

IN THE REPUBLIC OF SINGAPORE

SINGAPORE MEDICAL COUNCIL DISCIPLINARY TRIBUNAL

[2024] SMCDT 2

Between

Singapore Medical Council

And

Dr Chen Hsing Yu

... Respondent

GROUNDS OF DECISION

Administrative Law – Disciplinary Tribunals

Medical Profession and Practice – Professional Conduct – Suspension from Register of Medical Practitioners

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Singapore Medical Council

v

Dr Chen Hsing Yu

[2024] SMC DT 2

Disciplinary Tribunal – DT Inquiry No. 2 of 2024

A/Prof Ong Biauwei Chi (Chairman), A/Prof Tan Tong Khee, Ms Thian Yee Sze (Judicial Service Officer)

26 February 2024 and 8 May 2024

Administrative Law – Disciplinary Tribunals

Medical Profession and Practice – Professional Conduct – Suspension from Register of Medical Practitioners

8 May 2024

GROUNDS OF DECISION

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

- 1 The Respondent, Dr Chen Hsing Yu (“**Dr Chen**”), pleaded guilty to one charge under section 53(1)(c) of the Medical Registration Act (Cap 174, 2014 Rev Ed)¹ (“**the Act**”) for engaging in an improper act or conduct on 17 April 2020 at Hospital A when he attempted to record a female doctor using his mobile phone without her consent while she was taking a shower, bringing disrepute to the medical profession.
- 2 Arising out of his plea of guilty to the charge, the Singapore Medical Council (“**SMC**”) is seeking a suspension of Dr Chen’s registration for a period of eight (8) months, censure and a written undertaking from Dr Chen that he will not engage in the conduct

¹ See the charge in the Amended Notice of Inquiry by Disciplinary Tribunal dated 31 October 2023 in the Agreed Bundle of Documents (“ABD-1 – 37”) at ABD-36 – 37.

complained of or any similar conduct. Dr Chen has submitted that a fine of \$5,000 would be appropriate, coupled with the said written undertaking. Parties agree that Dr Chen should bear the costs of the proceedings.

Agreed facts

- 3 Dr Chen admitted to the facts in the Agreed Statement of Facts dated 4 December 2023 (“**ASOF**”) without qualification. The facts in the ASOF and undisputed documentary evidence in the Agreed Bundle of Documents (“**ABD**”) which are pertinent for the purposes of our decision on sentencing are set out presently.

In relation to the present charge

- 4 On 17 April 2020 between 1720 hours and 1830 hours, the victim, a female doctor, went to the ensuite unisex shower at a ward in Hospital A, to take a shower after her rounds at the isolation ward. Unknown to her and without her consent, Dr Chen, a Resident Trainee at Hospital A, “had intended to record (the victim) through the gap under the shower door but stopped just short of actually doing so. (The victim) headed home after her shower without noticing anything amiss”².
- 5 That same day, one of the victim’s colleagues informed her that a nurse had witnessed Dr Chen attempting to record her while she was taking a shower. The victim then lodged a police report upon the management’s advice.
- 6 Dr Chen’s residency training at Hospital A was terminated a few days later on 29 April 2020. His employment with MOH Holdings Pte Ltd (“**MOHH**”) was terminated with immediate effect for misconduct by way of email on 11 May 2020³.
- 7 Dr Chen was investigated for, among others, the offence of attempted voyeurism under section 377BB(3) read with section 511 of the Penal Code (Cap 224, 2008 Rev Ed). With the concurrence of the Attorney-General’s Chambers, the police administered a 24-month conditional warning in lieu of prosecution on Dr Chen with effect from 1 June 2021, pursuant to which Dr Chen was to refrain from any criminal conduct in the

² At [3] of the ASOF.

³ At ABD-8 and 9.

following 24 months. He has since satisfied that condition. The SMC was notified of the conditional warning on 1 June 2021.

