

IN THE REPUBLIC OF SINGAPORE

SINGAPORE MEDICAL COUNCIL DISCIPLINARY TRIBUNAL

[2021] SMCDT 1

Between

Singapore Medical Council

And

Dr Sim Choon Seng

... Respondent

GROUND OF DECISION

Administrative Law — Disciplinary Tribunals

Medical Profession and Practice — Professional Conduct — Suspension

TABLE OF CONTENTS

<u>Contents</u>	<u>Page No.</u>
Introduction	3
Background, Agreed Statement of Facts and Finding of Guilt	6
Respondent's Mitigation and Submissions on Sentence	6
Submission on Sentence by the Singapore Medical Council	9
The DT's Deliberation	11
The Sentence	17
Publication and/or Redaction of the DT's Decision	18

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Singapore Medical Council

v

Dr Sim Choon Seng

[2021] SMC DT 1

Disciplinary Tribunal — DT Inquiry No. 1 of 2021

Dr Wong Sin Yew (Chairman), A/Prof Quek Swee Tian and Ms Ng Teng Teng Cornie (Legal Service Officer)

3 December 2020 and 15 January 2021

Administrative Law — Disciplinary Tribunals

Medical Profession and Practice — Professional Conduct — Suspension

12 March 2021

GROUNDS OF DECISION

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

Introduction

1. Dr Sim Choon Seng (“**the Respondent**”) faced a charge brought by the Singapore Medical Council (“**the SMC**”)¹ as follows –

“That you, Dr Sim Choon Seng, a registered medical practitioner under the Medical Registration Act (Cap. 174, 2014 Rev Ed), are charged that on 29 April 2019, you were convicted in Singapore of twenty counts of the offence of intruding upon the privacy of unknown females with the intention to insult their modesty, an offence punishable under section 509 of the Penal Code (Cap. 224, 2008 Rev Ed) (“**Penal Code Offence**”) as well as one count of the offence of possession of obscene films with knowledge that the said films were obscene, an offence punishable under section 30(2)(a) of the Films Act (Cap. 107, Rev Ed 1998) (“**Films Act Offence**”):

Particulars

¹ Notice of Inquiry by Disciplinary Tribunal dated 28 July 2020. See the SMC’s agreed Bundle of Documents Tab 5.

- (a) On 28 July 2016, at or about 1.24pm, at Jem Shopping Centre, located at No. 50 Jurong Gateway Road, Singapore, you intruded into the privacy of one unknown female, by using a Sony Ericsson W902 mobile phone to record an upskirt image of the said unknown female, with intention to insult her modesty;
- (b) Upon your arrest, the Sony Ericsson W902 mobile phone was seized from you and multiple upskirt images of various female victims were recovered from the said mobile phone, which was used to commit the offences set out below:
- (i) On 29 June 2016, at or about 1.31pm, at an unknown location in Singapore, you intruded into the privacy of one unknown female, by using the Sony Ericsson W902 mobile phone to record an upskirt image of the said unknown female, with intention to insult her modesty;
 - (ii) On 1 June 2016, at or about 1.29pm, at an unknown location in Singapore, you intruded into the privacy of one unknown female, by using the Sony Ericsson W902 mobile phone to record an upskirt image of the said unknown female, with intention to insult her modesty;
 - (iii) On 8 May 2016, at or about 1.46pm, at an unknown location in Singapore, you intruded into the privacy of one unknown female, by using the Sony Ericsson W902 mobile phone to record an upskirt image of the said unknown female, with intention to insult her modesty;
 - (iv) On 19 April 2016, at or about 1.14pm, at an unknown location in Singapore, you intruded into the privacy of one unknown female, by using the Sony Ericsson W902 mobile phone to record an upskirt image of the said unknown female, with intention to insult her modesty;
 - (v) On 9 April 2016, at or about 3.10pm, at an unknown location in Singapore, you intruded into the privacy of one unknown female, by using the Sony Ericsson W902 mobile phone to record an upskirt image of the said unknown female, with intention to insult her modesty;
 - (vi) On 16 March 2016, at or about 1.12pm, at an unknown location in Singapore, you intruded into the privacy of one unknown female, by using the Sony Ericsson W902 mobile phone to record an upskirt image of the said unknown female, with intention to insult her modesty;
 - (vii) On 17 February 2016, at or about 12.48pm, at an unknown location in Singapore, you intruded into the privacy of one unknown female, by using the Sony Ericsson W902 mobile phone to record an upskirt image of the said unknown female, with intention to insult her modesty;
 - (viii) On 10 February 2016, at or about 1.30pm, at an unknown location in Singapore, you intruded into the privacy of one unknown female, by using the Sony Ericsson W902 mobile phone to record an upskirt image of the said unknown female, with intention to insult her modesty;

