

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2022] SGHC 302

Originating Summons No 3 of 2022

Between

Ong Kian Peng Julian

... Appellant

And

Singapore Medical Council

... Respondent

And

Originating Summons No 4 of 2022

Between

Chan Herng Nieng

... Appellant

And

Singapore Medical Council

... Respondent

And

Originating Summons No 5 of 2022

Between

Singapore Medical Council

... Appellant

And

Ong Kian Peng Julian

... Respondent

And

Originating Summons No 6 of 2022

Between

Singapore Medical Council

... Appellant

And

Chan Heng Nieng

... Respondent

JUDGMENT

[Professions — Medical profession and practice — Professional conduct]

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Ong Kian Peng Julian
v
Singapore Medical Council and other matters

[2022] SGHC 302

General Division of the High Court — Originating Summonses Nos 3, 4, 5
and 6 of 2022
Sundaresh Menon CJ, Andrew Phang Boon Leong JCA and Tay Yong Kwang
JCA
3 August 2022

2 December 2022

Judgment reserved.

Sundaresh Menon CJ (delivering the judgment of the court):

Introduction

1 The medical profession is held in high esteem because its members have been called to the work of healing. Those who avail of the services of medical professionals must repose trust and confidence in them. This is essential, not least because it is necessary to enable a frank and open exchange of information. But this engenders an expectation on the part of patients that they will be treated with dignity and respect, and that any information they provide will be used for proper purposes. It is true that doctors have a life outside their profession. In general, they are not to be punished for moral failings in their personal lives. But what happens when the line between a doctor's personal and professional life is obscured? That is the question presented in this case.

2 The medical practitioners in question are Dr Ong Kian Peng Julian (“Dr Ong”) and Dr Chan Herng Nieng (“Dr Chan”). Dr Ong was a consultant general and colorectal surgeon in private practice and Dr Chan was a senior consultant in the Department of Psychiatry at the Singapore General Hospital at the time the subject matter of the disciplinary proceedings transpired.

3 Dr Ong and Dr Chan each claimed trial to a single charge of improper conduct which brought disrepute to the medical profession under s 53(1)(c) of the Medical Registration Act (Cap 174, 2014 Rev Ed) (the “MRA”), and were convicted by a Disciplinary Tribunal (the “DT”) on their respective proceeded charges at the conclusion of a four-day hearing. The DT imposed a term of suspension of eight months on Dr Ong and a term of suspension of five months on Dr Chan.

4 By Originating Summonses Nos 3 and 4 of 2022, Dr Ong and Dr Chan appeal against their convictions and sentences. By Originating Summonses Nos 5 and 6 of 2022, the Singapore Medical Council (the “SMC”) appeals against the sentences meted out by the DT, on the basis that each is manifestly inadequate. Before we turn to the merits of these appeals, we first set out the relevant factual background.

Background

5 Dr Chan entered into an intimate relationship with one Serene Tiong (“Ms Tiong”) between 2017 and 2018. Sometime in 2018 Ms Tiong discovered that Dr Chan was contemporaneously involved in other intimate relationships and having sexual relations with other women. Ms Tiong then accessed Dr Chan’s phone, and without his knowledge and consent, took images of various WhatsApp messages exchanged between Dr Ong and Dr Chan. Ms Tiong then

filed a complaint (the “Complaint”) against Dr Chan and Dr Ong with the SMC, appending the aforementioned images. The Complaint contained multiple allegations against Dr Ong and Dr Chan and the accompanying images showed parts of various conversations between Dr Ong and Dr Chan. After the initial review of the Complaint and the accompanying materials, disciplinary proceedings were initiated against Dr Ong and Dr Chan in respect of one particular exchange of messages in which Dr Ong had forwarded the contact information of one of his patients (“K”) to Dr Chan (the “Messages”).

6 K was a property agent who consulted Dr Ong on 19 March 2018. She underwent a medical procedure performed by him on 19 March 2018. She was discharged on 20 March 2018. Sometime between 19 and 20 March 2018, Dr Ong obtained K’s consent to share her contact details with Dr Chan, on the supposed basis that Dr Chan was looking to purchase a property. Shortly after, a WhatsApp conversation ensued between Dr Ong and Dr Chan, in the course of which Dr Ong forwarded K’s contact to Dr Chan. That conversation, which consisted of nine messages and spanned two minutes, was the subject of the proceeded charges against both Dr Ong and Dr Chan. For the purposes of this judgment, the individual messages have been transcribed and numbered as follows:

Message No.	Sender/Recipient	Message
1	Dr Chan to Dr Ong	U r just too stretched ..
2	Dr Chan to Dr Ong	Can ask her for drinks instead ?
3	Dr Ong to Dr Chan	[sends the contact details for K]

4	Dr Ong to Dr Chan	Feel free to play your game
5	Dr Ong to Dr Chan	Sure [replying to “Can ask her for drinks instead ?”]
6	Dr Chan to Dr Ong	Me? Out of the blue ask her?
7	Dr Ong to Dr Chan	I can recommend dilatation of her anus after her wounds heal
8	Dr Ong to Dr Chan	She’s expecting you re the property mah [replying to “Me? Out of the blue ask her ?”]
9	Dr Chan to Dr Ong	I can’t decide to go thru the property route

7 Thereafter, on 20 March 2018, Dr Chan started a conversation with K, discussing the possibility of purchasing an investment property (the “Follow-on Conversation”). On 21 March 2018, K sent Dr Chan a list of properties to look at. However, Dr Chan and K did not stay in contact and did not meet each other. Sometime in June 2018, Dr Ong contacted K and sought and obtained a WhatsApp message from K, in which she stated that she had consented to Dr Ong forwarding her contact details to Dr Chan for the purposes of a property transaction and that she did not eventually meet Dr Chan.

