SINGAPORE DENTAL COUNCIL
DISCIPLINARY COMMITTEE INQUIRY FOR DR PEH GEK CHUAN
ON 21 AUGUST 2023, 24 JANUARY 2024, 5 AUGUST 2024 AND 22 JANUARY 2025

Disciplinary Committee:
Dr Kwa Chong Teck – Chairman
Mr Ong Ming Da – Member
Dr Yeo Kok Beng – Member
Mr Yogeeswaran S/O Sivasithamparam – Observer

Legal Assessor:
Ms Engelin Teh, SC
(Engelin Teh Practice LLC)

Counsel for the SDC:
Mr Kenny Chooi
Mr Joel Yap
(Adsan Law LLC)

Counsel for the Respondent:
Mr Charles Lin
Ms Tracia Lim
Mr Daniel Poh
(Charles Lin LLC)

DECISION OF THE DISCIPLINARY COMMITTEE

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

A. Introduction

1. The Respondent in this Inquiry is **Dr Peh Gek Chuan** ("**Respondent**"). The Respondent is and was at the material time a registered dentist under the Dental Registration Act (Cap 76) (2009 Rev Ed) ("**DRA**") and practising at St Andrew's Dental Surgeons ("**SADS**").

2. Dr SE was at the material time i.e. 30 March 2015 to 24 December 2015, a dentist with conditional registration under section 14A of the DRA employed by SADS. One of the conditions of Dr SE's registration was that he was required to work under the supervision of a Division 1 dentist assigned by his employer.

3. The Respondent was approved and appointed by the Singapore Dental Council ("**SDC**") as the supervisor of Dr SE.

4. These proceedings arose out of a complaint made by the SDC. Pursuant to the said complaint, the Respondent was served with a Notice of Inquiry ("**NOI**") dated 16 September 2019. Following several amendments, the final version of the NOI was re-dated 6 October 2020.

B. Amended Charge

5. The Respondent is charged with professional misconduct under section 40(1)(*d*) of the DRA. The original charge against the Respondent was amended on several occasions by the SDC. The final version of the charge (**"Amended Charge"**) dated 6 October 2020 reads as follows:-

Amended Charge

That you, **DR PEH GEK CHUAN**, are charged that you, over the period 30 March 2015 to 24 December 2015, whilst practising as a dentist at St. Andrew's Dental Surgeons, failed to work in the same clinic as and provide supervision to Dr SE, who was registered as a dentist with conditional registration under section 14A of the Dental Registration Act:

Particulars

(1) The conditions of Dr SE's registration were that he was required (among other things) to work under the supervision of a Division 1 dentist assigned by his employer.

(2) You were approved by the Council as the fully registered dentist to supervise Dr SE.

(3) Pursuant to the Council's Circular SDC 11:4 Vol 4 dated 30 July 2014 and/or the attached *"Roles and Responsibilities"*, Dr SE's employer was to ensure that Dr SE was being supervised at work at all times, and as Dr SE's supervisor, you were required to work in the same clinic premises as him and supervise him at work for the full period of his conditional registration or at all times.

(4) Pursuant to the Council's email to you titled "*Appointed as Supervisor of Dr SE"* and the attached *"Roles and Responsibilities of Supervisor for Dentists under Conditional Registration"*, you were required to work in the same clinic premises as Dr SE and supervise him at work for the full period of his conditional registration or at all times. The said email and attachment are annexed hereto.

(5) Pursuant to the Council's Circular SDC 8:4 Vol 5 dated 29 January 2015, Dr SE was required to work under supervision of a fully registered dentist in a particular employment approved by the Council, and as Dr SE's supervisor, you were required to work in the same clinic as him and supervise him at work.

(6) Over the period 30 March 2015 to 24 December 2015, (i.e. about 39 weeks or 9 months), you did not always work in the same clinic as Dr SE and supervise him at work in the same clinic. Over this period of about 39 weeks or 9 months, based on the records provided by the Singapore Prison Service:

(a) Dr SE was the *only* dentist working in the Prison Complex for about 317.47 hours (i.e. an average of about 8.1 hours a week). Neither you nor any other fully registered dentist from St. Andrew's Dental Surgeons was working in the Prison Complex when Dr SE was working in the Prison Complex during this time.

(b) You worked in the Prison Complex on 15 days for about 58.68 hours only (i.e. an average of about 1.5 hours per week only). During the remaining days of the 39 weeks when Dr SE was working in the Prison Complex, you were not working there.

(c) Out of the 15 days that you worked in the Prison Complex, you and Dr SE were both working in the Prison Complex at the same time (in different Clusters) for about 34.08 hours only (i.e. an average of about 0.9 hours a week only). During the remaining days of the 39 weeks when Dr SE was working in the Prison Complex, you were not working there.

(d) Even during the 15 days that you and Dr SE were both working in the Prison Complex on the same day, you exited the Prison Complex while Dr SE was still working in the Prison Complex on 7 of the 15 days.

(e) Further particulars of paragraph 6(a) above are set out in Table 1 annexed hereto. Further particulars of paragraphs 6(b) to (d) above are set out in Table 2 annexed hereto.

(7) As such, you breached your duties as the supervisor of Dr SE as mentioned in the Council's email to you titled "*Appointed* as *Supervisor of Dr SE*" and the attached "*Roles and Responsibilities of Supervisor for Dentists under Conditional Registration*"; and/or did not observe the Council's pronouncements including Circular SDC 11:4 Vol 4 dated 30 July 2014 and/or the attached "*Roles and Responsibilities*", and Circular SDC 8:4 Vol 5 dated 29 January 2015 (thereby being in breach of Regulation 16 of the Dental Registration Regulations and/or Section 2 of the Council's Ethical Code and Guidelines (August 2006));

and that in relation to the facts alleged you have been guilty of professional misconduct under section 40(1)(*d*) of the Dental Registration Act in that your conduct amounts to such serious negligence that it objectively portrays an abuse of the privileges which accompany registration as a dental practitioner.

6. The annexures/attachments and tables referred to in the Amended Charge were attached thereto.

7. In summary, the SDC alleges that over the material period i.e. 30 March 2015 to 24 December 2015, the Respondent failed to supervise Dr SE in breach of his duties as the supervisor of Dr SE as provided in the Council's email to the Respondent titled "*Appointed* as *Supervisor of Dr SE*" and the attached "*Roles and Responsibilities of Supervisor for Dentists under Conditional Registration*"; and/or did not observe the Council's pronouncements including Circular SDC 11:4 Vol 4 dated 30 July 2014 and/or the attached "*Roles and Responsibilities*", and Circular SDC 8:4 Vol 5 dated 29 January 2015 (thereby being in breach of Regulation 16 of the Dental Registration Regulations and/or Section 2 of the Council's Ethical Code and Guidelines (August 2006)).

8. This Disciplinary Committee was constituted on 13 March 2023. On 16 June 2023, Counsel for the Respondent wrote to the Secretariat informing the Disciplinary Committee that the Respondent would not be contesting the Amended Charge.

C. The Respondent's Plea of Guilt

9. At the hearing of the Inquiry before the Disciplinary Committee on 21 August 2023, the Respondent pleaded guilty to the Amended Charge ("the "**Guilty Plea**"). The Respondent also agreed to the facts relating to the charge as set out in the Agreed Statement of Facts ("**ASOF**"). Based on his agreement to the ASOF and his admission of guilt, the Disciplinary Committee

accepted the Respondent's Guilty Plea and the Respondent was duly convicted of the Amended Charge.

D. The Admitted Facts

10. The admitted facts in relation to the Amended Charge as set out in the ASOF are, *inter alia*, as follows:

(1) The Respondent was, at the material time, employed by SADS and approved by the Council as the fully registered dentist to supervise Dr SE Since then, the Respondent has been practising at, and has remained gainfully employed by, SADS.

(2) Dr SE was, at the material time, employed by SADS and practising as a dentist on conditional registration. The conditions of Dr SE's registration were that he was required (among other things) to work under the supervision of a Division 1 dentist assigned by his employer (i.e. the Respondent).

(3) At the material time, the Respondent was the *only* fully registered dentist who was approved and appointed by the Council to supervise Dr SE. As such, the Respondent was Dr SE's appointed supervisor.

(4) Pursuant to the Council's Circular SDC 11:4 Vol 4 dated 30 July 2014, dentists under conditional registration are required to be supervised by a Division 1 dentist working in the same practice for a specified period (at least 2 years). In the event that the assigned supervisor (the Respondent) was unavailable to oversee the work of the supervisee (Dr SE) for 30 days or more, the clinic must nominate another Division 1 dentist to supervise the conditional registrant (Dr SE). If the assigned supervisor (the Respondent) was away for less than a month, the clinic should ensure that another fully registered Division 1 dentist is present to provide the needed supervision.

