]

⁵ *Ibid* at [67]

31. By contrast, Dr Lum was charged under section 509 of the Penal Code for a single offence. The offence carries a maximum imprisonment term of one year, a fine or both.
32. As compared to Dr Lum, Drs Tan, Lee and Ong were all convicted for significantly more serious offences, each faced more than one charge, and all served substantial jail terms.
33. There is a much lower culpability and level of egregiousness in this case as compared to the acts of Drs Tan Lee and Ong. For instance, there was no physical contact between Dr Lum and the victim. This is unlike the cases of the other three doctors, where there was significant skin to skin contact with the victim's private parts (Dr Tan's case), with the victim's breast and nipple (Dr Lee's case), and during unprotected sexual penetration (on one of two occasions in Dr Ong's case). In Dr Lum's case, none of these aggravating factors were present, nor were brought to our attention.
34. As such, the DT concludes that the offence committed by Dr Lum is not to the degree and extent that signals such a serious defect in his character that would harm the reputation of the medical profession if he remained on the medical register and would warrant the consideration of a striking off. This will be elaborated upon further when the DT examines the sanction of suspension. In its view, the SMC correctly made no submission on the possibility of striking off.

Consideration of a fine

35. The DT next considered the sanction of a fine. Upskirting is the act of photographing or filming someone (usually a female) up their skirt or attire without their consent. It is usually conducted using the ubiquitous handphone camera. This is essentially the misconduct committed by Dr Lum. He admitted, in the Statement of Facts ("SOF") when he pleaded guilty in the State Courts, that prior to the incident in question, he had already started taking these types of videos at another hospital. Due to the sexual nature of these acts, they are considered serious even if the act of videoing is non-physical. This is because of the mental or psychological impact the violation of privacy may have had on the victim. In fact, according to the SOF, the act of Dr Lum caused the victim nurse in this case to panic. He had filmed her with her panties pulled down, in midst of relieving herself. She also remained hidden in the toilet for a period of time because she

was afraid the person filming her was still in the vicinity. The DT acknowledges the trauma the victim must have felt and had to endure. The demeaning impact of Dr Lum's act cannot be understated, nor glossed over.

36. The State Courts sentenced Dr Lum to six weeks imprisonment for his offence. The DT considers that a fine might be appropriate if the offence the doctor was convicted of was a relatively minor one. This is certainly not the case here. As alluded to earlier, this was not the first time Dr Lum had filmed such videos. Even as a starting point, a fine would certainly be wholly inadequate to address the seriousness of Dr Lum's misconduct, to regain the public trust, and to deter any like-minded medical practitioners from similar misconduct and the misuse of recording devices. Certainly, none of the precedents surveyed imposed a mere fine on the respective offender, and counsel for Dr Lum correctly did not make a submission for that particular sanction to be imposed.

Consideration of a suspension

37. The DT then turned to considering a suspension. The Western Australia State Tribunal in *Medical Board of Australia v Duck* [2017] WASAT 28, as cited by *Wong Meng Hang v Singapore Medical Council* [2018] SGHC 253 [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."

38. For Dr Lum, by his act of misconduct and by a court of law convicting him of it, he has clearly fallen below the standards expected of a medical practitioner. The question is, does he nevertheless have the necessary character qualities and attributes required to carry out the responsibilities of a doctor after the suspension? Importantly, would it be harmful or incompatible to the reputation of the profession to have Dr Lum remain on

the register after his suspension? In essence then, should Dr Lum be given “a second chance”?

39. Counsel for Dr Lum cited a number of cases where young doctors, in the cusp of the medical careers, were convicted of criminal offences. However, it was pointed out that they were given the opportunity to rehabilitate and remain on the register with a period of supervision or after a suspension: *Singapore Medical Council v Dr Yeo Eng Hui Damian* [2019] SMCDT 6 (“*Dr Yeo Eng Hui Damian*”); *Singapore Medical Council v Dr Joel Arun Sursas* [2018] SMCDT 8 (“*Dr Joel Arun Sursas*”); *Singapore Medical Council v Dr Quah Wiren Charles Abraham* (Singapore Medical Council Disciplinary Committee Inquiry 27 May 2011) (“*Dr Quah Wiren Charles Abraham*”). For these three cases, the doctors were relatively junior in age and of their experience in medical practice. The DTs and Disciplinary Committee (“**DC**”) in those cases assessed that the doctors in those cases had learnt their lesson and deserved another chance to make good their careers.
40. In the case of *Dr Yeo Eng Hui Damian*, Dr Yeo had been committed to a Drug Rehabilitation Centre after his arrest for consumption and possession of drugs, and possession of drug taking utensils. The DT in that case set out guidelines as to when a doctor may be suited for rehabilitation through a medical supervision framework (the “**medical supervision framework**”)⁶:
- (a) Where period of supervision and rehabilitation may be helpful to address the shortcomings of the doctor, be they in his professional or personal conduct;
 - (b) Where the doctor has insight, is likely to comply with the conditions and restrictions imposed, and be able to positively respond to the supervision and the rehabilitation; and
 - (c) Where the setting the doctor practices in is appropriate for the supervision and rehabilitation, or that there is a likelihood the doctor is able to procure such an appropriate setting.
41. The DT took into account Dr Yeo’s degree of remorse, rehabilitation regime up to that point, his suitability and potential for further rehabilitation under the medical

⁶ *SMC v Dr Yeo Eng Hui Damian* [2019] SMCDT 6 at [32]

supervision framework, including being offered re-employment at a restructured hospital. The DT made orders, amongst other things, for Dr Yeo to continue medical practice, albeit “demoted” from full registration to conditional registration, and to be placed under a strict medical supervision framework.