In relation to Dr Chen's past conduct in 2014 as a medical student

- 8 When Dr Chen applied for provisional registration in Singapore on 14 October 2015, he volunteered information to the SMC that on 23 April 2014, while he was an undergraduate medical student at medical school B, he had used a mobile telephone to take video footage of a female medical student (“F”) without her consent while she was using the toilet at a hospital.
- 9 Following investigations, Dr Chen admitted to “taking a video of approximately 3 seconds long of F while he was using the unisex bathroom, having taken the video from above the cubicle.”⁴. Dr Chen later deleted the video, provided a written apology to F and attended counselling, who did not press charges.
- 10 On 20 June 2014, medical school B notified the Australian Health Practitioner Regulation Agency of the incident.
- 11 One year later on 26 June 2015, Dr Chen attended an Impaired Registrant’s Panel Inquiry (“IRP”). The IRP was of the opinion that Dr Chen suffered from a personality structure which made him prone to voyeuristic behaviour with females, and which had the potential to impact on the safety of the public and to affect his capacity to practice medicine. The IRP opined that it would be appropriate for Dr Chen to enter the Health Programme, which was for health practitioners and students whose health was impaired and could place the public at risk. The programme was designed to protect the public while keeping impaired practitioners in safe practice where possible. Conditions were also imposed on Dr Chen’s student registration, including treatment by a general practitioner and treatment by a suitably experienced psychiatrist.

⁴ At [8] of the ASOF.

- 12 A panel of reviewers of a Medical Council in Australia (“**Institution C**”) recommended that Dr Chen exit the Health Programme after he attended an interview with the panel on 3 February 2016. He was so informed of the Institution C’s decision on 2 March 2016.

In relation to Dr Chen’s conditional registration status since the termination of employment at MOHH

- 13 After the plea of guilty hearing on 26 February 2024 before this Disciplinary Tribunal (“**DT**”), we sought further information from the SMC on Dr Chen’s conditional registration (“**C-Reg**”) status since MOHH’s termination of his employment.
- 14 On 8 March 2024, the SMC’s Counsel provided the DT with the following information by email (the contents of which were copied to Dr Chen’s Counsel):
- (a) Dr Chen’s C-Reg was cancelled on 12 May 2020 after his employment was terminated by MOHH on 11 May 2020. This was pursuant to section 21(6) of the Act as one of the conditions of Dr Chen’s C-Reg was to remain employed by MOHH.
 - (b) After Dr Chen successfully obtained employment with Institution D, he submitted a request to the SMC to resume practice with Institution D on 7 July 2022, which the SMC approved on 5 August 2022. Dr Chen started practice with Institution D on 26 September 2022.
 - (c) While Dr Chen’s C-Reg was cancelled on 12 May 2020 and resumed on 26 September 2022, his name was never removed from Part II of the Register of Medical Practitioners during that period of time, and his name had always remained on that register.

The applicable law

Prescribed penalties

- 15 As the complaint against Dr Chen was made to the SMC on 22 July 2021, before the commencement date of the amended Act on 1 July 2022, the relevant provisions governing disciplinary proceedings in Part 7, Division 5 of the Act in force prior to 1 July 2022 hence apply to the case at hand.
- 16 Section 53(2)(a) – (h) of the Act lists the following types of penalties which the DT can impose upon a finding by the DT that a registered medical practitioner has been guilty of

such improper act or conduct which brings disrepute to his profession under section 53(1)(c):

- (a) by order remove the name of the registered medical practitioner from the appropriate register;
- (b) by order suspend the registration of the registered medical practitioner in the appropriate register for a period of not less than 3 months and not more than 3 years;
- (c) where the registered medical practitioner is a fully registered medical practitioner in Part I of the Register of Medical Practitioners, by order remove his name from Part I of that Register and register him instead as a medical practitioner with conditional registration in Part II of that Register, and section 21(4) and (6) to (9) shall apply accordingly;
- (d) where the registered medical practitioner is registered in any register other than Part I of the Register of Medical Practitioners, by order impose appropriate conditions or restrictions on his registration;
- (e) by order impose on the registered medical practitioner a penalty not exceeding \$100,000;
- (f) by writing censure the registered medical practitioner;
- (g) by order require the registered medical practitioner to give such undertaking as the Disciplinary Tribunal thinks fit to abstain in future from the conduct complained of; or
- (h) make such other order as the Disciplinary Tribunal thinks fit, including any order that a Complaints Committee may make under section 49(1).

17 As stated in [2] above, parties agree that Dr Chen should give a written undertaking, which is pursuant to section 53(2)(g) of the Act. Parties disagree as to whether a suspension in section 53(2)(b) together with a censure in section 53(2)(f), as submitted by the SMC, should be imposed, or if a lighter penalty of a fine in section 53(2)(e), as put forth by Dr Chen, would be sufficient.