(5) Attached to the aforesaid Council's Circular SDC 11:4 Vol 4 dated 30 July 2014 is a document titled "*Roles and Responsibilities*", under which Dr SE's employer was to ensure that:

(i) all dentists under conditional registration must work under the supervision of a registered Division 1 dentist;

(ii) if the assigned supervisor (i.e. the Respondent) was away for less than 30 days, the clinic should ensure that another fully registered Division 1 dentist was present to provide the needed supervision; and

(iii) in the event that the assigned supervisor (i.e. the Respondent) was away for 30 days or more, the clinic should re-nominate and seek approval for a new supervisor to be assigned to the conditional registrant (i.e. Dr SE).

(6) Under the "*Roles and Responsibilities*" document, a supervisor must "*work in the same clinic premises as his/her supervisee*". The Respondent, as the assigned supervisor, was to, *inter alia*:

(i) provide proper guidance and training to the supervisee (i.e. Dr SE) in the various areas of practice of dentistry during the period of conditional registration;

(ii) ensure periodic discussions/meetings with the supervisee (i.e. Dr SE) so as to review his progress and make assessment of his practical training;

(iii) ensure that the conduct and practice of the supervisee (i.e. Dr SE) adhered to the regulations and guidelines of the Council, and was befitting of the dental profession; and

(iv) report to the SDC immediately if the dentist (i.e. Dr SE) was considered unsafe to practise in his current place of practice.

(7) By way of an email from the Council sent to the Respondent on 18 June 2015 titled "*Appointed as Supervisor of Dr SE*" and the attached "*Roles and Responsibilities of Supervisor for Dentists under Conditional Registration",* the Respondent was informed, *inter alia*, that:

(i) he had been nominated by SADS as the supervisor of Dr SE with effect from 30 March 2015, and that Dr SE was required to work under the supervision of a Division 1 dentist (i.e. the Respondent);

(ii) he was required (as Dr SE's supervisor) to work in the same clinic premises as Dr SE; and

(iii) in the event that the Respondent was unable to continue his supervisory duties for the full period of conditional registration, he should inform the Council immediately and the Council would write to the clinic to re-nominate a new supervisor.

(8) Pursuant to the Council's Circular SDC 8:4 Vol 5 dated 29 January 2015, Dr SE was required to work under supervision of a fully registered dentist in a particular employment approved by the Council, and the supervisor (i.e. the Respondent) must work in the same clinic as his supervisee (i.e. Dr SE).

(9) The aforesaid Council's Circulars were "pronouncements" of the SDC within the meaning of Regulation 16 of the Dental Registration Regulations, and the Respondent was aware that he had to observe these pronouncements on professional matters and professional ethics.

(10) the Respondent's supervision duties/responsibilities required him to, inter alia, be present in the *same physical premises* as Dr SE and/or be in *close physical proximity* to Dr SE to supervise the treatment(s) that each and every patient received from Dr SE. Dr SE had no right to treat patients independently in Singapore, no matter how briefly, at any given point in time.

(11) Over the period 30 March 2015 to 24 December 2015 (i.e. about 9 months), despite knowing that Dr SE had to be supervised by the Respondent at all times, the Respondent did not always work in the same clinic premises as and/or in physical proximity to Dr SE, and supervise him at work in the same clinic premises. Over this period, based on the records provided by the Singapore Prison Service:

(i) Dr SE worked in the Changi Prison Complex ("**Prison Complex**") for 178 days;

(ii) Dr SE was the *only* dentist working in the Prison Complex for 75 days out of the 178 days (for about 317.47 hours). Neither the Respondent nor any other fully registered Division 1 dentist from SADS was working in the Prison Complex at all when Dr SE was working independently in the Prison Complex during these 75 days;

(iii) The Respondent only worked in the Prison Complex on 15 days out of the 178 days (for about 58.68 hours only). During the remaining days of the 9-month

period when Dr SE was working in the Prison Complex (i.e. 163 days out of the 178 days), the Respondent was *not* working in the Prison Complex at all;

(iv) The Respondent failed to comply with his supervision duties/responsibilities in respect of Dr SE for 75 days over a 9-month period;

(v) Out of the 15 days that the Respondent worked in the Prison Complex, he and Dr SE were both working in the Prison Complex at the same time (but in different Clusters) for about 34.08 hours only (i.e. an average of about 0.9 hours a week only); and

(vi) Even during the 15 days that the Respondent and Dr SE were both working in the Prison Complex on the same day, the Respondent had exited the Prison Complex while Dr SE was still working in the Prison Complex on 7 of the 15 days.

(12) As such, the Respondent breached his duties as the supervisor of Dr SE as mentioned in the Council's email to the Respondent titled "*Appointed as Supervisor of Dr SE*" and the attached "*Roles and Responsibilities of Supervisor for Dentists under Conditional Registration*"; and/or did not observe the Council's pronouncements including Circular SDC 11:4 Vol 4 dated 30 July 2014 and/or the attached "*Roles and Responsibilities*", and Circular SDC 8:4 Vol 5 dated 29 January 2015 (thereby being in breach of Regulation 16 of the Dental Registration Regulations and/or Section 2 of the Council's Ethical Code and Guidelines (August 2006)).

(13) Accordingly, the Respondent is guilty of professional misconduct under section 40(1)(*d*) of the DRA in that the Respondent's conduct amounts to such serious negligence that it objectively portrays an abuse of the privileges which accompany registration as a dental practitioner.

E. Parties' Submissions on Mitigation and Sentence

11. The Disciplinary Committee would in the usual course have given directions for parties to provide their respective submissions on mitigation and sentencing. However, Counsel for the SDC, Mr Chooi, pointed out that if there would be disputes of facts in the course of submissions by the Respondent on mitigation, he would be requesting for a Newton hearing in order that such disputes of facts could be determined by the Disciplinary Committee before the SDC

proceeded with its submission on sentencing. Mr Chooi submitted that based on what he knew the Respondent's position to be, the mitigation plea would contain facts which would be in dispute, thereby necessitating a Newton hearing.

12. Counsel for the Respondent, Mr Lin, submitted that Mr Chooi's submission on the necessity of a Newton hearing was premature and without basis as the Respondent was not disputing any facts in the ASOF and he had not even filed his mitigation plea yet; whether there would be a need for a Newton hearing must depend on what his mitigation plea states.

13. Mr Chooi agreed that he would await the Respondent's submission of his mitigation plea before taking a position as to whether a Newton hearing would be necessary.

14. At the Inquiry hearing on 21 August 2023, in light of parties' aforesaid positions, the Disciplinary Committee gave the following directions:

    (a) The Respondent was to submit his mitigation plea by 11 September 2023;

    (b) Thereafter, both parties' counsel were to confer with each other and agree on the disputed facts/issues that might arise from the mitigation plea and whether such facts/issues would necessitate a Newton hearing by 25 September 2023; and

    (c) In the event that parties were unable to agree, counsel were to submit their respective submissions to the Disciplinary Committee by 16 October 2023 setting out, *inter alia*, the disputed facts/issues, their positions as to whether a Newton hearing would be necessary and the reasons therefor. The submissions were to be supported by the relevant legal authorities.

15. The Respondent's Counsel submitted the Respondent's mitigation plea on 11 September 2023 in which he stated that he was no longer relying on the matters that the SDC had anticipated might give rise to a Newton hearing. In response, the SDC's counsel confirmed that he would not be requesting for a Newton hearing.

16. The issue then arose as to whether the Respondent's mitigation plea was complete. Counsel for the SDC took the position that the Respondent's mitigation plea was incomplete as it did not include the Respondent's proposed sentence and the reasons and justifications therefor. The crux of the SDC's arguments was that the Respondent must submit a full mitigation plea that included the Respondent's sentencing position before the SDC filed its sentencing submissions.

17. The Respondent's Counsel disagreed with the SDC's position and stated that sentencing submissions were legal submissions on the application of the law on sentencing, taking into consideration the ASOF and the mitigation plea. Mr Lin asserted that the SDC, being the prosecutor in the proceedings should assist the Disciplinary Committee by presenting its sentencing submissions, setting out the general principles and their application to the case; and that the SDC's position was effectively that the accused person should be proposing his own sentence and providing the reasons and justifications in support of his proposed sentence.

18. A hearing was convened on 24 January 2024 to address the parties' aforesaid positions. The Disciplinary Committee, having read the earlier submissions of both parties and after hearing further oral submissions, agreed with the submission of the Respondent's Counsel.

19. At the conclusion of the hearing on 24 January 2024, the following directions were given by the Disciplinary Committee: -

(a) Counsel for the SDC was to file its sentencing submissions by 28 February 2024;

(b) The Respondent's counsel was to file its response to the SDC's sentencing submissions by 3 April 2024;

(c) Counsel for the SDC was to file its response by 2 May 2024; and

(d) A hearing would be fixed on a date to be notified by the Secretariat.