8 The rest of the WhatsApp message exchanges that had been appended to the Complaint were not the subject of any charges (the “Remaining Messages”). However, they documented various conversations between Dr Ong and Dr Chan discussing various other sexual encounters they each had which

did not concern K, and we return to consider their significance later in this judgment. A few examples of these conversations included:

- (a) An exchange of messages in which Dr Ong discusses the possibility of having group sex with Dr Chan;
- (b) An exchange of messages in which Dr Ong and Dr Chan discuss their history of having affairs with married women;
- (c) An exchange of messages in which Dr Ong and Dr Chan discuss exchanging contact information of women to engage in sexual relations with. In particular, Dr Ong pointed out that Dr Chan had not been referring women to him recently, to which Dr Chan replied that he would “try”.

The DT’s decision

9 The hearing before the DT took place over four days. K was the only witness called by SMC. At the close of the SMC’s case, both Dr Chan and Dr Ong submitted that they had no case to answer. However, the DT agreed that the evidence adduced by SMC was adequate, and called for their defences against the respective proceeded charges. Both Dr Chan and Dr Ong testified in their own defence.

10 The DT convicted both Dr Ong and Dr Chan of improper acts or conduct which brought disrepute to the medical profession under s 53(1)(c) of the MRA.

Decision regarding Dr Ong

11 Dr Ong did not deny that he had forwarded K’s phone number to Dr Chan. However, he denied that he did so for the purpose of allowing Dr Chan

to attempt to engage in sexual activity with K. He contended that he had obtained K's consent to provide Dr Chan with her contact information because Dr Chan was looking to invest in property, and he wanted to refer Dr Chan as a prospective client for K.

12 The DT noted that Dr Chan had never asked him to introduce a property agent and found it especially peculiar in this light that the only property agent Dr Ong had introduced to Dr Chan was his patient, K, whom he barely knew, even though he claimed to know other property agents. In the circumstances, the DT declined to accept Dr Ong's claim that he had introduced K to Dr Chan in connection with the latter's supposed interest in investing in property (GD at [46]–[47]).

13 The DT then considered whether the Messages revealed that Dr Ong and Dr Chan were acting in collusion, and both knew that the purpose for which K's contact particulars had been sent to Dr Chan was to enable him to attempt to have a sexual encounter with K and found this to be the case. It noted, among other things, that Message No. 7 which had been sent by Dr Ong carried an overt sexual connotation, and read together with the earlier messages as well as Dr Ong's testimony at trial that there was no medical reason for him to perform anal dilation on K, the proper inference to be drawn was that Dr Ong was alluding to sexual activity of some kind, placing it beyond a reasonable doubt that Dr Ong and Dr Chan were discussing K in sexual terms (GD at [95]–[97], [99]).

14 As for Messages Nos. 8 and 9, the DT found that these showed that Dr Ong and Dr Chan shared the common intention of having Dr Chan ask K out socially with a view to then attempting to have sexual relations with her (GD at [104]). In the DT's view, the irresistible inference to be drawn from Dr Ong's

and Dr Chan’s conduct, the Messages, and the Follow-on Conversation was that both Dr Ong and Dr Chan had colluded to introduce K to Dr Chan with Dr Chan pretending to be a genuine property purchaser, when the real intention was for Dr Chan to get to know K socially and then attempt to engage in sexual activity with her (GD at [128]).

15 While the DT did not consider the Remaining Messages in coming to their findings on collusion and the sexual intent, the DT did find that the tenor of the Remaining Messages was consistent with them (GD at [148]). In particular, the DT was of the view that the Remaining Messages demonstrated that Dr Ong and Dr Chan had a “continuing intention” to introduce women who might be willing sexual partners to each other (GD at [152]).

16 The DT held that in these circumstances, Dr Ong had failed to treat his patient (meaning K) with due courtesy, consideration, and respect (GD at [156]–[161], [168]–[170]). This was a breach of Guideline C1 of the SMC Ethical Code and Ethical Guidelines (2016 Edition) (the “ECEG”), which provides as follows:

C1. Attitude towards patients

A good patient-doctor relationship requires doctors to display a high standard of professional conduct in their dealings and interactions with patients. This means:

- (1) You must treat patients with courtesy, consideration, compassion and respect and without coercion, discrimination, harassment or exploitation.
- (2) You must always respect patients’ right to privacy and dignity.
- (3) You are not obliged to be subjected to abuse of any kind by patients or those with them. Yet, you must maintain a professional demeanour towards patients at all times. Except in cases of

self-defence against physical harm, you must not retaliate but seek to end the engagement with the patients as quickly as possible.