- (ix) On 10 February 2016, at or about 1.08pm, at an unknown location in Singapore, you intruded into the privacy of one unknown female, by using the Sony Ericsson W902 mobile phone to record an upskirt image of the said unknown female, with intention to insult her modesty;
- (x) On 6 January 2016, at or about 1.19pm, at an unknown location in Singapore, you intruded into the privacy of one unknown female, by using the Sony Ericsson W902 mobile phone to record an upskirt image of the said unknown female, with intention to insult her modesty;
- (xi) On 20 June 2015, at or about 1.32pm, at an unknown location in Singapore, you intruded into the privacy of one unknown female, by using a Sony Ericsson W902 mobile phone to record an upskirt image of the said unknown female, with intention to insult her modesty;
- (xii) On 17 April 2015, at or about 1.27pm, at an unknown location in Singapore, you intruded into the privacy of one unknown female, by using the Sony Ericsson W902 mobile phone to record an upskirt image of the said unknown female, with intention to insult her modesty;
- (xiii) On 7 February 2015, at or about 1.20pm, at an unknown location in Singapore, you intruded into the privacy of one unknown female, by using the Sony Ericsson W902 mobile phone to record an upskirt image of the said unknown female, with intention to insult her modesty;
- (xiv) On 22 December 2014, at or about 1.25pm, at an unknown location in Singapore, you intruded into the privacy of one unknown female, by using the Sony Ericsson W902 mobile phone to record an upskirt image of the said unknown female, with intention to insult her modesty;
- (xv) On 22 November 2014, at or about 5.24pm, at an unknown location in Singapore, you intruded into the privacy of one unknown female, by using the Sony Ericsson W902 mobile phone to record an upskirt image of the said unknown female, with intention to insult her modesty;
- (xvi) On 8 November 2014, at or about 3.35pm, at an unknown location in Singapore, you intruded into the privacy of one unknown female, by using the Sony Ericsson W902 mobile phone to record an upskirt image of the said unknown female, with intention to insult her modesty;
- (xvii) On 8 November 2014, at or about 2.59pm, at an unknown location in Singapore, you intruded into the privacy of one unknown female, by using the Sony Ericsson W902 mobile phone to record an upskirt image of the said unknown female, with intention to insult her modesty;
- (xviii) On 1 November 2014, at or about 2.08pm, at an unknown location in Singapore, you intruded into the privacy of one unknown female, by using the Sony Ericsson W902 mobile phone to record an upskirt image of the said unknown female, with intention to insult her modesty; and

- (xix) On 20 November 2014, at or about 1.45pm, at an unknown location in Singapore, you intruded into the privacy of one unknown female, by using the Sony Ericsson W902 mobile phone to record an upskirt image of the said unknown female, with intention to insult her modesty;
- (c) On 28 July 2016, at or about 2.00pm, at Jem Shopping Centre, located at No. 50 Jurong Gateway Road, Singapore, you had in your possession a Samsung Galaxy Note 4 mobile phone containing three obscene films, knowing the said films to be obscene, in contravention of section 30(2) of the Films Act (Cap. 107, Rev Ed 1998);
- (d) On or about 10 March 2019, you were charged in the State Courts with 178 counts of the Penal Code Offence and one count of the Films Act Offence;
- (e) On 29 April 2019, you were convicted in the State Courts by the learned District Judge Adam Nakhoda of 20 counts of the Penal Code Offence (as set out at paragraph (b) above), with the other 158 counts of the Penal Code Offence taken into consideration in sentencing, and were sentenced to serve 30 weeks' imprisonment;
- (f) On 29 April 2019, you were convicted in the State Courts by the learned District Judge Adam Nakhoda of the aforesaid Films Act Offence and were sentenced to pay a fine of S\$3,000, in default two (2) weeks' imprisonment; and
- (g) The aforesaid convictions have not been set aside;

and that in relation to the facts alleged, you have thereby been convicted of offences 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, Agreed Statement of Facts and Finding of Guilt

2. At the Pre-inquiry Conference on 10 September 2020, the Respondent indicated he would plead guilty to the Charge. At the Disciplinary Tribunal ("**the DT**") hearing on 3 December 2020, the Respondent pleaded guilty to the Charge without qualification. He also admitted to and confirmed the Agreed Statement of Facts tendered.
3. In view of the criminal convictions and sentence as well as the Respondent's plea of guilt to the Charge, the DT found the Respondent guilty as charged.

Respondent's Mitigation and Submissions on Sentence

4. In mitigation, the DT was informed as follows –

- (a) The Respondent is truly remorseful and sad of his actions and apologised to the District Courts and the DT for the trouble he has caused²; he has fully cooperated in the criminal investigations and in the DT proceedings, pleading guilty at the first earliest opportunity;
- (b) This is the Respondent's first run-in with the law and has until the DT inquiry, an unblemished record as a medical practitioner, upholding the highest principles and traditions of the medical profession³;
- (c) The Respondent recognised that he had a medical condition and proactively sought medical/psychiatric treatment whilst police investigation was ongoing. He was diagnosed with late onset persistent depressive disorder (dysthymia) and his actions were behavioural responses to long-term stress and untreated persistent depressive disorder with major depressive episodes. He underwent treatment with DE1 at Clinic A prior to his imprisonment and was found to be responsive. He continued with treatment after his release and it was found that his depressive disorder did not impact his work or personal functions. It was also found that the Respondent was in remission from voyeuristic disorder (video voyeurism) for at least three years with low risk of reoffending. The Respondent has shown a strong propensity to reform⁴.
- (d) The Respondent also consolidated his treatment with Institution A for Compulsive Sexual Behaviour Disorder ("**CSBD**") with a commitment to continue treatment for the next five years at regular fortnightly intervals. Institution A has opined that the Respondent is on course for sustained remission of CSBD¹.
- (e) Owing to the medical treatments, Institution A has on 19 October 2020, confirmed that the Respondent could continue with his medical practice subject to (i) a further 12-month treatment with Institution A and (ii) continued treatment with DE1⁵.

² See paras 4 - 5 of the Respondent's Mitigation.

³ See para 5 of the Respondent's Mitigation.

⁴ See para 7 - 9 of the Respondent's Mitigation.

⁵ See para 11 - 12 of the Respondent's Mitigation.