F. *Wong Meng Hang* Framework for Sentencing

20. Parties filed the aforesaid submissions as directed by the Disciplinary Committee together with their respective sentencing precedents and Bundle of Authorities. From the outset, Counsel for the SDC and for the Respondent held differing positions as to whether the sentencing matrix set out in **Wong Meng Hang v Singapore Medical Council and other matters [2019] 3 SLR 526** ("***Wong Meng Hang***") applied to the present case.

21. In his written submissions, counsel for the SDC submitted that the 4-step test in *Wong Meng Hang* had been affirmed in the Sentencing Guidelines for Singapore Medical Disciplinary Tribunals published on 15 July 2020 and applied to the present case. On the other hand, counsel for the Respondent submitted that the sentencing matrix in *Wong Meng Hang* did not apply to

the present case and was only applicable to clinical care causing harm to a patient and not to other forms of medical conduct and the Respondent's failure to supervise Dr SE was not misconduct relating to clinical care.

22. As parties' counsel had indicated that they wished to make oral submissions, a hearing was convened on 5 August 2024 for parties to make oral submissions on sentencing.

23. Shortly before the hearing, on 24 July 2024, the High Court delivered its decision in the case of **Amit Patel v Singapore Dental Council [2024] SGHC 188** ("***Amit Patel***"). In *Amit Patel*, the disciplinary committee had found Dr Patel guilty of five charges of professional misconduct under s 40(1)(*d*) of the DRA for failing to supervise one Dr Low Ee Lyn. On appeal by Dr Patel, the High Court dismissed Dr Patel's appeal against conviction but allowed his appeal against the orders made. The learned judge, Hoo Sheau Peng J, held that the *Wong Meng Hang* framework for sentencing would apply to disciplinary proceedings against dental professionals and applied the said framework in that case.

24. As the Amended Charge against the Respondent is premised on the same provision of the DRA as that in *Amit Patel*, Counsel were asked to address the Disciplinary Committee on whether the *Wong Meng Hang* framework would apply to the present case in light of the High Court's decision in *Amit Patel*. At the hearing on 5 August 2024, Counsel for the Respondent accepted that the *Wong Meng Hang* sentencing framework would apply to the present case.

25. As set out in *Amit Patel*, the 4-step approach in the *Wong Meng Hang* framework are:

Step 1 – to identify the appropriate level of harm and the level of culpability (i.e. the harm-culpability matrix) to determine the seriousness of the offence;

Step 2 – to identify the applicable indicative sentencing range;

Step 3 – to identify the appropriate starting point within the indicative sentencing range;

Step 4 – to make adjustments to the appropriate starting point to take into account any offender-specific factors.

26. The SDC's submissions on the 4-step approach are as follows:-

(a) With regard to Step 1 –

(i) Level of harm – Given the disciplinary committee's finding in Dr SE's case that the level of harm occasioned by Dr SE was moderate; and the harm occasioned by him (as supervisee) would generally be similarly applicable to the Respondent as the supervisor who had failed to supervise Dr SE and thereby allowed him to treat the patients unsupervised, the level of harm occasioned by the Respondent would be at least moderate. However, as the Respondent's misconduct was in his capacity as supervisor, the harm caused by the Respondent should be on the high end of moderate.

(ii) Level of culpability – Given the Disciplinary Committee's finding in Dr SE's case that Dr SE's culpability was at least medium; and the Respondent, being a senior dentist and the supervisor of Dr SE who was required to educate and guide Dr SE as the conditionally registered dentist, instead, permitted Dr SE to treat numerous vulnerable patients without any supervision, he would be more culpable than Dr SE and as such, his culpability should be at the high end of medium or the lower end of high.

(b) With regard to Step 2 – the applicable indicative sentencing range is a term of suspension of 1 to 2 years.

(c) With regard to Step 3 – the starting point should be a suspension of at least 22 months based on a non-supervision period of 75 days alone.

(d) With regard to Step 4 – the following aggravating factors should be taken into account:

(i) The seniority of the Respondent is an aggravating factor as such seniority would attract a heightened sense of trust and confidence which would result in an amplified negative impact when such an offender is convicted. As such, the SDC submits that based on the seniority of the Respondent alone, there should already be an uplift of two months to the starting point of a suspension of at least 22 months, thus bring the total sentence to 24 months.

(ii) The Respondent's multiple breaches in relation to a number of different patients is an aggravating factor. In addition to the failure to supervise Dr SE for the 75 days that the Respondent had pleaded guilty to, the SDC submits that the Disciplinary Committee should take into account the Respondent's

additional 95 days of breach (outside of the 75 days in the Amended Charge) comprising –

(a) 7 of the 15 days that the Respondent worked in the Prison Complex when he exited the Prison Complex while Dr SE was still working in the Prison Complex in breach of his supervision duties; and

(b) an additional 88 days (on top of the aforesaid 7 days) when the Respondent failed to supervise Dr SE in breach of his supervision duties.

(iii) On the premise that Dr SE had treated five patients on each of the additional 95 days (which the disciplinary committee in Dr SE's inquiry had stated was "*an extremely low number in any dental practice*" per day), the additional number of patients that the Respondent had exposed to potential harm would be at least an additional 475 patients, bringing the total to 850 patients if the period of 170 days (i.e. 75 days + 95 days) were to be considered. The SDC submits that such additional breaches in relation to the numerous additional patients would also warrant an uplift from the starting point of at least 22 months.

27. The Respondent's submissions on the 4-step approach are as follows:-

(a) With regard to Step 1 –

(i) Level of harm – the level of harm is slight as no harm had been caused to any patient from the occasions of non-supervision of Dr SE during the relevant period. Potential harm should only be considered if there was a sufficient likelihood of harm arising. Such likelihood of harm is low as Dr SE was an experienced dentist who had practised in Australia and he was restricted to performing simple procedures. Further, there was in place the Internal Safety Measures in the Prison Complex and while the Respondent did not physically supervise Dr SE's work, he and his employers took measures to review Dr SE's work.

(ii) Level of culpability – the level of culpability is low as the Respondent's lapse in supervision was an honest omission or inadvertence arising from his reliance

on his employers and his and his employers' misunderstanding on the guidelines and rules as to what constitutes adequate supervision.

(b) With regard to Steps 2 and 3 – the applicable indicative sentencing range based on the level of harm being slight and the level of culpability being low would be a fine of not more than $10,000 or punishment not amounting to a suspension.

(c) With regard to Step 4 –

(i) breaches outside the 75 days in the Amended Charge cannot be considered as the gravamen of the Amended Charge is the 75 days only. The ASOF does not state whether there has been a breach outside of the 75 days and it is inappropriate to rely on such breaches (if any).

(ii) The SMC Sentencing Guidelines state that multiple charges are an aggravating factor but the Respondent is charged with and pleaded guilty to the failure to supervise for 75 days only and cannot be punished outside the scope of the 75 days.

(iii) The Respondent's timely plea of guilt has mitigating value.

(iv) The Respondent's good character and remorse has mitigating value.

(v) The inordinate delay in prosecution should merit a discount of 80% to the sentence.

28. With regard to the parties' submissions on Step 4, i.e. whether to make adjustments to the appropriate starting point to take into account any offender-specific factors, the Disciplinary Committee will need to consider whether there were mitigating and/or aggravating factors which would warrant any adjustments to the starting point.

G. Mitigating and Aggravating Factors

29. The Respondent submits that the following are mitigating factors:-

(a) The Respondent had shown contrition and remorse when he provided an unreserved apology on 8 June 2017 in his written explanation, admitting his non-compliance with adequate supervision;

(b) The Respondent's timely plea of guilt in that he had elected to plead guilty as soon as this Disciplinary Committee was constituted in June 2023;

(c) The Respondent had an unblemished record until this incident in 30 March 2015;

(d) The Respondent's good character as evidenced by testimonials;

(e) The Respondent's contribution to society and the dental profession;

(f) The Respondent's commitment to implementing remediation measures in the event that he takes on supervision responsibilities again;

(g) The Respondent did not make any financial gain from Dr SE's treatment; he received only a stipend of $300 per session at the Prison Complex;

(h) The nature of the breach was based on the Respondent's misunderstanding of the relevant guidelines and circulars pertaining to supervision and he did not intentionally set out to flout the guidelines on supervision of conditionally registered dentists for personal gain or profit; and

(i) The Respondent was constrained in his supervision of Dr SE due to the structure of a clinic within the Prison Complex which was different from a regular dental clinic. While the Respondent did not personally supervise Dr SE, he and his employers took measures to review Dr SE's work.