Sentencing framework

18 Parties agree that the sentencing principles and framework laid down by the Court of Three Judges in *Wong Meng Hang v Singapore Medical Council and other matters* [2019] 3 SLR 526 (“*Wong Meng Hang*”) apply to the case before us. While *Wong Meng*

Hang involved a charge of professional misconduct under section 53(1)(d) of the Act, the General Division of the High Court in *Ong Kian Peng Julian v Singapore Medical Council and other matters* [2023] 3 SLR 1756 (“**Julian Ong**”) recognised the logic of the Sentencing Guidelines Committee appointed by the SMC in recommending the extension of the *Wong Meng Hang* framework to other forms of misconduct through the *Sentencing Guidelines for Singapore Medical Disciplinary Tribunals* dated 15 July 2020, which included misconduct under section 53(1)(c) which the medical practitioners in *Julian Ong* faced: at [61] – [62] of the judgment. That said, the Court emphasised the importance of bearing in mind the nuances of each case.

19 In *Julian Ong*, the Court set out the four steps under the modified *Wong Meng Hang* framework at [63]:

- (a) Step 1: The first step is to evaluate the seriousness of the offence with reference to harm and the culpability of the doctor. In this regard, harm encompasses bodily harm, emotional and psychological harm, economic harm, harm to society including harm to public confidence in the medical profession, as well as potential harm that could have resulted but did not materialise.
- (b) Step 2: Identify the applicable indicative sentencing range using 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

- (c) Step 3: Identify the appropriate starting point within the indicative sentencing range.
- (d) Step 4: Adjust the starting point by taking into account offender-specific aggravating and mitigating factors.

20 It would also be apposite for us to underline the overarching objectives of sentencing in disciplinary proceedings as laid down by the Court in *Wong Meng Hang* in [23] – [26] when determining the appropriate sentence in such cases, bearing in mind the four-step framework:

“23 We begin with the main objectives of sentencing in this context. Disciplinary proceedings enable the profession to enforce its standards and to underscore to its members the values and ethos which undergird its work. In such proceedings, *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. Vital public interest considerations include the need to uphold the standing and reputation of the profession, as well as to prevent an erosion of public confidence in the trustworthiness and competence of its members.* This is undoubtedly true for medical practitioners, in whom the public and, in particular, patients repose utmost trust and reliance in matters relating to personal health, including matters of life and death. As we observed in *Low Cze Hong* at [88], the hallowed status of the medical profession is “founded upon a bedrock of unequivocal trust and a presumption of unremitting professional competence”, and failures by practitioners in the discharge of their duties must be visited with sanctions of appropriate gravity.

24 *The primacy of these public interest considerations in the sentencing inquiry in disciplinary cases means that other considerations that might ordinarily be relevant to sentencing, such as the offender’s personal mitigating circumstances and the principle of fairness to the offender, do not carry as much weight as they typically would in criminal cases; and, as we later explain, these considerations might even have to give way entirely if this is necessary in order to ensure that the interests of the public are sufficiently met: Ang Peng Tiam v Singapore Medical Council and another matter [2017] 5 SLR 356 (“Ang Peng Tiam”) at [118].*

25 Second, the courts will also have regard to key sentencing principles of general application, such as the interests of general and specific deterrence. As we explained in *Singapore Medical Council v Kwan Kah Yee* [2015] 5 SLR 201 (“*Kwan Kah Yee*”) at [55]–[57], citing *Tan Kay Beng v Public Prosecutor* [2006] 4 SLR(R) 10 at [31], general deterrence, in particular, is a matter of considerable importance because it is “intended to create awareness in the public and more particularly among potential offenders that punishment will be certain and unrelenting for certain offences and offenders”. This is a central and operative sentencing objective in most, if not all disciplinary cases. *Specific deterrence, on the other hand, is directed at discouraging the particular offender from committing future offences, and the weight to be accorded to this sentencing objective may be greater in cases involving recalcitrant offenders* (see *Kwan Kah Yee* at [57]) as opposed to those with long, unblemished track records that are suggestive of a lack of propensity to reoffend: see *Ang Peng Tiam* at [105]–[107]. *Yet another relevant sentencing objective is the need to punish the professional who has been guilty of misconduct.*