- (f) The Respondent had already served the 30 weeks imprisonment and paid the \$3,000 fine for his criminal convictions. He was also effectively suspended from medical practice for a period of nine months; from 6 May 2019 to 23 September 2019 when he was in prison and his practising certificate was not renewed between January 2020 to 28 April 2020⁶.
- (g) The Respondent did not at any time breach patient's confidence or trust and no patients were involved in his convictions⁷.
5. Counsel for the Respondent, in applying the four-step sentencing framework ("**Sentencing Framework**"), as laid down in *Wong Meng Hang v SMC*⁸ and clarified in the Sentencing Guidelines for Singapore Medical Council Disciplinary Tribunals published on 15 July 2020⁹ ("**the SMC DT Sentencing Guidelines**"), submitted that the Respondent's case is one where the level of harm is between slight to moderate and culpability is between low to medium. This is because there are no patients or staff involved, nor any aggravating factors and contact with any victims. That being the case, their start point for consideration will be a fine, or other punishment not resulting in any suspension¹⁰.
6. However, based on the recent sentencing precedent of *SMC v Dr Lum Yang Wei*¹¹, it was acknowledged that the start point for consideration would be four months' suspension with the other usual consequential orders¹².
7. In the Respondent's Further Sentencing Submissions, we were informed that the Respondent's case is one where the level of harm is moderate¹³ and culpability is at the lower end of the medium range¹⁴. No other starting point was proposed.

⁶ See para 18 of the Respondent's Mitigation.

⁷ See para 19 of the Respondent's Mitigation.

⁸ Court of Three Judges in *Wong Meng Hang v Singapore Medical Council and other matters* [2018] SGHC 253

⁹ See Tab 13 the SMC's Bundle of Authorities (PBOA). For purposes of this Grounds of Decision, reference to authorities will be made to PBOA as it contains the authorities also cited in the Respondent's BOA.

¹⁰ See para 4 of the Respondent's Sentencing Submissions.

¹¹ See Tab 8 PBOA.

¹² See para 7 of the Respondent's Sentencing Submissions.

¹³ See para 9 of the Respondent's Further Sentencing Submissions.

¹⁴ See para 11 of the Respondent's Further Sentencing Submissions.

8. It was pointed out to us that in the current COVID-19 pandemic, the Respondent should be allowed to continue to practise so that he can serve his patients and return his skills and training as a medical practitioner to the public as soon as possible¹⁵. Our attention was also drawn to paragraph 23c of DE1’s medical report dated 15 October 2020 which reads -

“Dr Sim be allowed to remain as a practising doctor, as work currently serves as a protective function for him. He should be encouraged to explore working reduced hours in the interim if this helps with management of his stress levels. This can be done in consultation with his treatment provider, to ensure that his clinical load continues to be well-managed and provides him with an avenue for self-actualisation and fulfilment, while at the same time ensuring that he does not revert to pre-morbid levels of burn-out.”¹⁶

9. With all the mitigation and other sentencing factors and circumstances, Counsel for the Respondent submitted that the appropriate sentence would be a suspension of eight (8) months together with the usual consequential orders¹⁷. No change was made to this submission of eight months notwithstanding the Respondent’s Further Sentencing Submissions on the appropriate sentencing range to be between 12 to 24 months.

Submission on Sentence by the Singapore Medical Council

10. Counsel for the SMC submitted that following the SMCDT Sentencing Guidelines, the Respondent’s case is one where there is moderate harm and medium culpability, where the indicative sentencing range is a suspension of 12 to 24 months.¹⁸
11. The SMC submitted that harm under the SMCDT Sentencing Guidelines includes harm to public confidence in the medical profession as well as harm to public health and safety and the public healthcare system; in considering the harm caused, the DT should not only be looking at actual harm caused but also the seriousness of the potential harm risked and the likelihood of the potential harm arising from the breach.¹⁹ In this regard, the SMC assessed the Respondent’s case to be of moderate harm as the offences would undermine public confidence to the medical profession and the healthcare system.²⁰

¹⁵ See para 13 of the Respondent’s Sentencing Submissions.

¹⁶ See para 12 of the Respondent’s Sentencing Submissions.

¹⁷ See para 14 of the Respondent’s Sentencing Submissions.

¹⁸ See para 26 of the SMC’s Sentencing Submissions.

¹⁹ See Para 17 of the SMC’s Sentencing Submissions.

²⁰ See Para 18 of the SMC’s Sentencing Submissions.

While the SMC accepts that the offences were committed in the Respondent's personal capacity, the offences related to sexual misconduct where there is intrusion into the victims' privacy and therefore serious. The ubiquitous use of mobile phones with in-built camera functions, the ease with which such videos or digital images can be captured without detection and uploaded for dissemination in committing the offences warrant the need for general deterrence. Coupled with the number of offences in the Respondent's case, the duration which the upskirt images were taken (November 2014 to June 2016), and the fact that these offences were committed in public places, these would all undermine public confidence in the medical profession.²¹

12. On culpability, the SMC submitted that the Respondent would have known that the taking of upskirt images was inappropriate but perpetrated such behaviour over a sustained duration. This intentional and deliberate misconduct is more culpable than a one-off offence committed in a moment of folly. Although these would all ordinarily point to the Respondent's culpability being in the "high" range, the SMC recognises that the Respondent's pre-existing depressive disorder (as can be seen from the medical report from Clinic A dated 11 November 2016) may have contributed to his state of mind when committing the various offences, and thus considers his culpability to be in the "medium" range.²²
13. On the start point of a sentence, the SMC is of the view that the imposition of a fine and/or restrictions on the Respondent's practice would be manifestly inadequate in the circumstances.²³ Bearing in mind the previous sentencing precedents, a suspension is warranted. In light of proportionality and consistency with the previous sentencing precedents (*SMC v Wong Siew Kune*²⁴, *SDC v Hoo Swee Tiang*²⁵ and *SMC v Lum Yang Wei*²⁶) which indicate that a lengthier period of suspension would be appropriate in cases involving numerous offences, the SMC submits that a starting point in the middle of the sentencing range (between 1 to 2 years, i.e. 12 to 24 months suspension) is appropriate and justified, and that a period of suspension of 16 months would therefore be a reasonable starting point.²⁷

²¹ See Para 19 - 22 of the SMC's Sentencing Submissions.