42. In the case of *Dr Joel Arun Sursas*, Dr Sursas was found to have worked as a locum in breach of his medical registration conditions, for issuing medical certificates (“MCs”) to himself while giving the impression that the MCs were issued by another doctor, and for backdating one of the MCs he issued to himself. His medical registration was cancelled following the discovery of his misconduct. While there was clear dishonest behaviour in this case, the DT concluded that Dr Sursas had learnt his lesson and had paid a price for his misconduct. He was genuinely remorseful, had worked hard during the period he could not practice medicine to better and prove himself, and that he had a potentially good future ahead including being offered re-employment by a restructured hospital. While Dr Sursas was not on any register during the course of the DT proceedings, the DT declined to have him struck off the register, even notionally. It imposed a notional three years suspension on Dr Sursas, and fined him \$15,000, to send a message to the profession that such dishonest conduct would not be tolerated.
43. In the case of *Dr Quah Wiren Charles Abraham*, Dr Quah had been convicted in the then-Subordinate Courts for a theft offence. The DC in that case decided to be merciful and gave him a censure, to allow him a fresh start after being duly punished by the court. The DC added that their case should not be cited as a precedent.
44. The DT pauses here to note that one common factor in the present case, and the cases of *Dr Yeo Eng Hui Damian*, *Dr Joel Arun Sursas* and *Dr Quah Wiren Charles Abraham*, was that all four young doctors cited work stress as part of their mitigation for their wrongdoing. Whilst clearly none of the four doctors can rely on that reason to excuse themselves from their misconduct, it may be an area the medical profession may want to pay attention to, so as to minimize the chances of more doctors in the future failing in the same way.
45. In the very recent case of *Public Prosecutor v Terence Siow Kai Yuen* [2020] SGHC 82 (“*Terence Siow Kai Yuen*”) the Respondent had pleaded guilty to and was

convicted of a charge of outrage of modesty. He had touched the buttocks of the victim while they were both ascending on an escalator. The Chief Justice, in assessing if a person had a strong propensity to reform for the purposes of a rehabilitative sentence, set out a three-stage evaluation framework⁷:

- (a) First, the court should consider whether the offender has demonstrated a **positive desire to change** since the commission of the offence(s) (“**the first limb**”).
- (b) Second, the court should consider whether there are conditions in the offender’s life that are **conducive to helping him turn over a new leaf** (“**the second limb**”).
- (c) If, after considering the first two limbs, the court comes to a *provisional* view that the offender has demonstrated an extremely strong propensity for reform, the court should then consider, in light of the **risk factors** presented, whether there are reasons to revisit the finding of such a high capacity for reform (“**the third limb**”).

46. After thoroughly reviewing the mitigation submissions, and bearing in mind the principles set out for the medical supervision framework (as in the case of *Dr Yeo Eng Hui Damian*) and whether a person had a strong propensity to reform (as in the case of *Terence Siow Kai Yuen*), the DT finds Dr Lum:

- (a) Has displayed regret and remorse. He pleaded guilty to the criminal charge in the State Courts. His letter of explanation in response to the SMC’s Notice of Complaint (see “**MP**” Annex E) indicates a self-awareness of what he needed to do to address and deal with the wrong committed. The willingness to obtain psychiatric and other professional help, and the “giving back to society” speaks of a contrite spirit. Enrolling himself into further professional studies is also positive, as it minimizes the influence of negative factors, and that there are positives influences like the guidance of the teachers⁸. Dr Lum also indicated from the outset of these proceedings that he would, and did, plead guilty to the MRA charge against him. He also pleaded guilty to the criminal charge in 2017. All this spared the victim of having to testify in court. Dr Lum has also kept

⁷ *PP v Terence Siow Kai Yuen*[2020] SGHC 82 at [55]

⁸ *Ibid* at [57].

himself crime free since his release from prison in July 2017, and indeed since his arrest in February 2016. There appears to be a clear and positive desire to change his ways.