17 The DT suspended Dr Ong for a term of eight months, having regard to the factors and sentencing framework set out by this court in *Wong Meng Hang v Singapore Medical Council* [2019] 3 SLR 526 (“*Wong Meng Hang*”). In the DT’s view, the level of *harm* occasioned by Dr Ong’s abuse of the trust and confidence placed in him by K, for the potential sexual benefit of Dr Chan, was in the moderate range (GD at [225]–[233]). As Dr Ong had played a more active role in forwarding K’s contact to Dr Chan, and that this was a one-off incident, the DT concluded that his *culpability* was in the low to medium range (GD at [238]–[241]). Applying the analytical framework set out in *Wong Meng Hang*, the DT found the appropriate starting point within the applicable indicative sentencing range was suspension for a period of eight months (GD at [247]), and as the aggravating and mitigating factors did not have a material effect on the sentence no further adjustments were made (GD at [260]).

Decision regarding Dr Chan

18 As for Dr Chan, the DT considered his evidence and noted that despite having his own “regular” property agent, Dr Chan saw fit to contact only K about his intention to purchase a second property. Having considered the content of the Messages in context, the DT concluded that Dr Chan had no genuine intention to explore the purchase of an investment property through K, and that Dr Chan and Dr Ong had colluded to use the pretext of a potential property investment as an excuse for Dr Chan to get to know K socially so that he could then attempt to engage in sexual activity with her (GD at [40]–[45], [47], [73], [129]).

19 However, the DT considered that Guideline C1 did not apply to Dr Chan because K was not his patient (GD at [166]). Notwithstanding this, the DT found that by his collusion with Dr Ong, Dr Chan was guilty of improper conduct that brought disrepute to the medical profession, an offence under s 53(1)(c) of the MRA. In the circumstances, the DT exercised its discretion to amend the charge against Dr Chan by removing the reference to Guideline C1 (GD at [181] and [188]).

20 Applying an objective inquiry, the DT concluded that the collusive acts of Dr Ong and Dr Chan were something “that as medical practitioners they should not have done” (GD at [199]). Finding that Dr Chan’s conduct was improper and had brought disrepute to the profession, the DT convicted Dr Chan of the amended charge (GD at [202]).

21 As to sentence, in the DT’s view, the level of harm occasioned by Dr Chan was pegged at the lower end of moderate given that K was not his patient, and because his offence had been committed in a non-professional capacity and so might cause less harm to public confidence (GD at [225(iv)(2)] and [234]). As Dr Chan had played a more passive role in receiving K’s contact with Dr Ong, the DT concluded that his culpability was in the low range (GD at [238]–[241]). In the circumstances, the DT found the appropriate starting point was suspension for a period of five months (GD at [259]), and as the aggravating and mitigating factors did not have a material effect on the sentence no further adjustments were made (GD at [260]).

Our decision

22 In this judgment, we consider the various appeals against both the convictions and sentences, and we set out the principal arguments raised by the

parties in the relevant sections where we address each of the principal issues.
We begin by setting out the principles which are not disputed.

23 Sections 53(1)(c) and 53(2) of the MRA reads:

53.—(1) Where a registered medical practitioner is found by a Disciplinary Tribunal—

...

(c) to have been guilty of such improper act or conduct which, in the opinion of the Disciplinary Tribunal, brings disrepute to his profession;

...

the Disciplinary Tribunal may exercise one or more of the powers referred to in subsection (2).

(2) For the purposes of subsection (1), the Disciplinary Tribunal may —

(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).

24 In *Pang Ah San v Singapore Medical Council* [2021] 5 SLR 681 (“*Pang Ah San*”), we held at [42] that “any conduct, whether by actions or words, which would bring disrepute to the profession would come within the ambit of the provision.” We agree with the DT that it was not necessary for an act or conduct of a medical practitioner to be in breach of a guideline in the ECEG in order for that medical practitioner to be found guilty under s 53(1)(c) of the MRA. This is consistent with the fact that the ECEG itself states that it is not meant to be exhaustive, and as stated within the foreword to the ECEG “medical practitioners should endeavour to keep to the basic principles of the 2016 ECEG and extend their application to areas that may not be specifically addressed.”

25 As we have said in *Low Chai Ling v Singapore Medical Council* [2013] 1 SLR 83 at [72] (cited in *Pang Ah San* at [43]), in order to determine what amounts to such misconduct, the court should make an objective inquiry into whether public confidence in the profession would be damaged by the revelation of their conduct, and what such conduct would signify to the public at large about doctors. This is an inquiry that is to be undertaken from the perspective of a reasonable layperson and no special deference is given to what other members of the profession might think about the conduct. This is so because the concern is with the standing of the profession in the estimation of others. Practically, such an inquiry would be aided by asking whether the reasonable person, on hearing about what the professional concerned had done, would have said without hesitation that he should not have done it.

26 In this light, we turn to examine Dr Ong's and Dr Chan's appeals against their convictions, before considering whether their sentences were appropriate should their convictions be upheld.

Our decision on conviction

Were the charges proved beyond a reasonable doubt?