²² See Para 13 - 25 of the SMC's Sentencing Submissions.

²³ See Para 27 of the SMC's Sentencing Submissions.

²⁴ See Tabs 1 - 2 and 10 PBOA.

²⁵ See Tab 7 PBOA.

²⁶ See Tab 8 PBOA.

²⁷ See Para 31 of the SMC's Sentencing Submissions.

14. Bearing that in mind, the Respondent's pre-existing depressive disorder, his follow through with treatment and his early plea of guilt to the Charge as weak mitigating factors and balancing that with the gravity of the Respondent's offences where a serious sanction is necessary to signal the profession's disapprobation of his conduct, the SMC submits that an appropriate suspension term would be 14 months. In coming to the 14-month suspension, the SMC did not consider the Respondent's 30-week imprisonment sentence and his suspension from medical practice during imprisonment plus the immediate period of four months (January 2020 to 28 April 2020) after his release from prison term (6 May 2019 to 23 September 2019) as mitigating; the Respondent's imprisonment is a natural consequence of the punishment for his criminal offences and the four months after his release (January 2020 to 28 April 2020) was the time required for the SMC to process and consider his application for a medical license given his criminal convictions (requiring additional documentation etc to prove that his treatment was on track).²⁸

The DT's Deliberation

15. The DT considered and agree with the SMC that the "*sanctions in medical disciplinary proceedings serve two functions:*
- a) *first, to ensure that the offender does not repeat the offence and ultimately to ensure that the public is protected from the potentially severe outcomes arising from the actions of errant doctors; and*
 - b) *second, to uphold the standing of the medical profession.*"²⁹
- And with that, the paramount need for general deterrence and upholding of the reputation and confidence in the medical profession.
16. In this regard, following *Wong Meng Hang v SMC*, the broader public interest considerations are paramount and will commonly be at the forefront when determining the appropriate sentence that should be imposed in each case. These considerations include "the need to *uphold the standing and reputation of the profession*, as well as to

²⁸ See Para 15, 33 – 36 of the SMC's Sentencing Submissions.

²⁹ *Singapore Medical Council v Kwan Kah Yee* [2015] 5 SLR 201

*prevent an erosion of public confidence in the trustworthiness and competence of its members.”*³⁰

17. It is clear to us that the SMCDT Sentencing Guidelines will extend to non-clinical care offences (which the Respondent has been convicted of) and applies to all five limbs under section 53(1) of the Medical Registration Act.
18. The DT considered and agree with the SMC for the Respondent’s case to be of moderate harm as the offences undermined public confidence to the medical profession and the healthcare system. Although the offences can be said to be of a personal nature as it did not involve patients and no actual injury / harm was caused, the DT does not agree with the Respondent’s classification of his case to be of slight harm. The seriousness of the nature, number, duration and type of offences cannot be downplayed as it does adversely affect the faith / trust that any member of public will have in any doctor to be consulted knowing that he has committed such offences. Harm to public confidence in the medical profession was conceded to in the Respondent’s mitigation as he had stated that the taking of steps “to get diagnosed and seek treatment for his medical condition” were mitigating factors, and that these steps would “clearly satisfy public interest consideration and go some way towards upholding public confidence in the medical profession”³¹. In any event, we also note that the Respondent had conceded to “moderate” harm in the Respondent’s Further Sentencing Submissions³².
19. In considering the culpability of the Respondent’s offences, it appears that the Respondent’s state of mind is intentional and deliberate. This is panned out by the number of upskirt images taken by the Respondent at various public places for the period of November 2014 to June 2016 (close to 200 images) and this may have continued but for the fact that the Respondent was caught. However, we note that the Respondent’s pre-existing depressive disorder (as can be seen from the medical report from Clinic A dated 11 November 2016) may have contributed to his state of mind when committing the various offences and thus the DT considered and agree with the SMC for the Respondent’s case to be of medium culpability. Although Counsel for the

³⁰ Court of Three Judges in *Wong Meng Hang v Singapore Medical Council and other matters* [2018] SGHC 253 and para 10 of the SMC’s Sentencing Submissions.

³¹ See para 17 and 27 of the Respondent’s Mitigation.

³² See para 9 of the Respondent’s Further Sentencing Submissions.

Respondent had initially stated that the Respondent's case is of low culpability, in his Further Sentencing Submissions, it is now stated that it should be the lower end of the medium range for culpability³³.