30. In response, the SDC submits that the Respondent does not have the benefit of mitigating factors and that the following aggravating factors should be taken into account:-

(a) The Respondent's plea of guilt was not a timely plea but a belated plea –

(i) He had fought and contested his case before the previous Disciplinary Committee all the way to a trial date being fixed to commence on 13 October 2020 before he applied to recuse the previous disciplinary committee. As such,

when the present Disciplinary Committee was constituted, all relevant documents for trial in the present Inquiry hearing had already been filed by both parties.

(ii) The Respondent's Inquiry would have proceeded to trial before the previous disciplinary committee on 13 October 2020 but for his various applications to the previous disciplinary committee –

(1) The Respondent's application on 6 February 2020 to request for his Inquiry to be heard separately from Dr SE (but by the same disciplinary committee);

(2) The Respondent's application on 5 October 2020 to object to the SDC's amendment of the charge which application was dismissed by the previous Disciplinary Committee on 6 October 2020; and

(3) The Respondent's application on 18 November 2020 to recuse the previous Disciplinary Committee, and for a new Disciplinary Committee to be constituted.

(iii) It was only after the present Disciplinary Committee was constituted and new trial dates were issued on 14 June 2023 that the Respondent indicated on 16 June 2023 that he wished to take a certain course of action.

(b) The Respondent's decision to plead guilty came after the Grounds of Decision of the Disciplinary Committee for Dr SE's inquiry was published in which Dr SE was convicted and sentenced for his failure to practise under the supervision of the Respondent. In light of the aforesaid and the Sentencing Guidelines which state at [70(a)] that "*the mitigating weight would be less where there is overwhelming evidence against the offender such that the prosecutor would not have any difficulties in proving its case against him*", the SDC submits that no (or negligible) mitigating weight should be accorded to the Respondent's belated plea of guilt as the Respondent decided to plead guilty only when he knew that his "*game was up*".

(c) The Respondent's alleged good character, volunteering and contributions to society are irrelevant and are not mitigating factors. In that regard, the SDC refers to the Sentencing Guidelines at [70(b)] which states:

> "… a doctor's general good character and past contributions to society (e.g. volunteer work and contributions to charities) in and of itself will not be regarded as a mitigating factor because it is not the DT's place to judge the moral worth of the doctor. It has no relevance to the doctor's culpability or the harm he has caused by the commission of the offence, and may be perceived as unfairly favouring more privileged offenders who have more opportunities to make such societal contributions as compared to less privileged offenders."

(d) The SDC disputes the Respondent's allegation that he did not make financial gain from Dr SE's treatment. Apart from the stipend of $300 per session at the Prison Complex, the Respondent stood to generate a much larger income by treating his private patients (at private/unsubsidised rates) at his clinic instead of treating the inmate patients (at fixed/subsidised rates) at the Prison Complex. As such, it was more lucrative for the Respondent to be working at his private clinic than at the Prison Complex and he stood to gain financially from the breach of his supervision duties.

(e) The Respondent's allegations on the supposed "*structure of a clinic within Changi Prison Complex*" and the purported "*measures to review Dr SE's work*" are inadmissible and/or untenable as they constitute fresh evidence.

(f) The Respondent's breach of his supervision duties is the most egregious among all the non-supervision cases. It is unprecedented in terms of the extent and duration of the breaches and the potential number of patients who were put at risk of harm.

(g) In view of the lack of mitigating factors and the aforesaid aggravating factors, the SDC proposed that the starting point of 22 months of suspension for the Respondent should be uplifted by at least two months to 24 months.

31. The Respondent's reply to SDC's aforesaid submissions are summarised as follows:-

(i) With regard to the SDC's submission that the Respondent's plea was not timely but belated, the Respondent points out that his initial plea of guilt on 18 February 2020 was not accepted by the previous Disciplinary Committee which had concerns about the charge. It was therefore reasonable for the Respondent to contest the charge. Claiming trial was not an aggravating factor.

(ii) With regard to the Respondent's application for his Inquiry to be heard separately from Dr SE's inquiry, the Respondent had intended to pursue a certain course of action while

Dr SE had intended to contest the charge against him. As such, it was reasonable for both inquiries to be heard separately.

(iii) With regard to the Respondent's application to object to the SDC's amendment of the charge, the outcome of the application to amend the charge was that the Inquiry was scheduled to commence on 13 October 2020 instead of 12 October 2020 i.e. there was no delay. The Inquiry did not commence on 13 October 2020 due to reasons beyond the Respondent's control.

(iv) The Respondent disagrees that he had chosen to plead guilty because Dr SE's conviction showed that his "*game was up*". The roles and responsibilities of supervisors and supervisees are different and should not be conflated.

(v) The Respondent submits that his plea of guilt has mitigating value pursuant to the case of **Angliss Singapore Pte Ltd v PP [2006] 4 SLR(R) 653** ("***Angliss***"). The Respondent also refers to Part III of the Guidelines on Reduction in Sentences for Guilty Pleas in his submission that the Disciplinary Committee can give a 30% discount off the sentence in the present case as the Respondent had decided to plead guilty on 26 June 2023, shortly after the Disciplinary Committee was constituted on 14 June 2023.

(vi) With regard to the Respondent's application to recuse the previous Disciplinary Committee, the Respondent submits that although the previous Disciplinary Committee recused itself on 27 November 2020, the Respondent only received notice of the constitution of the new Disciplinary Committee on 14 June 2023, a delay of over 2.5 years. There was also a delay of 2 years, 4 months and 3 weeks between the issuance of the Notice of Complaint and the NOI. Overall, there was a delay of 59 months which delay cannot be attributed to the Respondent, and during this period, he was left in limbo, wondering when his Inquiry would commence.

(vii) The Respondent submits that there should be no uplift to the sentence and that there should be a sentencing discount of no less than three months for his unblemished record and good character and for having shown remorse and insight. In addition, the Respondent submits that a further sentencing discount of 30% should be granted for the Respondent's timely plea of guilt and a further 80% discount for the inordinate delay of 59 months. The Respondent submits that the applicable sentence under the *Wong Meng Hang* sentencing framework should be a letter of warning, or in the alternative, a fine of $10,000.

32. The SDC in its final response to the Respondent's aforesaid reply maintains its earlier positions and submits, *inter alia*, as follows:

(a) The Respondent's plea of guilt has no (or negligible) mitigating value as it was not a timely plea of guilt but one that was made very belatedly. At the second inquiry hearing by the previous Disciplinary Committee on 18 February 2020, the Respondent was given time to consider whether he wished to plead guilty to the charge. However, at the next hearing on 13 August 2020, the Respondent had resolutely told the previous Disciplinary Committee that he was not pleading guilty and would claim trial and contest the charge. He had only pleaded guilty to the Amended Charge at a hearing before this Disciplinary Committee on 21 August 2023.

(b) By then, and in light of the conviction of Dr SE, the Respondent would have no defence to his breach of failing to supervise Dr SE for 75 days where the objective evidence showed that the Respondent did not enter the Prison Complex on these days. The same evidence that were considered by the disciplinary committee in Dr SE's case were tendered to the present Disciplinary Committee. Given the many common issues or overlap of issues in both Dr SE's inquiry and the Respondent's present Inquiry, and given that Dr SE was convicted and sentenced for his failure to be supervised by the Respondent, the SDC submits that the evidence against the Respondent was so overwhelming that it was not surprising that the Respondent decided to plead guilty after the Grounds of Decision in Dr SE's case was published.

(c) The SDC referred to *Angliss* which stated at [77] that "*a plea of guilt can be taken into consideration in mitigation when it is motivated by genuine remorse, contriteness or regret and/or a desire to facilitate the administration of justice*". The SDC submits that in light of the aforesaid events, the Respondent's plea of guilt was not so motivated.

(d) The Guidelines on Reduction in Sentences for Guilty Pleas ("**SAP Guidelines**") are not applicable to and/or binding on any court or this Disciplinary Committee. In any event, the SAP Guidelines state that a plea of guilt can be taken into consideration by the Courts if there is an early plea of guilt which was not the case here.

(e) The issue of alleged delay in prosecution in the present case does not merit a sentencing discount. In the case of **Ang Peng Tiam v Singapore Medical Council [2017] 5 SLR 356** ("***Ang Peng Tiam***"), the court stated at [111] that even where there has been inordinate delay in prosecution, "*there are a number of conditions that must be met*

before delay can be considered a mitigating factor for the purpose of sentencing" and that any sentencing discount is *"subject to certain qualifications"*. *Ang Peng Tiam* further states at [109] that even where the three cumulative conditions are met by the offender, public interest may "*take precedence"*, and that any sentencing discount may be "*outweighed by the public interest which demands the imposition of a heavier penalty"*. The 3 cumulative conditions are:

(i) there has been a significant delay in prosecution ("**1st Condition**");

(ii) the delay has not been contributed by the offender ("**2nd Condition**"); and

(iii) the delay has resulted in real injustice or prejudice to the offender ("**3rd Condition**").