27 The core factual circumstances surrounding the commission of the alleged improper conduct are not in dispute. It was not disputed before the DT, nor before us, that Dr Ong and Dr Chan had exchanged the relevant messages. The real question turned on how the Messages were to be interpreted and what inferences this gave rise to. The substance of the charges against both Dr Ong and Dr Chan was that they had colluded with each other for Dr Ong to introduce a patient of his to Dr Chan so that Dr Chan could attempt to engage in sexual activity with her. SMC's case rested primarily on the Messages and the legal burden was on SMC to establish beyond a reasonable doubt that the proper interpretation of the Messages and the inference to be drawn therefrom was that the doctors had indeed colluded in the manner alleged.

28 In these appeals, both Dr Ong and Dr Chan raised broadly similar arguments against their convictions, which essentially consisted of two prongs. First, it was contended by each of them that it could not be inferred from the Messages that they had colluded as alleged. It followed from this that the DT had erred in rejecting their case that Dr Ong had introduced K to Dr Chan for the purpose of possibly purchasing an investment property. Second, they contend that the Remaining Messages should not have been considered by the DT because they consisted of similar fact evidence that should not have been admitted in the circumstances. They contend that viewed in isolation, *without*

reference to the Remaining Messages, there was insufficient evidence to prove beyond a reasonable doubt that both doctors had colluded as alleged.

What was the proper inference to be drawn from the Messages

29 We begin with a preliminary point that was taken by counsel for Dr Ong, Mr N Sreenivasan SC. He argued that the reference to “her” in Message No. 2, which was sent by Dr Chan to Dr Ong and which read “[c]an ask her for drinks instead?”, did not necessarily refer to K. He contended that the Messages were a snapshot of part of a longer conversation between Dr Ong and Dr Chan and did not unambiguously point to the doctors colluding about anything sinister, much less something which concerned K specifically. Mr Sreenivasan pointed to the unavailability of the messages which preceded or came after the Messages to caution against coming to a definite conclusion about what was before us, given the danger that the messages that were exchanged before this and subsequently could cast the Messages in a different light.

30 We are not persuaded by Mr Sreenivasan’s arguments. First, by Dr Ong’s own evidence, it was he who had deleted the messages which preceded the Messages, in an attempt to avoid the scrutiny of his wife after Ms Tiong had contacted her over his indiscretions. Even if we accept that this was not done to avoid scrutiny in disciplinary proceedings, it does not assist either Dr Ong or Dr Chan. It is one thing to say that an adverse inference should not be drawn against Dr Ong for having deleted the messages; it is quite another to say that because the deleted messages could have been in his favour in the context of the disciplinary proceedings, we should assume they were and therefore find reasonable doubt as to the text of the Messages themselves. There is simply no basis to make that leap in favour of either Dr Ong or Dr Chan.

31 In our judgment, the proper interpretation of the Messages and the inferences that may be drawn from them must begin with the text of the Messages and the context in which that exchange took place. We turn therefore to the text of the Messages.

32 Message No. 2 from Dr Chan reads “[c]an ask her for drinks instead?”. In direct reference to Message No. 2, Dr Ong replies “[s]ure” in Message No. 5. In reply, Dr Chan sends Message No. 6 which reads “[m]e? Out of the blue ask her?”. In our judgment, Messages Nos. 2, 5, and 6 clearly show that Dr Chan was entertaining the idea of asking a woman out for drinks upon Dr Ong’s suggestion. But once this is considered in light of the fact that Dr Ong had forwarded K’s contact information to Dr Chan in Message No. 3, and in light of Message Nos. 8 and 9 which referred to the “property” and “the property route”, it is simply impossible to arrive at any conclusion other than that Dr Chan was entertaining the idea of asking K out for drinks and that Message No. 2 was a reference to K. As we have already observed, K is a property agent.

33 Message No. 8 which reads “[s]he’s expecting you re the property” was sent by Dr Ong in direct response to Message No. 6 and Dr Chan’s reply to this in Message No. 9 was: “I can’t decide to go thru *[sic]* the property route”. As we have said, when this is all seen together, one is led to the logical and inexorable conclusion from the plain text of the Messages that Dr Ong and Dr Chan were discussing how Dr Chan was to approach K to invite her for drinks, with the potential purchase of property being the possible way for Dr Chan to initiate the invitation.

34 Turning next to the context in which the entire exchange was conducted, we identify a number of points which can reasonably be inferred from the messages. First, the material part started with Dr Chan asking Dr Ong if he could

ask K out for drinks. This was not what one could characterise as a typical way in which to approach a property agent. Second, as the DT had rightly observed, it was difficult to understand why Dr Chan seemed hesitant and apprehensive about *how* to contact K if the conversation was genuinely just about a possible property purchase. To be clear, Message No. 2 shows that there was no hesitancy on the part of Dr Chan in wanting to meet K. Rather, it was a hesitancy over the *method* by which he was to secure a physical meeting with her. It is common knowledge that property agents advertise their services publicly, and expect to be contacted by total strangers interested in purchasing property. If the Messages had truly been about a genuine property transaction, it would have been entirely normal and natural for the meeting with K to take place such that there would have been no occasion at all for Dr Chan to have had any concern at all in this regard. Simply put, it was inexplicable that Dr Ong and Dr Chan felt the need to strategise, as it were, as to how the latter could meet up with K. Third, if the conversation between Dr Ong and Dr Chan had genuinely been one about property, it would not have been necessary for Dr Ong to tell Dr Chan that K was expecting him to contact her about “the property”. What else would it have been about? And it makes no sense for Dr Chan to then respond that he could not decide to go through the “property route”. This strikes us as remarkable for two reasons. First, the use of “property” as a “route”, makes it difficult to accept that the actual subject matter of the Messages was actually about property. And second, the suggestion in the final message that Dr Chan could not decide to go down the “property route”, points clearly to the idea that the real point of contacting K was *not* to pursue a property investment.