20. In coming to the starting point for the sentencing range, we are unable to agree with the Respondent that the start point should be a fine or other punishment not resulting in any suspension (i.e. slight harm and low culpability) as that would be wholly inadequate. We note that Counsel for the Respondent had acknowledged and conceded that, with the recent sentencing precedent of *SMC v Dr Lum Yang Wei*³⁴, the start point for consideration would be four-months' suspension with the other usual consequential orders (i.e. slight harm and medium culpability or moderate harm and low culpability attracting a suspension of up to one year). A suspension is clearly warranted in the present case.
21. Pursuant to our analysis of moderate harm and medium culpability in paragraphs 18 to 19 above, we are of the opinion that the indicative sentencing range should be a suspension of 12 to 24 months. We note that the SMC had suggested that a suspension of 16 months would be a reasonable starting point (somewhere in the middle of 12 to 24 months) bearing in mind the previous sentencing precedents (*SMC v Wong Siew Kune*³⁵, *SDC v Hoo Swee Tiang*³⁶ and *SMC v Lum Yang Wei*³⁷) in terms of proportionality and consistency.
22. We set out in a table form below a summary of the decision in the three cases:

Case Name (Decision Date)	Offences in question	Suspension duration
<i>SMC v Wong Siew Kune</i> (10 May 2007)	Dr Wong Siew Kune filmed upskirt videos of two different women on the same day (one in a hospital and another in a shopping centre) and was convicted of two offences of insulting the modesty of the two women under section 509 of the Penal Code. Two other offences of filming upskirt were taken into consideration for the purpose of sentencing.	24 months

³³ See para 11 of the Respondent's Further Sentencing Submissions.

³⁴ See Tab 8 PBOA.

³⁵ See Tab 1-2 and 10 PBOA.

³⁶ See Tab 7 PBOA.

³⁷ See Tab 8 PBOA.

<i>SDC v Hoo Swee Tiang</i> (3 Oct 2018)	Dr Hoo Swee Tiang touched the rear inner part of a lady's exposed thighs with his hand while inside an MRT train and was convicted of an offence of outrage of modesty under section 354(1) of the Penal Code.	Six months
<i>SMC v Lum Yang Wei</i> (20 Mar 2020)	Dr Lum Yang Wei filmed upskirt video of one female victim (in hospital) and was convicted of an offence of intruding upon the privacy of the victim with the intention to insult her modesty under section 509 of the Penal Code.	Four months

23. We note from the outset that the cases in *SMC v Wong Siew Kune*³⁸, *SDC v Hoo Swee Tiang*³⁹ and *SMC v Lum Yang Wei*⁴⁰ were all decided pre-publication of the SMCDT Sentencing Guidelines. In that regard, we asked for further submissions from parties on what they felt would be the treatment of such cases post-SMC DT Sentencing Guidelines.
24. Counsel for the Respondent submitted in their Further Sentencing Submissions that the sentencing range for *SMC v Lum Yang Wei* would be in the moderate harm and lower end of the medium culpability range and for *SDC v Hoo Swee Tiang*, it would have been moderate harm and medium culpability range post-SMC DT Sentencing Guidelines⁴¹.
25. Counsel for the SMC submitted in their Further Sentencing Submissions that the sentencing range for *SDC v Hoo Swee Tiang* and *SMC v Lum Yang Wei* would be in the moderate harm and medium culpability range post-SMC DT Sentencing Guidelines. Counsel for the SMC also submitted that a higher sentence would probably have been prescribed had the DT applied the SMC DT Sentencing Guidelines in both cases⁴².
26. Looking at the three cases of *SMC v Wong Siew Kune*, *SDC v Hoo Swee Tiang* and *SMC v Lum Yang Wei*, an offence under section 354(1) of the Penal Code in *SDC v Hoo Swee Tiang* which involves an outright act of molestation will be more serious / severe than filming upskirt under section 509 of the Penal Code in *SMC v Wong Siew Kune*

³⁸ See Tab 1-2 and 10 PBOA.

³⁹ See Tab 7 PBOA.

⁴⁰ See Tab 8 PBOA.

⁴¹ See para 12 - 18 of the Respondent's Further Sentencing Submissions.

⁴² See para 4 - 30 of the SMC's Further Sentencing Submissions.

and *SMC v Lum Yang Wei*. Where a disciplinary action relates to an offence of filming upskirt, the fact that the offence took place in a hospital should be treated with more gravity as it will completely diminish any public confidence on the faith to be placed on the medical profession.

27. The DT is of the opinion that the three cases of *SMC v Wong Siew Kune*, *SDC v Hoo Swee Tiang* and *SMC v Lum Yang Wei* would have fallen within the moderate harm and medium culpability range post-SMC DT Sentencing Guidelines. As the SMC DT Sentencing Guidelines prescribes a range of between 12 to 24 months suspension for moderate harm and medium culpability offence(s), it will appear that the suspensions imposed in *SDC v Hoo Swee Tiang* and *SMC v Lum Yang Wei* are on the low side (i.e. not within the 12 to 24 months range).
28. With the SMC DT Sentencing Guidelines in mind, the DT looked at a reasonable start point within the 12 to 24 months range of suspension for sentencing. In this regard, we have no reasons to disagree with the SMC that a period of suspension of 16 months (somewhere in the middle of the range) would be a reasonable starting point; we note that the Respondent had not given us any specific starting point to work with.
29. For us, the 16 months starting point in the Respondent's case will take into consideration the number and type of criminal offences involved and sustained duration over which such offences were committed by the Respondent. The starting point of 16 months will signal the severity of the misconduct and send a stern reminder of the profession's disapproval in that regard.
30. We are mindful that in *SMC v Wong Siew Kune*, a 24-month suspension was imposed. This was a 2007 decision involving two convicted offences of filming upskirt (with two others taken into consideration for sentencing and from media reports, we understand that one convicted offence was committed in a hospital) and two-page sentencing decision does not go into how the Disciplinary Committee came to impose a 24-month suspension save to say that the convicted offences are "serious" and "that the penalty has to be adequate to uphold confidence of the public on the integrity of the profession a whole"⁴³.