26 Finally, considerations of fairness to the offender may, in appropriate cases, warrant the imposition of a lighter sentence. In cases such as *Ang Peng Tiam* where there had been inordinate delay in the SMC’s prosecution of the disciplinary proceedings, we applied a sentencing discount in recognition of the prejudice that had been unfairly suffered by the

offending doctor in the form of the mental anguish and anxiety that was caused by the pendency of the charge over a prolonged period of time. At the same time, we have previously emphasised that such considerations of fairness may be outweighed or even rendered substantially irrelevant by countervailing concerns in the public interest, especially in cases where the offence in question is particularly heinous: *Ang Peng Tiam* at [118]. Therefore, where important public interest considerations demand the imposition of a heavier penalty, the existence of prejudicial delay in the proceedings may have no mitigating effect at all in the sentencing of the offender.”

[emphasis added]

Parties’ sentencing positions

SMC’s submissions on sentence

21 Based on the *Wong Meng Hang* sentencing framework, the SMC submitted that the harm caused was of a moderate level while Dr Chen’s culpability was low for the following reasons:

- (a) The victim suffered emotional and psychological distress, given that she was made aware of what Dr Chen had done, which was an appalling invasion of her privacy when she was at her most vulnerable.
- (b) Dr Chen’s act caused serious harm to public confidence in the medical profession. He undermined the collegiate bond between medical practitioners when he preyed on a fellow doctor who had just come off her rounds.
- (c) Dr Chen’s attempt to record the victim was an intentional one, while his failure to do so was an entirely fortuitous one.

22 With reference to the indicative sentencing range in *Wong Meng Hang*, the appropriate starting point was a six-month suspension, having regard to cases featuring broadly similar circumstances, particularly the decisions of the DT in *Singapore Medical Council v Deshan Kumar Rajeswaran* [2020] SMCDT 6 (“***Deshan***”) and *Singapore Medical Council v Lum Yang Wei* [2020] SMCDT 4 (“***Lum Yang Wei***”).

23 Dr Chen’s conduct as a medical student in Australia was a prior instance of professional misconduct that was a significant aggravating factor. In its sentencing submissions dated 3 January 2024, the SMC said that this could be seen:

“39.... from the striking similarity in his actions across 6 years: both times, the location was a unisex toilet in a hospital, and both times the victim was

a female colleague (or fellow student) who subsequently became aware of what he had done. The only difference is that in April 2014 (Dr Chen) filmed a 3 second video of his victim whereas in April 2020 he was fortuitously unable to carry out his intended act. Clearly, (Dr Chen) has a propensity for filming female medical practitioners without their consent in a hospital setting, and it is imperative that he be deterred from attempting to do this a third time.”

24 In the circumstances, the SMC submitted that specific deterrence was a relevant sentencing consideration in this case. There were also no material mitigating factors.

Dr Chen’s mitigation and submissions on sentence

25 Dr Chen submitted that the harm caused was “at the lowest end of “low””⁵ and that the level of his culpability was also low for the following reasons:

- (a) Unlike the cases of *Deshan* and *Lum Yang Wei*, Dr Chen’s act did not result in any taking of actual images and no harm was in fact caused to the victim. The victim was not aware of it until she was told about the attempt later.
- (b) The potential harm to society and harm to public confidence in the medical profession was minimal as Dr Chen only committed one act of attempt and did not in fact invade the victim’s privacy. In addition, no one was actually harmed.
- (c) In terms of culpability, Dr Chen’s attempt was not premeditated but arose spontaneously when he was feeling depressed and under immense pressure, having to deal with the unprecedented COVID-19 pandemic as a young doctor. He was also not charged for an offence, and admitted to the act and disclosed the previous incident in 2014 when he was a medical student.

26 Based on the indicative sentencing range in *Wong Meng Hang*, a starting point of a fine should be imposed. In this regard, it was argued that prosecutorial discretion was exercised to give him a conditional warning, and that he had been “unable to practise as a fully registered medical doctor for at least 45 months from the Incident to-date. Dr Chen has therefore already been punished by this set back in his career development”⁶.

⁵ Respondent’s Mitigation Plea and Sentencing Submissions dated 5 January 2024 (“R1”) at [34].

⁶ At [48] of R1.