(f) **With regard to the 1st Condition**, the SDC submits that there had been no inordinate delay in the present Inquiry. On the specific facts of the Respondent's case, the disciplinary committee's decision in Dr SE's inquiry on the issue of delay is highly relevant to the Respondent's Inquiry as the Notices of Complaints were made against Dr SE and the Respondent respectively at the same time (on 23 May 2017) and the Notices of Inquiry were also issued against Dr SE and the Respondent at the same time (on 16 September 2019). The Disciplinary Committee in Dr SE's inquiry has found that the period of 2.25 years (or 27.5 months) between the date of the Complaint and the date of the NOI was not an inordinate delay. As such, the SDC submits that the same period of 2.25 years (or 27.5 months) between the date of the Complaint and the NOI for the present Inquiry would be reasonable, given that time was needed for quasi-criminal processes to run their course and in the present case, an arduous process was involved in relation to dental treatment in a prison complex. The SDC produces a comparison chart to support its contention that the period of 2.25 years between the date of the Notice of Complaint and the NOI does not constitute inordinate delay. The SDC thus submits that the Respondent has not satisfied the 1st Condition under *Ang Peng Tiam*.

(g) **With regard to the 2nd Condition**, the SDC submits that if there was any delay, the Respondent had contributed to the delay by his various applications to the previous disciplinary committee and by his own conduct and/or inaction in respect of the constitution of the fresh disciplinary committee –

(i) On 18 February 2020, the Respondent applied for his Inquiry to be heard separately from Dr SE (but by the same Disciplinary Committee). This was because the Respondent claimed that he intended to take a certain course of action while Dr SE intended to contest the charge against him. This contributed to the Inquiry against the Respondent being held back and postponed as the same Disciplinary Committee had to then deal with the two inquiries separately and at different times, one after the other. Shortly after the Respondent's application on 18 February 2020, the COVID-19 circuit breaker and other consequential restrictions were imposed which caused the Inquiry hearing to be adjourned by about 6 months. The Respondent subsequently changed his position at the next hearing on 13 August 2020 and informed the disciplinary committee that he wished to claim trial and contest the charge.

(ii) The Respondent also resisted the SDC's request to amend the NOI. A hearing was convened on 30 September 2020 at the request of the Respondent. As a result of the Respondent's objection, the SDC was directed to make a formal application. This was resisted by the Respondent and a hearing ensued during which the Respondent's objections were dismissed by the Disciplinary Committee. The Respondent's baseless resistance to the SDC's application to amend the charge resulted in a further delay to the proceedings.

(iii) In addition to resisting the SDC's application to amend the NOI, the Respondent took out his own application to object to the SDC's formulation of his charge which application was dismissed by the previous disciplinary committee. This resulted in yet another delay. The Respondent then asked for his trial to be postponed to a later date but the Disciplinary Committee did not agree with the Respondent that the circumstances warranted granting him a long postponement and allowed the trial to be postponed for just a day from 12 October to 13 October 2020.

(iv) The Respondent objected to the SDC's application on 16 September 2020 to hold a joint inquiry for Dr SE and himself despite the SDC's submission that a joinder of the two inquiries would lead to an expeditious disposal of the two inquiries. The SDC submitted that the inquiries had started out as a joint inquiry but was separated only because the Respondent had previously applied for separate inquiries on the basis that he was intending to take a certain course of action while Dr SE was claiming trial. As the Respondent had retracted his

position and was intending to claim trial, the basis for separate inquiries would no longer stand. As the Respondent maintained his objections, the disciplinary committee did not allow the SDC's application for a joint trial and Dr SE's inquiry was directed to proceed on 12 October 2020 while the Respondent's trial dates were vacated since the same Disciplinary Committee was hearing both inquiries separately. The Respondent's objection to a joinder has resulted in the Respondent's hearing being postponed and a further delay.

(v) On 27 October 2020, the Respondent applied for the previous Disciplinary Committee to recuse itself, and for a new Disciplinary Committee to be constituted to hear his Inquiry, submitting that there was apparent bias if the same Disciplinary Committee was to hear and decide both Dr SE's and the Respondent's inquiries one after the other. As a result of the Respondent's applications, the Disciplinary Committee voluntarily recused itself from hearing the Respondent's Inquiry. Had it not been for the Respondent's applications to recuse the previous Disciplinary Committee and for a fresh Disciplinary Committee to be constituted to hear his Inquiry, trial dates would have been re-fixed earlier. Instead, the parties had to await the constitution of the new Disciplinary Committee before any trial dates could be fixed.

(vi) The Respondent claimed at [88] of his Sentencing Submissions that he was left in "*limbo*" wondering when his Inquiry would commence. This is not the case.

(vii) The Respondent's 1st inquiry hearing was held on 11 February 2020 and his trial would have been completed shortly after 12 October 2020 but for his various applications to the Disciplinary Committee and/or his objections to the SDC's applications set out above.

(viii) Bearing in mind the circuit breaker and its extension, and the consequential restrictions on physical meetings from early April 2020 until around August 2020, the SDC's prosecution of the Respondent's Inquiry was expeditious (as his inquiry hearing would have been completed within a short period of about 6 months excluding the aforesaid period).

(ix) When the previous Disciplinary Committee recused itself on 27 November 2020 (as a result of the Respondent's recusal application), the said Disciplinary Committee had instructed the "*parties*" (i.e. the SDC and the Respondent) to

communicate with the Secretariat as to the constitution of a fresh Disciplinary Committee.

(x) As such, if the Respondent was truly wondering when the fresh Disciplinary Committee would be constituted and/or when new trial dates would be fixed for his inquiry, all he needed to do was to write to the Secretariat in accordance with the previous Disciplinary Committee's instruction.

(xi) Even if the previous Disciplinary Committee had not instructed the "*parties*" to communicate with the Secretariat as to the constitution of a fresh Disciplinary Committee, the Respondent was fully at liberty, on his own accord, to write to the Secretariat to make the relevant enquiry.

(xii) The Respondent had chosen to leave matters in "*limbo*". His own conduct and/or inaction had contributed to the fresh Disciplinary Committee not being constituted earlier and/or new trial dates being fixed earlier.

(xiii) It is therefore opportunistic and/or an afterthought for the Respondent to now refer to the period between his recusal of the previous Disciplinary Committee and the constitution of the fresh Disciplinary Committee to submit that this amounted to a delay in prosecution.

(xiv) The SDC submits that it had prosecuted the Respondent's Inquiry expeditiously, and it was the Respondent's own conduct and/or inaction that had caused or contributed to any "*delay*" (if at all) in these proceedings.

(xv) As such, the Respondent has failed to satisfy the 2nd Condition.

(h) **With regard to the 3rd Condition**, the SDC submits that even if there was any "*inordinate delay*" in prosecution, the Respondent has not suffered real injustice or prejudice as a result thereof.

(i) The SDC refers to *Ang Peng Tiam* where the court stated what would amount to "prejudice" in the context of disciplinary proceedings for professional misconduct:

> "116 In the context of disciplinary proceedings for professional misconduct, such prejudice might be exacerbated if, for instance, news

> that a doctor has been investigated for professional misconduct has become public such that he has had to run his practice under the cloud of a tarnished name and an impending prosecution which remains in the public eye even as it is delayed.
>
> 117 In appropriate cases, other types of prejudice, such as the loss of income or career opportunities, may also be taken into consideration. In all cases, however, the burden is on the offender to prove that he has suffered particular prejudice by reason of the delay."

(j) The SDC also refers to the **Grounds of Decision of Goh Yong Chiang Kelvin** ("***Kelvin Goh***") at [69] in relation to a doctor's failure in that case to prove "prejudice" beyond the "*anxiety and mental anguish he might have suffered while going through the disciplinary process*":

> "69. More significantly, we noted that the Respondent did not show that he suffered 'real injustice or prejudice' beyond the **anxiety and mental anguish** he might have suffered while going through the disciplinary process. The **Respondent** did not provide any evidence to show that his professional practice suffered as a result. Nor was there any evidence put before us that pointed to 'real injustice or prejudice'. It would have been otherwise if the **Respondent** provided evidence to show that as a result of the proceedings he was not able to work as doctor, for example. There was no such evidence."

(k) The SDC submits that based on *Ang Peng Tiam* and *Kelvin Goh*, the burden is on the Respondent to prove that he had suffered "*particular prejudice*" by reason of a delay, and also to specify what the purported "prejudice" is. In this regard, *Ang Peng Tiam* has stated at [117] that *"[i]n all cases, however, the burden is on the offender to prove that he has suffered particular prejudice by reason of the delay*."