⁴³ See para 5 and 6 of Tab 10 PBOA.

31. Although *SMC v Wong Siew Kune* was cited in the Grounds of Decision in *SDC v Hoo Swee Tiang*, it is unclear how that impacted the DC's decision to impose a six-months' suspension in that case.
32. In *SMC v Lum Yang Wei*, the DT stated that they were unable to ascertain the reasons for the 24-month suspension in as *SMC v Wong Siew Kune* appear to be an unreported decision. Nevertheless, the DT in *SMC v Lum Yang Wei* distinguished *SMC v Wong Siew Kune* based on the fact that there were four offences involved in *SMC v Wong Siew Kune* and that Dr Lum was a houseman who was in the midst of completing his housemanship at the material time with more likelihood of rehabilitation as compared to Dr Wong Siew Kune who was a specialist doctor of a consultant rank. It then went on to conclude that *SMC v Wong Siew Kune* was of "limited utility" and "it would be dangerous to rely on it without knowing the full facts of that case"⁴⁴. In coming to that conclusion, the DT there also noted that in *SMC v Tan Kok Leong*⁴⁵, they found it unsafe to rely on the decision in *SMC v Wong Siew Kune* as a sentencing precedent⁴⁶. We agree that without having a full background of the circumstances in *SMC v Wong Siew Kune*, it will be difficult to assign any weight to the length of the suspension imposed there and consider it for purposes of determining the suspension in this case.
33. The next step will be to consider any mitigating factors that are specific to the Respondent and we had regard to the mitigating factors set out in paragraph 4(a) to (g) above. In doing so, we are in agreement with the SMC that the period for which the Respondent was not able to practise or "suspended" while he was in prison serving sentence should not be considered a mitigating factor as this was a "natural consequence of the punishment of his criminal offences" and that the criminal prosecution is clearly distinct from disciplinary proceedings⁴⁷. Further the period for which he could not practise in January to 28 April 2020 (after his release from prison) while his application for the practise license was underway thereafter should also not be considered as a mitigating factor as it must be understood that the SMC in considering his application for a practise license after his conviction for the criminal offences must surely be

⁴⁴ See para 23 of Tab 8 PBOA.

⁴⁵ *SMC v Tan Kok Leong* [2019] SMCDT 4 at [58].

⁴⁶ See para 23 of Tab 8 PBOA.

⁴⁷ See para 34 of the SMC's Sentencing Submissions.

satisfied that his treatment was on track and seek evidence of the same; that the Respondent needed time to get reports from Institution A to show that his treatment was on track so that he can practise is something that the Respondent should be prepared for. For completeness, we should point out that Counsel for the Respondent had stated in their email to the DT of 8 January 2021 that the Respondent had not been able to renew his practise licence after 31 December 2020 as the SMC imposed fresh conditions. Between 1 January 2021 to the delivery of our sentence on the Respondent on 15 January 2021, it was only about two weeks and any inability to practise during that two weeks' period is not a real mitigating factor that should be given much weight, if any.

34. While we agree with the SMC that the Respondent's seeking treatment for his condition should not be considered as a mitigating factor as his pre-existing medical condition at the material time was already considered in arriving at the appropriate sentencing range (moderate harm and medium culpability), we are of the opinion that the Respondent's progress achieved thus far with his psychiatric treatment demonstrates his remorse and resolve to reform. We also note that the offences are his first brush with the law and that no patients were involved in nor was there any breach of patient's confidence / trust with the offences. This coupled with his early plea of guilt are certainly mitigating factors to be given weight.

The Sentence

35. Having considered all the facts and circumstances, the respective submissions of both parties, the sentencing precedents cited, and bearing in mind the SMC DT Sentencing Guidelines, we hereby exercise our powers under section 53 of the Medical Registration Act ("**MRA**") to impose the following sentence on the Respondent:
- (a) that the Respondent's registration in the Register of Medical Practitioners be suspended for **14 months**;
 - (b) that the Respondent be censured;
 - (c) that the Respondent commit to continuing his follow-up psychiatric treatment with Clinic A (DE1) in engagement with the IMA National Addiction Management Services (DE2) to monitor progress and endorse a revision of his

diagnosis, until full recovery from his persistent or major depressive disorder, voyeuristic disorder (video voyeurism) and Compulsive Sexual Behaviour Disorder;

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

36. It should be noted that the Respondent is not objecting to paragraph 35 (b) to (e) above.

Publication of the DT's Decision

37. At the DT hearing on 3 December 2020, the Respondent had requested that we consider not to publish our decision in this case or alternatively to consider publication of our decision with redaction of the Respondent's name / identity ("**publication**"). The reason given was that the Respondent and his family has already been subjected to publicity of his convictions and that this was also on the recommendation of Clinic A in paragraph 21 of DE1's report of 15 October 2020 as follows –

"In addition, the anticipated publicity over Dr Sim's case once SMC findings are made known will be counter-therapeutic and exacerbate both his shame and levels of emotional distress, ironically placing him at increased risk of developing more chronic mood disturbances or internalising problems. In the event that Dr Sim's license is revoked permanently, this will eliminate one of his primary sources of coping through meaningful work, which might impact his ability for long-term self-management."⁴⁸

38. We requested that DE1 take the stand so that he can elaborate on his recommendation on publication and to take any questions thereto. DE1 agreed and attended before the DT at the hearing on 15 January 2021.