- (b) Has the support of his peers and superiors in the medical fraternity. The testimonial letters lend support to Dr Lum's professional competence and his potential as a doctor (see "MP" Annex C). More telling, MOHH promoted him to a full Medical Officer in December 2018 (see "MP" Annex D page 53) and offered him Conditional Registration ("C-Reg") as a medical practitioner and employment on August 2019 (see "MP" Annex D page 56). The C-Reg offer was held in abeyance by the SMC pending the completion of these DT proceedings. He also has family and church support. There are thus conditions conducive to the potential that Dr Lum can, one day, resume contributing to society as a doctor again.
- (c) Has made positive progress in his recovery, following psychiatric and psychotherapy treatment (see "MP" Annexes A and B). The report from his psychiatrist dated 2 December 2016 described Dr Lum's risk of repeating his dysfunctional behaviour to be very low, if he keeps and follows through with his psychiatric and psychotherapy treatment (see "MP" Annex A at [19]). Dr Lum subsequently has been on regular follow up with his psychiatrist and psychotherapist without any issues. The reports state that Dr Lum has put in place measures to ensure his emotional control and manage behavioural issues. From the latest psychiatric report, he has shown good response to the treatment. He is on three-months follow-up with his psychiatrist. This follow up is important, as the treating doctor is there as an objective observer of his progress and will be able to spot any risk factors early and treat any regression expeditiously. Therefore, any risk factors that might curtail his progress appears to be low.

47. The DT believes that because of the rehabilitation he has undergone, his strong desire to "turn a new leaf", the support of his peers, family and his spiritual community, the low risk factors in his life, Dr Lum would be able to resume work as medical practitioner. He still has the qualities, attributes and competence needed to carry out the responsibilities of a medical practitioner. It is also clear the medical fraternity has no issues reintegrating Dr Lum into its wings again because of his potential as a competent

and productive medical practitioner. This would then be a suitable case to offer the doctor a second shot at his medical career.

48. The DT is thus of the view that a suspension for Dr Lum would be the most appropriate sanction. In addition, the DT sees no need to impose a medical supervision framework on Dr Lum, as was done in the cases of *Dr Yeo Eng Hui Damian* and *Dr Hoo Swee Tiang*. This is because the DT notes that his offer from SMC of C-Reg dated 29 August 2019 already has certain additional conditions and restrictions (including supervision conditions) attached to it. Therefore, if Dr Lum accepts the C-Reg offer, he would be subject to a supervisory framework.
49. If a suspension is to be imposed, the MRA requires a minimum of three-months suspension, with a maximum three years. In this case, the objectives of the punishment are to uphold the standing and reputation of the medical profession so as to ensure the public trust in the profession is protected; and to ensure an unequivocal message of deterrence is sent to Dr Lum and the medical fraternity at large. To achieve the objectives, the DT is of the view the minimum suspension period of three-months would be insufficient. A balance needs to be struck between essentially giving Dr Lum “a second chance”, and the need to meet the objectives of the punishment.
50. The DT is guided by the six-months suspension imposed on Dr Hoo. However, Dr Hoo was actually charged for the more serious offence of outrage of modesty. There was physical contact with the victim in that case. In addition, Dr Hoo claimed trial against the criminal charge, and he again did so at the disciplinary proceedings against him (although the Disciplinary Committee in that case did not hold that fact against him). It is also noted that Dr Hoo not only had a suspension of six-months imposed on him, he was also placed under supervision for a period of two years following his suspension, with conditions akin to a medical practitioner under Conditional (as opposed to “Full”) Registration. Therefore, the DT’s view is that the suspension for Dr Lum should be for a period less than what has imposed on Dr Hoo.
51. Further, it is noted that Dr Lum has not practised for about 15 months since the completion of his housemanship at the end of February 2019. He had also not been able to practise for about 24 months following his arrest, conviction and incarceration. That

would make it nearly 39 months of not being able to practise medicine. While being unable to practise can be attributed solely to Dr Lum's own doing, the DT would be remiss in not taking that fact into account as well. In most other disciplinary proceedings against medical practitioners, the doctor is generally able to continue to practise until the Disciplinary Tribunal has made its orders.

52. Having carefully considered the matter, the DT is of the view that a suspension of four months (as requested by the SMC and Counsel for Dr Lum) is a fair, adequate and balanced sanction. In the opinion of the DT, the severity of the sanction (i.e. it not being a fine nor the minimum suspension period) would adequately addresses the objectives of the punishment. It also demonstrates to the public that the DT will take upskirting offences very seriously. Dr Lum will have to pay the price of his misconduct by not being able to practice medicine for another four months. He will serve this on top of the six weeks of jail he received and the 39 months he has been unable to work as a doctor.
53. With this sanction, the DT is confident that Dr Lum's continued presence on the medical register after his suspension would not be incompatible with or harmful to the reputation of the medical profession. Having said that, the DT would still want to exhort Dr Lum to fully embrace this "second chance", for there likely will not be a "third chance".

Sentence

54. The DT fully considered all the facts and circumstances, the respective submissions of both parties, and the sentencing precedents cited. We order that Dr Lum:
- (a) Be suspended from the Register of Provisionally Registered Medical Practitioners for **a period of four (4) months**;
 - (b) 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.

Publication of decision

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

56. The hearing is hereby concluded.

A/Prof Roy Joesph
Chairman

Dr Lydia Au

Mr Kevin Ng
Legal Service Officer

Mr Chia Voon Jiet and Ms Grace Lim Rui Si (M/s Drew & Napier LLP)
for Singapore Medical Council; and

Mr Julian Tay and Mr Anthony Wong (M/s Lee & Lee LLP)
for the Respondent.