(l) However, the only "prejudice" that the Respondent has mentioned is a bare sentence that it is an "*inference*" that "*Dr Peh suffered anxiety and distress from the inquiry*". The Respondent has not shown that he had suffered a loss of income and career opportunities, and that his prosecution has become public news.

(m) Apart from a submission of a mere "*inference*" that he had suffered "*anxiety and distress*" from the inquiry, the Respondent did not provide any evidence that he had suffered "*particular prejudice*" because of any purported delay in the inquiry, or "*provide any evidence to show that his professional practice suffered as a result*".

(n) According to *Kelvin Goh*, a submission of "*anxiety and mental anguish*" would not suffice to evidence "*real injustice or prejudice*" as required under *Ang Peng Tiam*. In

this regard, the Disciplinary Tribunal in *Kelvin Goh* stated that the respondent had not provided evidence to show that as a result of the proceedings, he was not able to work as a doctor.

(o) Although the onus is not on the SDC to show that the Respondent did not suffer from "*particular prejudice*", the SDC submits that the Respondent has remained gainfully employed with SADS (i.e. the same clinic he was working for) since the time of the Complaint until now. In other words, the Respondent's professional practice has not suffered as a result of the inquiry.

(p) Further, it appears that the Respondent continues to hold the numerous appointments and memberships in the various organisations listed at [112] of the SDC's Sentencing Submissions. The Respondent has not asserted that he had lost any of these appointments/memberships because of a "delay" in his inquiry.

(q) The fact that the Respondent was Dr SE's supervisor at the material time and that he is undergoing an inquiry for professional misconduct is not "*in the public eye*" and has not been made public to date.

(r) In light of the above, the Respondent has failed to satisfy the 3rd Condition.

33. The SDC submits that the burden is on the Respondent to prove that he has met all three cumulative conditions stipulated at [109] of *Ang Peng Tiam*, before any sentencing discount may even be considered and that the Respondent had failed to do so.

Public interest considerations which override any sentencing discount

34. It is the SDC's submission that even if the Respondent was able to prove that all the three cumulative conditions have been met, the rationale for any sentencing discount may be entirely overridden by the 4th factor of countervailing public interest considerations as set out in *Ang Peng Tiam* at [118]:

> "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**...As stated (at [89] above), 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 of the profession, as well as the need to protect the public from the

> potentially severe outcomes arising from the actions of errant members of the profession."

in *Wong Meng Hang* at [103] and [104] as follows:

> "103 We accept that the first three requirements have been met. The notices of inquiry were only received … more than three years after the doctors had received the notices of complaint…
>
> 104 But in spite of the considerable delay in the proceedings, we decline to place any weight on this in the present case on the basis of the **fourth factor** we articulated in Ang Peng Tiam. As we have explained and reiterated at [26] and [99] above in respect of personal mitigating circumstances, any justification for a sentencing discount in cases of delay must be carefully considered against the **public interest**. In view of the gravity of Dr Wong's misconduct, the need to ensure fairness to the individual offender in this case is **entirely overridden** by the wider considerations of general deterrence and the need to uphold the standing of the medical profession."

and in *Kelvin Goh* at [68]:

> "68. If we had found inordinate delay, we would have nevertheless, found that **public interest** considerations would have outweighed the need to give a discount in the sentencing of the Respondent. While it was recognised that the **anxiety and mental anguish** hanging over the Respondent during the period of delay could be taken into account as a mitigating factor in sentencing, it was equally recognised that the underlying rationale of 'fairness to the offender may be outweighed by the **public interest** which demands the imposition of a heavier sentence' – see Ang Peng Tiam at [118]. Here the twin demands of deterrence and the upholding of the reputation of the medical profession would have prevented the application of a discount to any sentence imposed. The importance of the standing and trustworthiness of the medical profession could not be taken lightly having regard to the profession's role in society."

35. The SDC submits that public interest considerations are paramount and in the present case, there is a strong public interest to, *inter alia*, protect public confidence and the reputation of the dental profession, as well as the need to protect the public from potentially severe outcomes arising from the actions of the Respondent in breaching his supervision duties/responsibilities for a lengthy period of time.

36. The SDC submits that the supervision standard and requirements were critical to, *inter alia*, protect patients from harm or potential harm, protect members of the public who seek dental care, and maintain public confidence in the dental profession and refers to the **Grounds of Decision of Disciplinary Committee Inquiry against Dr Law Lay Yin** ("***Law Lay Yin***") at [20] as follows:

> "However, the DC is mindful of its duty to uphold the highest standards of professional practice and conduct, protect members of the public who seek or depend on dental care, and maintain public confidence in the trustworthiness and integrity of the dental profession. The requirement for supervision of a conditionally registered dentist is imposed for the purpose of ensuring that the dentist observes and abides by those standards, so that his or her patients are protected from harm, and thereby maintain public confidence in the dental profession."

37. The SDC highlights the **Grounds of Decision in the Disciplinary Inquiry against Dr Tham Kar Yeng and Dr Jade Foo See Theng** ("***Tham Kar Yeng and Jade Foo***") where the disciplinary committee highlighted at [9] to [10] that it was in the public interest to ensure that only qualified and competent dentists are allowed to treat patients, and to uphold the standing of the profession:

> "9 In this regard, reference is made to the judgment by the Court of Three Judges in the case of Kwan Kah Yee, a Singapore Medical Council case, in which it was clarified that sanctions in medical disciplinary proceedings serve two functions: first, to ensure that the offender did not repeat the offences; and second to uphold the standing of the medical profession. And by parity of reasoning, it was argued by the Prosecution here that "it is in the public interest to ensure that only duly qualified and competent dentists are allowed to treat patients". So the unsupervised treatment of a patient or patients in this case by a conditionally registered dentist needed to attract a sanction with sufficient deterrence.
>
> 10 In short, the legal liability was absolute. When the 1st Respondent took the brief time off from the Clinic on the morning of 21 December 2016, to deal with what was thought to be an emergency situation concerning her 3-year-old son who had suddenly taken ill, she could have left instructions with the staff at the Clinic for Dr Foo not to treat any patients until Dr Tham returned..."

38. The SDC reiterates that the Respondent's breach of his supervision duties/responsibilities is the longest period of breach in relation to similar cases of unsupervised practice, and is unprecedented as to the egregiousness of the breach. Other cases such as those of *Law Lay Yin* and *Tham Kar Yeng and Jade Foo* had only involved the failure to supervise for less than two hours in a single day (and only involved one or two patients).

39. In stark contrast, the Respondent had failed to supervise Dr SE for a substantial and lengthy/prolonged period of at least 75 days (or even 82 days or 170 days).

40. The SDC submits that the public interest considerations take on a greater role when the numerous prisoner-patients who were affected were a vulnerable group in society. These inmates in the Prison Complex faced severe constraints to their life and liberty and had to depend on whatever dental care that may be provided to them. They had no (or negligible) choice with regard to whose dental services they could seek, and had to accept the dental

treatment by whichever dentist was allocated to them on any particular day, without any inkling that Dr SE was not authorised to treat them independently (see *Dr SE's* Grounds of Decision at [22(d)]).

41. There would therefore be all the more public interest, in the present case, in ensuring that only properly supervised conditionally registered dentists provided dental services to such vulnerable patients.

42. Given the extent and persistence of the Respondent's breach of his supervision duties/ responsibilities, and the substantial number of patients involved (who had undergone treatment by Dr SE without supervision), it is conceivable that potentially severe outcomes may have arisen from his misconduct. There is a need to protect the inmate patients and the public from such harm (or potential harm).

43. The SDC's case is that the Respondent has failed to prove that all 3 cumulative conditions have been met; and in addition, the Respondent has also failed to show that there are no countervailing public interest considerations that would override or outweigh the need for any sentencing discount.

44. In the premises, the SDC submits that no sentencing discount can be accorded to the Respondent on account of any purported delay in prosecution.

45. In respect of Step 4 of the sentencing framework, the SDC submits that in view of the aggravating factor of the seniority of the Respondent in the profession alone, there should already be an uplift of *two months* to the starting point of a suspension of at least 22 months (i.e. without even needing to consider other aggravating factors).

46. While the SDC maintains that there are also the further aggravating factors of the additional 95 days of the Respondent's breach of his supervision duties/responsibilities (i.e. the additional 7 days and additional 88 days of non-supervision by the Respondent which he has pleaded guilty to and/or admitted in the ASOF – which are not part of the 75 days), the SDC is not relying on these further aggravating factors to further increase the orders and penalties sought of 24 months of suspension.