27 The following mitigating factors were put forth:

- (a) Dr Chen pleaded guilty to the charge, showing his contrition.
- (b) He was a young doctor who had yet to obtain full registration in Singapore as a result of the incident. He deserved another chance to make good his career.
- (c) The matter had been pending for almost four years (although Dr Chen’s Counsel sought to emphasise that it was “not (his) intention to suggest that anyone (was) at fault for any delay in these disciplinary proceedings”⁷), which would have likely inflicted undue suffering on Dr Chen stemming from anxiety, suspense, and uncertainty.
- (d) Dr Chen had been rehabilitated and there was no foreseeable risk of re-offending. To this end, he undertook a voluntary regime of professional therapy at his own expense. He also embarked on a regime of physical discipline and training to enhance his self-esteem and confidence. He attended courses to widen his personal horizon and experience, undertook volunteer work and sought help from the elders in church. The strong support from his family and church decreased the risk of reoffending by providing him with a conducive environment to sustain his full recovery.

Our decision on sentence

28 In coming to our decision on sentence, we have borne in mind the sentencing principles in [20] above and applied the four-step approach laid down in *Wong Meng Hang*, as modified in *Julian Chin* for cases under section 53(1)(c). The Court in *Wong Meng Hang* reiterated that in going through the four-step analysis to arrive at the appropriate sentence, “regard should be had to the sentencing objectives and public interest considerations, which we have outlined at [23] – [26] above and which remain of overarching importance ... the public interest and the need for general deterrence will often be the central and operative considerations in the sentencing inquiry for disciplinary cases.”: at [44].

Harm

29 We agree with the SMC that the level of harm caused by Dr Chen’s act was moderate. First, although Dr Chen did not carry through with the recording of the victim taking a

⁷ At [52] of R1.

shower, who did not realise there and then of his intention to do so, she was made aware of it later that evening. Dr Chen's misconduct was sexual in nature, as was the case in *Lum Yang Wei* which too involved the recording of a video using a handphone, and the victim would have suffered emotional and psychological distress upon the knowledge that her privacy was invaded in a most insidious and surreptitious way while she took a shower at the hospital, a place where she should have or would have considered safe. She would also have felt embarrassed by the episode. We hence do not agree with Dr Chen's argument that no harm was caused to the victim. While it is fortunate that the video was ultimately not taken, the potential harm that could have resulted but did not materialise needs to be taken into account in assessing the level of harm, particularly the fact that a permanent record of the victim taking a shower which could potentially be watched repeatedly and circulated could have been made if Dr Chen carried through with his intended act. Our finding in relation to the level of harm suffered by the victim echoes the sentiment of the High Court in *Tan Siew Chye Nicholas v Public Prosecutor* [2023] 4 SLR 1223 ("*Nicholas Tan*"), which also involved the recording of a video of a victim placed in a vulnerable position. In *Nicholas Tan*, the accused, a university undergraduate, took out his mobile phone with the intention of taking an upskirt video of a victim, a female student at the same university. He recorded the video despite knowing that the victim did not consent to this, but deleted the video from his phone later. While on police bail for this incident, he committed a similar act in respect of another victim in a lift, but deleted the video later. The Court opined at [44] of the judgment opined that "(i)n a failed recording situation..., the victim would more often than not be aware that he or she had been a victim of voyeurism and would, as a result, *suffer significant emotional distress*. Such harm brings both general and specific deterrence to the fore" (emphasis added).

- 30 The harm to public confidence in the medical profession also cannot be understated. As the Court stated in *Wong Meng Hang* at [23], in disciplinary proceedings, broader public interest considerations are paramount. Such vital public interest considerations include the need to uphold the standing and reputation of the medical profession, and to prevent an erosion of public confidence in the trustworthiness of members of the profession. Dr Chen's act, which violated the privacy of the victim, betrayed the trust of a fellow member of the medical fraternity, and in turn the public's expectation and confidence in the medical profession to uphold the highest standards of proper personal behaviour and values.