35 Fourth, when the Messages are examined in the light of what was perhaps the most troubling part of the entire exchange, which was the Message

No. 7 that Dr Ong had sent to Dr Chan, whatever doubts one might have entertained about what Dr Ong and Dr Chan were discussing are completely erased. Read in an integrated and contextual manner, there was simply no reasonable way in which the explanation put forward by Dr Ong and Dr Chan—that their conversation was about the innocuous introduction of a property agent—could cohere with what was said in that message. Mr Sreenivasan does not deny that this message concerned K since it alluded to the medical procedure she had undergone with Dr Ong. However, Dr Ong sought to distance himself from the message by describing it as “an improper and crude joke made in a private [conversation] between two friends”, rather than a phrase that carried a sexual innuendo or connotation. Counsel for Dr Chan, Mr Lee Eng Beng SC, took the position before the DT and before us that Dr Chan had been a passive recipient of this message from Dr Ong, and he did not know why Dr Ong had sent that message; nor did he acknowledge it in his reply to Dr Ong. In our judgment, all these arguments are misconceived. Even if it could be reasonably argued that the message read in *isolation* was nothing more than an appalling joke made by a doctor about and at the expense of his patient, when seen in light of the entirety of the exchange that Message No. 7 was a part of, it becomes inescapable that the subject-matter of the Messages was not about property but about a potential sexual venture. As for Dr Chan’s submission that he had been a passive recipient of that message, this may be so, except that it entirely misses or sidesteps its real significance, which is that it demolishes the contention that this was nothing more than an innocent conversation about property. Indeed, if property is what the conversation concerned, then it is notable that Dr Chan did not react adversely to the crude remark made by Dr Ong, which would have been wholly out of place in the context of such a conversation.

36 This interpretation of the Messages, which is that it had nothing really to do with any genuine interest in a property investment, and the inference that taken as a whole, this was a conversation in which Dr Ong was sharing his patient's particulars with Dr Chan to enable the latter to attempt to have a sexual encounter with her is further strengthened when we consider the surrounding conduct of Dr Ong and Dr Chan. In the course of the proceedings below, it emerged that Dr Chan was already in contact with another property agent, who handled the rental of another property he owned. This was a property agent whom Dr Chan said he was sufficiently familiar and comfortable with to even ask her to introduce women to him who would be open to having sexual relations with him. Yet he admitted that he never asked that property agent about the property he was purportedly interested in investing in. Indeed, it does not appear that Dr Chan had approached any other property agents at all.

37 As for Dr Ong, he admitted that Dr Chan had never asked him to help find a property agent. This was also confirmed by Dr Chan, who also had his own property agent whom he was familiar with, and it makes it even more implausible that a conversation that started with Dr Chan asking if he could "ask her for drinks instead?" could suddenly change track and become a discussion about a property investment in respect of which Dr Chan had never requested Dr Ong for help.

38 We also place little weight on the argument which was raised by both Mr Sreenivasan and Mr Lee that Dr Chan's subsequent conduct in not following through to meet K, corroborated their case that the Messages were about a property transaction. First, the gravamen of the charges proceeded against both doctors was that they had colluded to refer K, who was Dr Ong's patient, to Dr Chan for him to attempt to engage in sexual activity. In other words, it was the misuse of a patient's contact information by Dr Ong with the participation of Dr

Chan, that was at the heart of the charges. And as Mr Sreenivasan himself accepts, it was not necessary for Dr Chan to have met K or to have engaged in any sort of sexual activity with K, for the charges to be made out. Second, the fact that Dr Chan had subsequently contacted K about purchasing an investment property after he had received K's contact information from Dr Ong does not shed any light on the Messages. After all, given that K had been told that Dr Chan would contact her *about a property*, it would have been most peculiar if he reached out to her in any other context. The point of the exercise was to conceal the real intent behind a façade of normalcy.

39 We are therefore satisfied that Dr Ong had set up an introduction for K to be contacted by Dr Chan under the pretext of the latter's feigned interest in a potential property transaction, when both he and Dr Chan knew that this was not the real point of the introduction. Rather, it was to enable Chan to pursue his own agenda, which they both knew was for him to try to have sex with K. We therefore agree with and affirm the DT's finding to this effect.

Whether the Remaining Messages were inadmissible

40 We turn to consider, whether the Remaining Messages constituted inadmissible similar fact evidence. To recapitulate, as summarised at [8] above, the Remaining Messages consisted of several WhatsApp message exchanges which had taken place between Dr Ong and Dr Chan, discussing their sexual escapades as well as the exchange of contact information of women in order for either Dr Ong or Dr Chan to attempt to engage in sexual relations with them.