47. While it is the SDC's position that there are no or little mitigating factors in the present case, should the Disciplinary Committee uphold any of the mitigating factor(s), the SDC submits that

such mitigating factor(s) should be set off against the further aggravating factors of the additional days of non-supervision by the Respondent as set out above.

H. The Disciplinary Committee's Determination based on the Wong Meng Hang framework

48. The Disciplinary Committee has duly considered the following:-

(a) the Respondent's Mitigation Submissions dated 11 September 2023 ("**Respondent's Mitigation Submissions**");

(b) the SDC's Sentencing Submissions dated 28 February 2024 ("**SDC's Sentencing Submissions**");

(c) the Respondent's Sentencing Submissions and Reply to SDC's Sentencing Submissions dated 3 April 2024 ("**Respondent's Reply Submissions**");

(d) SDC's Reply Submissions dated 21 May 2024 ("**SDC's Reply Submissions**"); and

(e) all submissions contained in emails and oral submissions (including all authorities and precedents tendered),

and sets out its decision below.

49. While parties were initially in disagreement as to whether the *Wong Meng Hang* framework would apply to the present proceedings, this issue was put to rest during the hearing on 5 August 2024 when counsel for the Respondent accepted that pursuant to *Amit Patel*, the *Wong Meng Hang* framework would apply to determine the orders that should be made against the Respondent.

50. The Disciplinary Committee's determination of the appropriate sentence to be imposed on the Respondent based on the application of the *Wong Meng Hang* framework is set out below.

<u>STEP 1 – to identify where the Respondent's offence falls within the harm-culpability matrix</u>

(1) The appropriate level of harm

51. As held in *Wong Meng Hang*, the appropriate level of harm requires a consideration of the "*type and gravity of the harm or injury that was caused to the patient and …to society*" as a result of the offence. Potential harm should be taken into account only if there was a sufficient likelihood of the harm arising.

52. The Respondent argues that the level of harm is slight as no harm had been caused to any patient from the occasions of non-supervision of Dr SE and that potential harm is unlikely and should not be considered. The Respondent further argues that there is no harm caused to public confidence in the dental profession and that one factor going towards harm to public confidence is whether there was actual harm to patients and the likelihood of potential harm and that in the present case, neither actual harm nor potential harm was present.

53. The SDC on the other hand argues that given that the Disciplinary Committee in Dr SE's inquiry had found that the level of harm occasioned by Dr SE's offence is moderate, the Respondent's submission that the level of harm on his part (as supervisor) is slight, is untenable. Given that the Respondent bore a greater responsibility than his supervisee to ensure that the supervision requirements were complied with, his breach of such requirements would cause greater harm to public confidence than Dr SE's.

54. The SDC disagrees with the Respondent that the likelihood of potential harm arising is low for the following reasons: first, the Respondent had exposed all inmate patients seen by Dr SE to substantial potential harm; secondly, the Respondent in allowing Dr SE to treat "*at the minimum hundreds of inmate patients unsupervised*" had undermined public health and safety within the prison community; thirdly, the Respondent had admitted that Dr SE had performed extractions and fillings which were invasive in nature and would involve bleeding, risks or potential harm.

55. Given the aforesaid, the SDC submits that harm to public confidence in the dental profession had been caused. The SDC further submits that potential undermining of public confidence could be exacerbated when a supervisor like the Respondent (as compared to a supervisee) flouts the regulations. It is thus the SDC's submission that the level of harm caused by the Respondent is at least on the high end of Moderate range.

56. While the Disciplinary Committee notes that there has been no allegation of harm to Dr SE's inmate patients, it cannot be said that potential harm is unlikely. The Respondent has allowed hundreds of patients in the Prison Complex to be exposed to potential harm by breaching his duties of supervision. It must be borne in mind that the prison inmates belong to a vulnerable community with limited access to treatment options who would have little or no opportunity to

know whether the treatment by Dr SE was the appropriate treatment or to complain about any concerns in relation to the treatment. When referring to the non-supervision of Dr SE, in [95] of *Amit Patel*, Hoo J stated that "*I am of the view that the harm occasioned there is much more severe than the harm in the present case*". Given the extensive number of patients, the long period of breach and the vulnerability of the patients, the Disciplinary Committee agrees with the SDC that the level of harm in the present case is on the high end of Moderate range.

(2) The appropriate degree of culpability

57. The Respondent argues that his culpability is low as the breach resulted from an honest omission or inadvertence which arose from his reliance on his employers and a misunderstanding as to what constitutes adequate supervision.

58. The SDC argues that given that Dr SE's culpability was found by the Disciplinary Committee to be at least medium, the Respondent's submission that his culpability is low cannot be the case. The SDC submits that as supervisor of Dr SE, the Respondent was required to educate and guide the conditionally registered dentist on the supervision requirements but instead permitted Dr SE to treat numerous vulnerable patients without supervision; as such, the SDC submits that the Respondent's conduct would be more culpable than that of Dr SE and should be at the high end of Medium (or even the low end of High).

59. With regard to the degree of culpability, the Disciplinary Committee does not accept the Respondent's submission that his culpability is low. The Respondent knew that Dr SE was permitted to practise as a dentist subject to being supervised by him as a Division 1 dentist. In that regard, the Council's Circular SDC 11:4 Vol 4 dated 30 July 2014 together with the attached document titled "*Roles and Responsibilities*" are clear. There can be no misunderstanding by the Respondent of the words "*A supervisor must: …work in the same clinic as his/her supervisee*". The Respondent's submission that he was under the misconception that he did not have to physically supervise Dr SE cannot hold water in the light of the clear and unambiguous words. For the same reason, the Disciplinary Committee is unable to accept the Respondent's statement that his lapse in supervision was an honest omission or inadvertence which arises from his reliance on his employers and a misunderstanding as to what constitutes adequate supervision. In the premises, the Disciplinary Committee is of the view that the Respondent's degree of culpability is on the high end of Medium.

STEP 2 – identify the applicable indicative sentencing range

60. ***Wong Meng Hang*** at [33] sets out the following sentencing matrix:

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

61. Based on the Disciplinary Committee's finding that the level of harm is the high end of Moderate and the degree of culpability is the high end of Medium, the indicative sentencing range for the Respondent based on the sentencing matrix of *Wong Meng Hang* is a term of suspension of 1 to 2 years.

STEP 3 – determine the appropriate starting point within the indicative sentencing range

62. The SDC submits that the sentencing precedents prior to the Grounds of Decision for Dr SE's inquiry should be disregarded as they did not adopt the framework in *Wong Meng Hang* and were unduly lenient, and that the precedents to be considered would be the disciplinary committee's decision in Dr SE's inquiry and *Amit Patel*, both of which applied the *Wong Meng Hang* framework.

63. The Respondent has not cited any precedents which applied the *Wong Meng Hang* framework, but only cited cases where the *Wong Meng Hang* framework was not applied.

64. It is the SDC's submission that public interest and public confidence would require that there be consistency in the Respondent's Inquiry as to the finding of the Respondent's level of harm and degree of culpability when compared to the finding against Dr SE. The SDC refers to the Sentencing Guidelines which state at [62]:

> "Consistency in sentencing means that where there are no differentiating factors, **public interest** demands that there should be some consistency in the imposition of sentences on offenders committing the same or similar offences. The DTs should hence, at Step 3, consider sentencing precedents. Consistency in sentencing is important to protect **public confidence** in the administration of justice.".

65. In this regard, as the Disciplinary Committee in Dr SE's inquiry has found that Dr SE's levels of harm and culpability (as supervisee) were "*moderate"* and "*at least medium"* respectively, it is the SDC's submission that a higher starting point for the Respondent (as supervisor) would be supported by the higher levels of harm and culpability for the Respondent (as compared to Dr SE).

66. The SDC thus submits that the starting point of a suspension of at least 22 months is appropriate.

67. While the Disciplinary Committee is not bound by the decision of the Disciplinary Committee in Dr SE's inquiry, it accepts the SDC's submissions that guidance could be found in the precedents applying the *Wong Meng Hang* framework. The Disciplinary Committee hereby determines that the starting point within the indicative sentencing range should be a 22-month suspension.

<u>STEP 4 – whether there should be adjustments to the starting point to take into account offender-specific factors (i.e. mitigating and aggravating factors)</u>

68. The Respondent argues that due regard should be given to the mitigating factors set out in the Respondent's Mitigation Submissions and submits that there should be (i) no uplift to the sentence; (ii) a sentencing discount of no less than three months for his unblemished record and good character; and his remorse and commitment to remediation; (iii) a further sentencing discount of up to 30% for his timely plea of guilt; and (iv) a further sentencing discount of 80% for the inordinate delay in prosecution. It is the Respondent's submission that the applicable sentence under the *Wong Meng Hang* framework should be a letter of warning, or in the alternative, a fine of $10,000.