Culpability

- 31 Both parties submitted that the level of culpability in this case was low, which we agree with.
- 32 In *Wong Meng Hang*, the Court elaborated on how the culpability of the offender was to be examined (at [30(b)]):

... it is essential to also examine the *culpability* of the offender, by which we mean *the degree of blameworthiness* disclosed by the misconduct. This may be assessed by reference to the extent and manner of the offender's involvement in causing the harm, the extent to which the offender's conduct departed from standards reasonably expected of a medical practitioner, *the offender's state of mind when committing the offence*, and *all of the circumstances surrounding the commission of the offence*. Harm may be caused in a variety of ways, usually ranging in severity from negligent or careless acts, to grossly negligent acts, to knowing incompetence and recklessness. In some situations, it may even include intentional acts.
[emphasis added]

- 33 It is not disputed that Dr Chen intended to record the victim in the shower through the gap under the shower door, although he stopped short of carrying through with it. While his attempt was an intentional one, there is insufficient evidence before us that there was premeditation on his part – we have hence proceeded on the basis that the act was not premeditated. Our assessment that the level of culpability in the case before us is low is consistent with the DT's finding in *Deshan*, which involved the recording of two upskirt videos at a supermarket – the DT held that the culpability of the offender was low as there was no premeditation involved and the acts were committed at the spur of the moment (at [32(b)] of the grounds of decision). This is in contrast to the culpability of the two doctors in *Julian Ong*, which were pegged to the medium range. In that case, the Court found that the two doctors colluded, resulting in the 1st offender forwarding a female patient's contact details to the 2nd offender, who later entered into an intimate relationship with the patient. It was also found that the 1st offender obtained the patient's consent to so forward her contact details under false pretences. There was clearly premeditation involved in that case. In contrast, in the present case, there is no evidence of advance planning and scheming.

34 We should also point out that we do not find that the intentional nature of Dr Chen’s act was reduced in seriousness by virtue of the fact that he did not carry out the act of recording in the end as there is no evidence before us as to why he “stopped just short of actually doing so”⁸. In his interview with the police during their investigations into the incident, Dr Chen simply stated that “he decided not to proceed with the plan and hurriedly left the place”⁹ but did not go on to explain why he did not to proceed with the plan.

The applicable indicative sentencing range and the appropriate starting point within that range

35 In light of our finding that the level of harm caused was moderate and that the level of Dr Chen’s culpability was low, the applicable indicative sentencing range pursuant to the sentencing matrix in *Wong Meng Hang* is a term of suspension between three months and one year.

36 As emphasised in *Julian Ong* at [74], the appropriate sentence in each case turns on its facts. In this regard, reference is to be made to relevant cases involving similar circumstances.

37 Both parties identified two cases, the facts of which were similar to the case before us:

(a) The respondent in *Deshan*, a consultant rehabilitation physician, pleaded guilty to one charge under section 53(1)(c) of the Act. While he was off-duty on 18 July 2016, he intruded upon the privacy of two females at a supermarket by recording two upskirt videos of them from under their skirts. The respondent sought psychiatric treatment two weeks after the incident. The attending psychiatrist assessed that the respondent’s ability to manage his impulses and urges was compromised at the time of the incident due to his underlying persistent depressive disorder, which was precipitated and perpetuated by his work and home stress. This underlying condition was noted by the DT. He was reviewed by the psychiatrist over four years, and also had other forms of therapy. The psychiatrist opined that the probability of the respondent repeating the behaviour relating to the incident

⁸ At [3] of the ASOF.

⁹ At paragraph 7 of ABD-5.

was extremely low to minimal, although he recommended that the respondent continue to undergo risk assessments at regular intervals. Like Dr Chen, he was given a 24-month conditional warning in lieu of prosecution for insulting the modesty of a woman under the then-section 509 of the Penal Code, the condition for which he met. The DT found that the harm caused was moderate while the level of culpability was low. The DT also considered the fact that the respondent was a senior medical professional who was required to conduct himself in a manner which was befitting of that higher standing to be an aggravating factor. In the circumstances, the DT imposed a four-month suspension period.

- (b) The respondent *Lum Yang Wei* pleaded guilty to one charge under section 53(1)(b) of the Act for having been convicted of an offence under the then-section 509 of the Penal Code and sentenced to a six-week imprisonment term, implying a defect in character which made him unfit for his profession. The respondent here insulted the modesty of the victim, a nurse, by placing his handphone, with the video recording function turned on, under the toilet door of the handicap toilet at the visitor's lounge outside a hospital ward, thereby intruding upon the privacy of the victim. The DT found that, with a degree of premeditation, he had decided to film the victim while she was in the toilet relieving herself. The Statement of Facts revealed that the respondent's act of recording caused the victim to panic. She also remained hidden in the toilet for a period of time as she was afraid that the person filming her was still in the vicinity. It was also stated in the Statement of Facts that prior to the incident in question, the respondent had started taking these types of videos because he was aroused by the uniforms of nurses. Like the respondent in *Deshan*, the respondent here had undergone voluntarily rehabilitation and treatment to address the root causes which gave rise to the misconduct. He had also not practised medicine for about 15 months since completing his housemanship in February 2019, coupled with his inability to practise for a about 24 months prior to that as a result of his arrest and incarceration. The DT also took into account the fact that the respondent showed regret and remorse, having pleaded guilty to the criminal charge. In the circumstances, the DT imposed a four-month suspension period. We note that in this case, both the SMC and the respondent's counsel had in fact agreed on the imposition of a suspension term of four months.