39. For background, Counsel for the Respondent had attached four medical reports from Clinic A in the Respondent's mitigation dated – (1) 11 November 2016, (2) 30 November 2019, (3) 30 September 2020 and (4) 15 October 2020; the report of 11 November 2016 appears to be prepared for the prosecution of the Respondent's criminal charges; the reports of 30 November 2019 and 30 September 2020 were

⁴⁸ See para 15 of the Respondent's Sentencing Submissions.

addressed to the SMC for purposes of the Respondent's application of his practising license; and the report of 30 September 2020 was relied on for the Respondent's mitigation before the DT on 3 December 2020. For purposes of the DT hearing on 15 January 2021, DE1 had also provided a supplementary report dated 13 January 2021.

40. In this supplementary report, DE1 had elaborated that his recommendation in paragraph 37 above drew upon "extant research pertaining to the effects of public identification on the rehabilitative trajectories of known sexual offenders" in countries where there are sexual offender registries in place.⁴⁹ He went on to say that "*(w)hile we do not have similar legislation in Singapore, we may extrapolate from these findings to inform about the anticipated effects of shaming and labelling on Dr Sim and his family. In his case, given his predisposition towards social and emotional isolation, as well as the fragility of the intimate relationships he has been re-building over the past few years, we are concerned that another stressor of such a magnitude might exacerbate his depressive symptoms, self-blame, and suicidal ideation*"⁵⁰ and "*it might also have the unintended effect of distancing Dr Sim from his family members again as they could be subjected to the public backlash that might ensue*"⁵¹.
41. Under cross-examination by the SMC, re-examination by Counsel for the Respondent and questions from the DT, DE1's position at the DT hearing on 15 January 2021 can be summarised as follows: -
- (a) He agreed that as sexual offender registries will identify the name, location, photograph and the nature of the sexual offences involved of each registered sexual offender, it is perceived as some sort of blacklisting; that is a higher level of naming and shaming than that of the publication of a decision in a DT case;
 - (b) He agreed that the research that he relied on is not widely accepted in Singapore and it is his personal opinion, having consideration of the Respondent's underlying psychological makeup, the publication may "exacerbate his depressive symptoms, self-blame, and suicidal ideation" and "have the unintended effect of distancing Dr Sim from his family members". In coming

⁴⁹ See para 3 of Dr DE1's supplementary report dated 13 January 2021

⁵⁰ See para 5 of Dr DE's supplementary report dated 13 January 2021

⁵¹ See para 6 of Dr DE's supplementary report dated 13 January 2021

to this conclusion, the only consideration he had in mind was the Respondent's condition. He had not considered the principles of open justice or public interests;

- (c) He stated that the publication of the decision in this case may cause the Respondent to slip back into a depression and that may be a trigger for suicide. The risk of suicide is not high (words to the effect of "low risk" and "will not commit suicide" were used by DE1 at the DT hearing on 15 January 2021) as the Respondent had made progress in his treatment and with continued ongoing treatment and the measures in place, they hope to be able to manage any fallout;
 - (d) He stated that while his position is that the publication of the DT's decision may "have the unintended effect of distancing Dr Sim from his family members", he accepted that the Respondent's family ties have mended after the Respondent's conviction and sentence and that he had not interviewed the Respondent's family members to check on any distancing that may result with the impending publication of the DT's decision; and
 - (e) He accepted there was no gag order at the time of the Respondent's criminal conviction and there were media reports then. However, he is unable to tell what impact those reports had on the Respondent as Clinic A / he did not see the Respondent after the conviction until after the Respondent's release from prison. The first report thereafter was furnished by one DE3 from his clinic dated 30 Nov 2019 and it is stated that the Respondent was still in low mood.
42. The SMC's submission is that the principles of open justice and public interests will demand that the DT's decision be published without redaction and that should triumph the protection of the Respondent's interests. In making its submissions, the SMC relied on the cases of *Public Prosecutor v. GDB*⁵², *Yassin v. The General Medical Council*⁵³ and *Iskandar bin Rahmat v Law Society of Singapore*⁵⁴. The SMC pointed out that while it is plausible that there is some risk of suicide, that risk will be minimised by the Respondent's improvement / progress from treatment and in continuing to seek

⁵² [2020] SGMC 49 at [29 – 36]

⁵³ [2015] EWHC 2955 (Admin) / [2015] All ER (D) 210 (Oct) at [57 – 59].

⁵⁴ [2020] SGHC 40 at [86 – 91]

treatment. Although, the DT hearing is not an open court hearing as such, the principles of open justice do not apply in lesser force. As this is a disciplinary hearing by the medical profession to self-regulate themselves, there is a greater need for transparency to inspire public confidence and inform the public when doctors are found guilty. The general trend so far has been publication of the DT's decision without redaction except for cases where the doctors complained of have been acquitted. That being the case, the balance should be tilted in favour of publication without redaction in line with the principles of open justice and public interests.