41 As stated by the Court of Appeal in *Tan Meng Jee v Public Prosecutor* [1996] 2 SLR(R) 178 ("*Tan Meng Jee*") at [41], the underlying rationale for the rule excluding similar fact evidence is to guard

against reasoning by propensity. The rule exists to prevent the inference that a person's past conduct increases his disposition or tendency to have committed the offence with which he is now charged (see *Muhammad Abdul Hadi bin Haron v Public Prosecutor and another appeal* [2021] 1 SLR 537 (“*Hadi*”) at [53]).

42 However, there is no blanket rule against the admission of similar fact evidence. Sections 14 and 15 of the Evidence Act 1893 (2020 Rev Ed) (“EA”) provide that:

14. *Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill will or goodwill towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant when the existence of any such state of mind or body or bodily feeling is in issue or relevant.*

...

15. *When there is a question whether an act was accidental or intentional or done with a particular knowledge or intention, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.*

[emphasis added]

In this regard, as stated by this court in *Tan Meng Jee* at [48] and *Hadi* at [55], admission of similar fact evidence under ss 14 and 15 of the EA is permissible provided that it can be shown *that the probative value of the evidence exceeds its prejudicial effect*.

43 Turning to the present case, we first address a preliminary argument put forward by both Dr Ong and Dr Chan. Both doctors rely on *Law Society of Singapore v Constance Margreat Paglar* [2021] 4 SLR 382 (“*LSS v Constance*”) at [42], where the Court of Three Judges stated that:

... it is well established that disciplinary proceedings are quasi-criminal in nature, and the rule that similar fact evidence is generally inadmissible in criminal proceedings lends further weight to the notion that antecedents are irrelevant for the purpose of determining liability in disciplinary proceedings...

to contend that similar fact evidence is generally inadmissible in disciplinary proceedings.

44 In our judgment, *LSS v Constance* does not assist Dr Ong and Dr Chan. That case does not preclude or bar the admission of similar fact evidence in disciplinary proceedings. Rather, the court in *LSS v Constance* was simply restating the general position that similar fact evidence is *generally* inadmissible. This was not inconsistent with the view in both *Tan Meng Jee* and *Hadi*, that similar fact evidence while generally inadmissible *can be admitted if its probative weight outweighs its prejudicial effect*.

45 That said, we do not think that the issue of similar fact evidence is even engaged in the present case. It is clear that the DT had not considered the Remaining Messages as evidence pointing to propensity, but rather as evidence that demonstrated and shed light on the true context of the relationship between Dr Ong and Dr Chan, as well as their state of mind and intention when discussing K, in the light of which the Messages were to be construed (GD at [147]–[151]). As stated in *Tan Meng Jee* at [37], in determining the admissibility of evidence, the purpose for which the evidence is sought to be admitted is vital (see also *Michael Anak Garing v Public Prosecutor and another appeal* [2017] 1 SLR 748 at [8]). Like the DT, we do not think it necessary to rely on the Remaining Messages to reach the conclusion that Dr Ong and Dr Chan had colluded to refer K to Dr Chan with sexual intent. As explained in [31]–[39] above, the text of the Messages and the surrounding context in which they were exchanged was sufficient for us to come to a

conclusion on their true meaning. In our view, the Remaining Messages were only of potential relevance in helping to establish the nature of the relationship between Dr Ong and Dr Chan so as to provide the context in which the Messages could be better understood, and this does nothing more than to confirm and fortify the conclusion we arrived at, based only on the text of the Messages.

46 The EA allows the admission of such evidence under s 9, which states:

9. Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened or which show the relation of parties by whom any such fact was transacted, are relevant insofar as they are necessary for that purpose.

In our judgment, the Remaining Messages are relevant and admissible for the *limited purpose* of demonstrating the nature of the relationship and dealings between Dr Ong and Dr Chan, which in turn was useful in shedding light on the meaning of the Messages. The nature and meaning of the Messages are without doubt relevant to the charges in question here.

47 In any event, having considered the three factors of cogency, the strength of inference, and relevance, we are satisfied that the Remaining Messages were admissible, and their probative weight outweighed their prejudicial effect. First, the provenance of the Remaining Messages was not disputed. Neither Dr Ong nor Dr Chan disputes the authenticity of the Remaining Messages, or that they had sent those messages to each other. Their only contention in this regard was that Ms Tiong had curated the messages to paint them in the worst possible light. That does not change the fact that the Remaining Messages were in fact exchanged between Dr Chan and Dr Ong. Second, the inference that can be drawn from the Remaining Messages is clear. Neither Dr Ong nor Dr Chan

disputes that the Remaining Messages showed that they had a history of introducing women to each other with a view to trying to engage in sexual activity and to discuss their sexual exploits and appetites. In this light, the Remaining Messages are not only relevant but also significant in contextualising what Dr Ong and Dr Chan were discussing in the Messages as well as demonstrating what they knew about each other, and their respective sexual exploits and appetites.

48 The Remaining Messages are not pivotal to our analysis of the proper inference to be drawn from the Messages. We consider that there was sufficient evidence, even leaving aside the Remaining Messages, to show the real point of the Messages. But they help fortify our conclusion that Dr Ong and Dr Chan were not discussing a property transaction in relation to K in the Messages.