38 Returning to the case before us, all things considered, bearing in mind that the incident concerned was an attempt and that no video was filmed, thus avoiding the detrimental consequences arising out of the fact that the video could be watched repeatedly and disseminated widely, coupled with the absence of premeditation on the part of Dr Chen, we would peg the starting point at the lowest end of the range, i.e., a suspension period of three months. This would also be consistent with the penalty of a four-month suspension term in both *Deshan* and *Lum Yang Wei*, which caused harm of a more serious nature – in *Deshan* not one but two videos involving two different victims were recorded; in *Lum Yang Wei*, there was premeditation involved and the victim was traumatised, panicking and hiding in the toilet out of fear. Although the SMC submitted that the sentence in *Lum Yang Wei* was unduly lenient, it would not be necessary for us to comment on the adequacy or otherwise of the sentence in that case as this point is not material to our decision. In this regard, we would only note that both the SMC and the respondent in *Lum Yang Wei* agreed that a suspension term of four months was appropriate, and the DT in that case arrived at the same conclusion after considering all the circumstances of the case.

Relevant mitigating and aggravating factors

39 Lastly, we turn to consider the effect of any relevant offender-specific mitigating or aggravating factors which may result in an adjustment to the sentence.

40 In *Wong Meng Hang*, the Court gave examples of mitigating and aggravating factors at [43]:

The fourth step in the sentencing analysis involves consideration of the offender-specific sentencing factors which do not relate directly to the commission of the particular offence, but may nonetheless be sufficiently aggravating or mitigating so as to warrant an adjustment in the sentence to be imposed on the offender in each case. Potential mitigating factors include a timely plea of guilt in circumstances that indicate remorse on the offender's part, and having a long unblemished track record and good professional standing. In certain circumstances, an undue delay in the prosecution of the proceedings may be regarded as a mitigating factor. Aggravating factors might include prior instances of professional misconduct, especially where such antecedents bear similarities to the conduct underlying the charge in the case at hand, which may demonstrate the offender's recalcitrance and unwillingness to adhere to

the values and ethos of the profession or a troubling lack of insight into the errors of his ways.

- 41 Dr Chen put forth a few mitigating factors (at [27] above), which we shall consider in turn.
- 42 While an early plea of guilty as in Dr Chen’s case can indicate remorse, we note and agree with the SMC’s submission at [44] of their sentencing submissions that he could not have seriously contested the charge given his admission to the act when he was interviewed by the police that he had “formed the intention to video record the (victim) whilst she was taking a shower, using his mobile phone. (Dr Chen) further explained he decided not to proceed with the plan and hurriedly left the place”¹⁰.
- 43 As for the point that Dr Chen is a young doctor and deserves another chance to make good his career, this needs to be set against the fact that this was not his first but his second transgression involving an act of a very similar nature in six years. Both incidents involved a fellow female student or co-worker who was either filmed or was a subject of such an attempt in the confines of a toilet or shower cubicle at a hospital. Dr Chen was in fact given a chance after the first episode in 2014, as shown by the fact that he graduated from medical school in Australia and obtained conditional registration in Singapore and worked as a resident trainee at the time of the incident which was the subject of these disciplinary proceedings. We further note that even after he was terminated by MOHH, he managed to obtain employment with Institution D in 2022, and started work with them in September 2022. In our view, this being the second time that he has committed the same type of sexual misconduct over a span of just a few years, the fact that he is a young doctor who deserves another chance is not of mitigatory value.
- 44 For the same reason, while we are happy to note that Dr Chen has voluntarily sought professional treatment to address his underlying medical issues, undertaken charity work and taken other steps to improve his general well-being, with the necessary support structure, they are not sufficiently material to warrant an adjustment in his sentence. In addition, the countervailing public interest consideration to uphold the standing and reputation of the medical profession, which the Court in *Wong Meng Hang* emphasised

¹⁰ At paragraph 7 of ABD-5.

is generally of central importance in the sentencing inquiry for disciplinary cases, needs to be borne in mind.