69. The SDC disputes the mitigating factors submitted by the Respondent and submits that there are no (or negligible) mitigating factors and instead, several aggravating factors as set out in the SDC's Sentencing Submissions and SDC's Reply Submissions. It is the SDC's submission that (without relying on the other aggravating factors), the aggravating factor of the seniority of the Respondent in the profession alone would warrant an uplift of two months, thereby bringing the total period of suspension to 24 months.

70. The Disciplinary Committee has duly considered both parties' submissions (including all precedents and authorities tendered) with regard to the mitigating factors and the aggravating factors. The Disciplinary Committee is of the view that the mitigating factors submitted by the Respondent are not borne out and are in fact outweighed by the aggravating factors for the reasons set out below:

(a) The plea of guilt was not timely – The Disciplinary Committee does not accept the Respondent's submission that the plea of guilt was timely. In light of the events set out in the SDC's Sentencing Submissions and SDC's Reply Submissions, and summarised at [30(a)] and [32(a) and (g)] above, the Disciplinary Committee finds that the plea of guilt was belated and submitted after significant delays occasioned by the Respondent's various applications and his conduct and inaction. The Disciplinary Committee further notes that the Respondent's plea of guilt was after the Grounds of Decision in Dr SE's inquiry was published, by which time, the evidence against him would be somewhat overwhelming, given that both the Respondent's and Dr SE's inquiries were based on the same set of circumstances and given the overlap in the issues pertaining to both inquiries.

(b) The Respondent derived financial gain from his breach – The Respondent submits that he did not make any financial gain from Dr SE's treatment as he received only a stipend of $300 per session at the Prison Complex. The SDC submits that apart from the stipend of $300 per session at the Prison Complex, the Respondent stood to generate a much larger income by treating his private patients (at private/unsubsidised rates) at his clinic instead of treating the inmate patients (at fixed/subsidised rates) at the Prison Complex; as such, it was more lucrative for the Respondent to be working at his private clinic than at the Prison Complex. The Disciplinary Committee accepts the submission by the SDC and finds that the Respondent in fact, stood to gain financially from the breach of his supervision duties.

(c) The nature of the breach – the Respondent submits that the nature of the breach was based on his misunderstanding of the relevant guidelines and circulars pertaining to supervision. As stated in [59] above, the Disciplinary Committee does not accept the Respondent's submission in light of the clear and unambiguous words in the Council's Circular SDC 11:4 Vol 4 dated 30 July 2014 read together with the attached document titled "*Roles and Responsibilities*". There can be no misunderstanding by the Respondent of the words "*A supervisor must: …work in the same clinic as his/her supervisee*".

(d) The extent of the breach – The Respondent submits that no harm had been caused to any patient from the occasions of non-supervision of Dr SE and any potential harm need not be considered as any likelihood of harm is low. The SDC submits that the Respondent's breach of his supervision duties is the most egregious among all the non-supervision cases. The breach to which the Respondent had pleaded guilty comprise a period of 75 days and was perpetrated over a period of nine months. In addition to the 75 days, based on the ASOF, the Respondent was also in breach for an additional 95 days as set out in [26(d)(ii) and (iii)] and [46] above. Based on the 75 days of breach, the patients that were exposed to potential harm was 375 and if the patients in the additional 95 days were considered, the number of patients exposed to potential harm would be 850. The Disciplinary Committee accepts the submission of the SDC that the Respondent's breach of his supervision duties is thus far the most egregious when compared to the other non-supervision cases. It is unprecedented in terms of the extent and duration of the breaches and the potential number of patients who were put at risk of harm.

(e) Delay in prosecution of the Inquiry –

(i) The Respondent submits that there had been an inordinate delay of 59 months in the prosecution of the Inquiry, comprising a delay of 2 years, 4 months and 3 weeks between the issuance of the Notice of Complaint and the NOI, and a further delay of more than 2.5 years between the time when the previous disciplinary committee recused itself on 27 November 2020 and the time when the Respondent received notice of the constitution of the present Disciplinary Committee on 14 June 2023. The Respondent submits that such delay cannot be attributed to the Respondent, who was left "*in limbo*" during this period, wondering when his inquiry would commence.

(ii) The SDC submits that there was no inordinate delay and the COVID-19 circuit breaker and other consequential restrictions should be taken into account; and even if there was, the Respondent had contributed to such delay by his various applications to the previous disciplinary committee as set out above and by his own conduct and inaction; and in any event, the Respondent had not suffered any injustice or prejudice. The SDC further submits that given the present circumstances, public interest considerations would override or outweigh any need for a sentencing discount.

(iii) The Disciplinary Committee accepts the submissions of the SDC as summarised in [32] and [33] above and finds that there was no inordinate delay in prosecution of the Inquiry, and even if there was any delay, such delay was contributed substantially by the Respondent, including his various applications to the previous disciplinary committee and his changes in stance during the course of the proceedings. The Disciplinary Committee further finds that even if there was any delay, the Respondent has not suffered any real injustice or prejudice and has not produced any evidence to such effect. In any event, the Disciplinary Committee is of the view that, given the extent and egregious nature of the breach, public interest considerations would override any sentencing discount even if such discount was warranted.

(f) <u>The Respondent's unblemished record, good character, volunteering and contributions to society</u> – The Respondent submits that his unblemished record, good character and contributions to society and the dental profession are mitigating factors that would contribute to a discount in sentencing. The SDC contends otherwise and refers to the Sentencing Guidelines at [70(b)] which provides that "… *a doctor's general good character and past contributions to society (e.g. volunteer work and contributions to charities) in and of itself will not be regarded as a mitigating factor because it is not the DT's place to judge the moral worth of the doctor. It has no relevance to the doctor's culpability or the harm he has caused by the commission of the offence, and may be perceived as unfairly favouring more privileged offenders who have more opportunities to make such contributions as compared to less privileged offenders".* Given the various aggravating factors as highlighted by the SDC, the Disciplinary Committee is of the view that the aggravating factors far outweigh any mitigating factors.

(g) The seniority of the Respondent – As set out in [26(d)(i)], [45] and [69] above, the SDC submits that the seniority of the Respondent is an aggravating factor which should warrant an uplift of two months. The Disciplinary Committee concurs.

71. Having considered the above issues, the Disciplinary Committee accepts the SDC's submissions that,

(a) the Respondent's plea of guilt was not a timely plea but a belated one;

(b) the nature of the breach was not based on the Respondent's misunderstanding of the relevant guidelines and circulars pertaining to supervision in light of the clear and unambiguous words in the Council's Circular SDC 11:4 Vol 4 dated 30 July 2014 read together with the attached document titled "*Roles and Responsibilities*";

(c) the Respondent stood to gain financially by treating his private patients at private/unsubsidised rates at his clinic than treating the inmates at the Prison Complex for which he would be paid only a stipend of $300 per session;

(d) the extent and duration of the Respondent's breach of his supervision duties and the potential number of patients who were put at risk of harm when compared to other non-supervision cases makes this case a particularly egregious one;

(e) there was no inordinate delay in prosecuting this Inquiry; if there was, such delay was contributed by the Respondent; and in any event, there was no real injustice or prejudice to the Respondent; and

(f) based on the facts and circumstance of this case, even if the mitigating factors merit a sentencing discount which is not the case here, public interest considerations would override or outweigh any need for a sentencing discount.

I. Orders of the Disciplinary Committee

72. For the reasons set out above and after careful and due consideration of the facts and evidence presented in this Inquiry by Counsel for both the SDC and the Respondent, including the ASOF, the Respondent's Guilty Plea, the written and oral submissions of counsel and taking into account all of the circumstances of the case, the Disciplinary Committee makes the following orders:-

(a) That the registration of the Respondent in the Register of Dentists be suspended for a period of **24 months**;

(b) That the Respondent be censured;

(c) That the Respondent shall give a written undertaking to the Singapore Dental Council that he will not engage in the conduct complained of or any similar conduct; and

(d) That the Respondent pays the costs and expenses of and incidental to these proceedings, including the costs and expenses of Counsel for the SDC and the Legal Assessor.

73. It is further ordered that the period of suspension is to commence 30 days after the date of the order herein.

74. The Disciplinary Committee further orders, pursuant to Regulation 25 of the Dental Registration Regulations, that this Decision be published for the benefit of the public and to raise the standards of the dental profession.

75. This Inquiry is hereby concluded.

Dated this 22nd day of January 2025.

Dr Kwa Chong Teck Chairman Disciplinary Committee	**Mr Ong Ming Da** Member Disciplinary Committee	**Dr Yeo Kok Beng** Member Disciplinary Committee	**Mr Yogeeswaran S/O Sivasithamparam** Observer Disciplinary Committee