Whether public confidence in the profession would be damaged by the conduct of Dr Ong and Dr Chan

49 In that light, we turn to consider if the charges are made out. We have held that the DT was correct to conclude from the Messages that Dr Ong and Dr Chan had colluded to introduce K to Dr Chan in order for Dr Chan to attempt to have sexual relations with K. Following from our observations at [25], the question is whether the DT erred in finding that public confidence in the medical profession would be damaged by the conduct of Dr Ong and Dr Chan. We approach this inquiry from the perspective of considering whether a reasonable person, on hearing about what Dr Ong and Dr Chan had done, would have said without hesitation that they should not have done it.

Dr Ong

50 In our judgment, it is beyond a reasonable doubt that Dr Ong’s conduct in colluding with Dr Chan to refer K, who was his patient, to Dr Chan under a false pretence in order for Dr Chan to pursue his own agenda of trying to have sexual relations with her, was something a reasonable person would conclude that Dr Ong ought not to have done.

51 First, as we have noted, K was Dr Ong’s patient at the material time. The relationship between the doctor and his patient exists for the benefit and best interests of the patient (see *Pang Ah San v Singapore Medical Council* [2014] 1 SLR 1094 at [66]). The complexion of that relationship carries with it a very real potential for exploitation, which is precisely what Dr Ong had done for the potential benefit of Dr Chan.

52 Second, Dr Ong obtained the consent of K to disclose her contact details to Dr Chan under false pretences. As stated in the text message K had sent Dr Ong on 22 June 2018 at his request:

Hi Dr Ong, I have given my consent to you earlier on in Feb to give my contact to your friend to purchase a house. ...

In our judgment, any acquiescence on the part of K to have her contact details disclosed to Dr Chan was not valid consent given our finding that Dr Ong knew that Dr Chan had no intention to purchase a property. The fact that K’s contact information was publicly available is also immaterial. It is the manner in which that contact information had come to Dr Ong, the manner in which he had obtained the consent of K to give that information to Dr Chan for an ulterior motive, and the fact that he misrepresented to K that a friend of his would be in touch with her for a legitimate business purpose that make Dr Ong’s conduct objectionable.

53 Third, the Remaining Messages painted a clear picture of the attitudes of Dr Ong and Dr Chan and, what they knew about each other’s sexual exploits and appetites. Dr Ong was passing on his patient’s contact in betrayal of her trust, and with the knowledge that Dr Chan would try to convert that introduction into an opportunity to satisfy his own lustful appetite. Dr Ong certainly did not treat K with respect and dignity.

54 In our judgment, Dr Ong’s conduct was incompatible with Guideline C1, which requires doctors to treat their patients with “courtesy, consideration... and respect ... without exploitation”. Dr Ong does not dispute before us that if he were found guilty of collusion with Dr Chan, his conduct would be a breach of Guideline C1. We also agree with the DT’s holding that ethical rules and guidelines have to be interpreted and read in a manner which gives effect to their underlying spirit and intent.

Dr Chan

55 Turning next to Dr Chan, in our judgment, it is also beyond a reasonable doubt that the conduct of Dr Chan in colluding with Dr Ong, was something a reasonable person would conclude that Dr Chan ought not to have done.

56 First, it is not disputed by Dr Chan, that as a doctor, he knew the ethical rules that applied to him. He also acknowledged in both his witness statement and oral evidence before the DT that he knew that K was Dr Ong’s patient and that Dr Ong was passing K’s contact information to him. Dr Chan also knew all this *in the context of the type of relationship he and Dr Ong shared* as evidenced in the Remaining Messages. While we agree with the DT that Guideline C1 does not apply to Dr Chan since there was no doctor-patient relationship between

him and K, it cannot be gainsaid that he had fully acquiesced and participated in a scheme where a fellow doctor was acting in violation of Guideline C1.

57 In any event, Mr Lee does not contend that the fact that K was not Dr Chan’s patient insulates him from culpability. This is rightly so, because a member of an honourable profession who receives information from another member of the profession which he knows was handed to him in breach of that other member’s duty, cannot be heard to say that he played no part in that breach where he intended to act on that information.

58 We therefore agree with the DT that Dr Chan’s conduct in receiving confidential patient information from another doctor in these circumstances and for these purposes, was conduct that a reasonable person would conclude he should not have engaged in.

59 In the circumstances, we find that the DT did not err in finding that both Dr Ong and Dr Chan, were guilty of improper conduct which brought disrepute to the medical profession. Accordingly, we uphold their convictions on the proceeded charges.

Our decision on sentence

60 Before we consider the appropriate sentences in respect of both Dr Ong and Dr Chan, we observe that the parties do not dispute the applicability of the four-step sentencing framework we set out in *Wong Meng Hang* (the “*Wong Meng Hang* framework”) even though we stated in *Wong Meng Hang* that the framework was set out in relation to cases where deficiencies in a doctor’s clinical care caused harm to a patient, and would not be applicable to other types of misconduct which lie within or outside a doctor’s professional responsibilities even though the same considerations of harm and culpability

might be relevant. This is because the relevant considerations and types of harm caused by the various forms of misconduct are markedly different and are often fact-specific (*Wong Meng Hang* at [36]):