43. Counsel for the Respondent stressed that DT should seriously consider the risk of the Respondent's "suicidal ideation" and that the DT should exercise its discretion in favour of not publishing and/or to redact any published decision. In his submissions, the Counsel for Respondent also made reference to how others would view the Respondent, in light of the Respondent's general practitioner's practice, if the DT's decision was published without redaction. Counsel for the Respondent pointed out that the decision in *Public Prosecutor v. GDB* and *Iskandar bin Rahmat v Law Society of Singapore* related to open court hearings and hence the strong concept of open justice whereas the DT hearing is a closed / in camera hearing. As for *Yassin v. The General Medical Council*, although this was most applicable case compared to the two other cases cited by Counsel for the SMC, it related to a hearing before the QBD, Administrative Court and the decision must also be read in that light.
44. Regulation 42 of the Medical Registration Regulations 2010 states that the DT "*may, in its discretion, publish an account of the inquiry and its findings ...*". In deciding whether the DT should publish its decision or publish its decision without redaction, the DT is mindful of the need to balance the protection to be afforded to the Respondent in light of his mental health and how this will affect how he will be viewed on the one hand and the countervailing legitimate public interests to be protected on the other hand in light of the principles of open justice and preservation of public confidence in the administration of justice and in disciplinary proceedings. This appears to be clear from the three cases of *Public Prosecutor v. GDB*, *Yassin v. The General Medical Council* and *Iskandar bin Rahmat v Law Society of Singapore*. This does not appear to be disputed by both the SMC and the Respondent.

45. We note that the Respondent's request for non-publication of the DT's decision is very similar to the reason given in the case of *Public Prosecutor v. GDB*, ie, to guard against potential adverse effects on the accused's rehabilitation. In that case, the hearing of an appeal against the refusal of a gag order to be made vis-à-vis a mandatory treatment order, the Court denied the gag order in favour of the principles of open justice notwithstanding that rehabilitation would be crucial for any mandatory treatment order especially with accused's young age in mind.
46. We also noted that in *Iskandar bin Rahmat v Law Society of Singapore*, the application to Court by the Law Society to seal off the Inquiry Committee Report in the review of the Law Society Council's determination was dismissed. The Court stated that the principles of open justice will serve "to promote public confidence in the administration of justice" and especially when "the issue at hand is the judicial scrutiny of the discipline of lawyers"⁵⁵.
47. Though we accept that *Public Prosecutor v. GDB* and *Iskandar bin Rahmat v Law Society of Singapore* dealt with open court hearings, we agree with the SMC that the principles of open justice do not apply in lesser force in a disciplinary hearing where there is a need for transparency to inspire public confidence and inform the public when doctors are found guilty. This was reflected in the case of *Yassin v. The General Medical Council*, where the Administrative Court held that there is a "general interest in the public being able to know the identities of those who have been subject to disciplinary proceedings" and that anonymity of the identity of the appellant would "go beyond any legitimate protection of the appellant's privacy interests". In coming to the decision, the Administrative Court found that the appellant's interests have been protected "by holding the hearing of the medical part of her case in private" and summarising "the evidence describing her health condition with sensitivity"⁵⁶, all of which have been done in our case.
48. Having heard DE1, and bearing in mind the submissions made by the SMC and Counsel for the Respondent, we take the view that on a balance, the legitimate public interests to be protected in light of the principles of open justice and preservation of public

⁵⁵ [2020] SGHC 40 at [90]

⁵⁶ ⁵⁶ [2015] EWHC 2955 (Admin) / [2015] All ER (D) 210 (Oct) at [59].

confidence in the administration of justice and in disciplinary proceedings by publication of our decision will triumph the need to protect the Respondent in light of his mental health and/or rehabilitation and how the Respondent will be viewed.

49. In this regard, we note that DE1's opinion is premised on research dissertations and articles on the effects of public identification of known sexual offenders in countries with sexual offender registries. From what we are taken to understand, the publication of a registered sexual offender's name, location, photograph and the nature of the sexual offences involved in respect of sexual offender registries is perceived as a blacklisting and is far more extensive than the publication of the DT's decision. Moreover, DE1 also accepted that the effects expounded in such research are not widely accepted in Singapore; it is his personal opinion bearing in mind the research and the Respondent's condition without any consideration to the principles of open justice and public interests / preservation of public confidence in the medical profession. We also note that although the Respondent was undergoing treatment with DE1 and Institution A, no opinion has been obtained from Institution A to support DE1's opinion and/or recommendation.

50. In line with the principles of open justice and preservation of public confidence in the administration of justice and in disciplinary proceedings, non-publication or publication with redaction should be an exception rather than the norm. Whilst we accept that there is a risk that publication may adversely affect the Respondent's rehabilitation, it must be noted that rehabilitation is not the main goal of disciplinary proceedings especially not with the Respondent's age (in his 50s). The Respondent should understand that rehabilitation is for his own good and for him to move on with his life as such; in any case, we have already factored in his rehabilitation for purposes of his mitigation. That said, it appears that any adverse effect to rehabilitation is or will be minimised by his improvement / progress so far and in his continuing treatment under DE1 and Institution A which the Respondent has undertaken to continue. We also note that there was no gag order in the criminal proceedings faced by the Respondent previously and that was reported in the media at the time of the charge / conviction; it does not appear to us that the publication then to have created a dent / affected his improvement / progress to date (see paragraph 4c to e) above on the Respondent's response to treatment in the Respondent's Mitigation).

51. We echo the fact that the disciplinary proceedings are heard in camera (closed) to protect doctors from frivolous complaints. Once they are convicted, it will be in the public interests for such decisions to be published to instil public confidence in a self-regulated profession. We also note that the DT's published decision would be a useful precedent for future cases. In the circumstances, we order that the Grounds of Decision be published with the necessary redaction of identities and personal particulars of all persons, except the Respondent's, involved.

52. The hearing is hereby concluded.

Dr Wong Sin Yew
Chairman

A/Prof Quek Swee Tian

Ms Ng Teng Teng, Cornie
Legal Service Officer

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

Mr Charles Lin and Ms Brenda Tay (M/s Charles Lin LLC)
for Dr Sim Choon Seng.