45 Dr Chen’s Counsel also submitted that “the long lapse of almost 4 years since the Incident in April 2020 have (*sic*) inflicted on Dr Chen much suffering stemming from the anxiety, suspense and uncertainty. His career has been practically put on hold and he should not be further hindered from starting all over at his (*sic*) present point instead of being set back further by a sentence of suspension”¹¹. Having reviewed the record in the Agreed Bundle of Documents and the Respondent’s Bundle of Documents leading up to the hearing before us, it is clear that there was no inordinate delay in the prosecution of the disciplinary case against Dr Chen. The police administered the conditional warning after completing investigations and consultation with the Attorney-General’s Chambers on 1 June 2021, a little over a year after the incident¹². The Notice of Complaint issued to Dr Chen pursuant to section 44(2) of the Act was dated 19 August 2021¹³, a couple of months after that. The entire disciplinary process, from the time the matter was referred to the Chairman of the Complaints Panel on 22 July 2021 to the date of the delivery of this DT’s sentencing decision today, has taken under three years. There has been no undue or inordinate delay throughout this process. That Dr Chen felt anxiety, suspense and uncertainty during this period is a natural reaction and consequence arising out the fact that he committed a wrongful act, and as a result was subject to a police investigation, potential criminal prosecution and professional disciplinary proceedings. However, the mental and emotional strain he has experienced in and of itself does not warrant a sentencing discount.

46 On the other hand, the SMC submitted that the fact that Dr Chen had committed a strikingly similar act in 2014 was a significant aggravating factor. In our view, while it is true that this was not the first but second transgression, a suspension term of three months would nevertheless be proportionate and sufficient a sentence to take into account the fact that this was Dr Chen’s second transgression. An uplift in the period of suspension is not, in our view, necessary or appropriate for the following reasons. First, while Dr Chen was subject to a programme directed by the regulatory authority in

¹¹ At [54] of R1.

¹² See the Respondent’s Bundle of Documents (“R2-1 – 24”) at R-4 -6.

¹³ At ABD-13 – 15.

Australia, he was only a student then and subject to its treatment directions as a student. It would not be appropriate to impose an uplift on the basis of a transgression committed while he was a student rather than a fully qualified practitioner: a student would not be subject to the same regime and expectations of a fully qualified doctor. Second, a three-month suspension is consistent with the sentence of a four-month suspension imposed in *Deshan* where two videos of two victims were in fact recorded by a respondent who was a senior member of the medical profession, a point which the DT in *Deshan* regarded as an aggravating factor. In contrast, Dr Chen attempted to take one video. Third, specific deterrence, which is directed at discouraging a particular offender from committing future offences, is not a key sentencing consideration in our case in light of the assessment of his attending psychiatrist, Dr E (and which, we note, the SMC did not raise an objection to at the hearing when Dr Chen’s Counsel referred to it), that the likelihood of Dr Chen committing a similar future transgression is extremely remote. As Dr E opined in his report dated 12 March 2022, “(t)aking into totality of the 2014 offence and the more recent offence in 2020, I am of the opinion that his likelihood of repeating similar offence (*sic*) is extremely remote.¹⁴⁷”

47 In the circumstances, no adjustment to the starting point of a three-month suspension is necessary.

Conclusion

48 For the foregoing reasons, pursuant to the DT’s powers under section 53(2) of the Act, the following orders are imposed on the Respondent:

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

49 The SMC suggested that the suspension commence 40 days after the date of today’s order, to take into consideration the time frame for parties to appeal and for Dr Chen to settle

¹⁴ At R2-14.

any outstanding matters before commencing his suspension. There was no objection from Dr Chen's Counsel. In the premises, it is further ordered that the period of suspension is to commence 40 days after the date of the order herein.

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

A/Prof Ong Biauwei Chi
Chairman

A/Prof Tan Tong Khee

Ms Thian Yee Sze

Mr Sui Yi Siong
(M/s Harry Elias Partnership LLP)
for Singapore Medical Council; and

Mr Quek Mong Hua and Mr Drashy Trivedi
(M/s Lee & Lee)
For Dr Chen Hsing Yu