... [T]his sentencing matrix is only applicable to cases where deficiencies in a doctor's clinical care causes harm to a patient, and not to other forms of medical misconduct such as overcharging, falsification of medical documents, inappropriate relations with a patient, or conduct which lies outside the ambit of a doctor's professional responsibilities to his patient but which leads to a conviction for a criminal offence implying a defect of character that renders the doctor unsuitable for registration as a medical practitioner. *Although the considerations of harm and culpability may remain relevant, those cases are likely to involve considerations that are specific to the type of misconduct in question and which would not arise in cases relating to clinical care. Further, the types of harm caused by those forms of misconduct may be markedly different in nature to that which is caused by misconduct in the form of deficient clinical care, and it would therefore not be appropriate to assess those cases by reference to the same matrix. Instead, the appropriate sentencing ranges for those types of matters should be considered by reference to other cases involving similar circumstances.*

[emphasis added]

61 On 15 July 2020, the Sentencing Guidelines Committee (the “Committee”) appointed by the SMC published the *Sentencing Guidelines for Singapore Medical Disciplinary Tribunals* (the “*Sentencing Guidelines*”), which extended the applicability of the *Wong Meng Hang* framework to both clinical and non-clinical offences. In particular, the Committee was of the view that the definition of “harm” in the *Wong Meng Hang* framework was broad enough to include other forms of harm, such as non-physical harm (including emotional or psychological distress), potential harm, and harm caused to public confidence in the medical profession, or to public health and safety or the public healthcare system.

62 We recognise the logic of the Committee's suggestion that the *Wong Meng Hang* framework can and should be extended to other forms of misconduct, so as to guide the DT in sentencing. Having said that, we would emphasise the importance of bearing in mind the nuances of each case.

63 The four steps under the modified *Wong Meng Hang* framework are briefly summarised as follows:

(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.

Dr Ong

64 With those principles in mind, we consider Dr Ong’s and Dr Chan’s sentences.

65 In Dr Ong’s appeal against sentence, he first argues that the harm caused by his conduct was non-existent or slight, because (a) there would have been no public erosion of confidence in the medical profession, (b) there was no physical harm or emotional distress caused to K, and (c) Dr Chan did not in fact meet with K. Second, he argues that the harm caused in the present case was lower than the harm identified in the closest analogous precedents of *Singapore Medical Council v Dr Deshan* [2020] SMCDT 6 (“*Deshan*”) and *Singapore Medical Council v Dr Azman bin Osman* [2020] SMCDT 7 (“*Azman*”), both of which concerned disciplinary action meted in respect of doctors who had committed sexual offences. Third, he argues that his culpability was low, as there was no pre-meditation, and he was only behaving casually or flippantly in providing K’s contact details to Dr Chan.

66 In SMC’s appeal against Dr Ong’s sentence, it argues that the term of suspension of eight months was manifestly inadequate. First, SMC argues that Dr Ong’s level of culpability falls in the medium range, and that the DT had erred in failing to consider that Dr Ong’s conduct was premeditated and intentional. Second, SMC argues that a term of suspension of 12 months is consistent with the sentences that have been meted out in respect of sexual

misconduct, citing cases from the UK as well as *In the matter of Dr AAB* [2008] SMCDC 2 (“*Dr AAB*”). Third, SMC argues that a higher sentence is warranted on the basis of general deterrence, and the need for a clear message to be sent to the medical profession that sexual exploitation of a patient, whether for one’s own benefit or for the benefit of another, is impermissible and reprehensible.

Harm

67 It is clear that this is a case that involves significant harm to public confidence in the medical profession. What Dr Ong did was an abuse of the trust and confidence that a patient had reposed in him for the potential sexual benefit of Dr Chan. Further, it was not only disrespectful to K, but it also dehumanised her into an object for sexual gratification.

68 That no actual harm was caused to K by either Dr Ong or Dr Chan misses the point. Such an assertion is true only in the limited sense that she was not compelled to engage in sexual relations with Dr Chan under false pretences. But it cannot be denied that she suffered humiliation and indignity as a result of what Dr Ong and Dr Chan did to her, and the fact that she was Dr Ong’s patient made it all the more aggravating. If actual physical harm had been caused to K, the sanction called for would likely have been a striking out order.

69 In our judgment, the harm to public confidence cannot be understated. Patients are entitled to expect that their doctors will display a high standard of professional conduct in their dealings and interactions with them. This extends to how their doctors handle their personal information and their details even after the end of their interactions.

70 All things considered, we regard the harm caused in the present case to be on the higher end of the moderate range.

Culpability

71 Turning to Dr Ong's culpability, we identify a number of points regarding Dr Ong's conduct that bear emphasis. First, Dr Ong obtained K's supposed consent under false pretences. Second, Dr Ong was the one who had initiated the act of collusion with Dr Chan, by forwarding K's contact details to Dr Chan. Third, the actions of Dr Ong were callous and an intentional departure from the conduct reasonably expected of a medical practitioner. There is simply no possible justification for dealing with a patient's information in the way Dr Ong dealt with K's information.

72 Having considered Dr Ong's case, even if we accept that this was the only incident involving a patient, it is clear that his culpability was on the high end of the medium range.

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

73 Having found that Dr Ong's conduct was of a medium degree of culpability and resulted in moderate harm, the applicable indicative sentencing range is a term of suspension between one to two years.

74 Following from our holdings in *Wong Meng Hang* and at [62] above that the appropriate sentence in each case turns on its facts, and that reference must be had to relevant cases involving similar circumstances, we make some observations on the cases cited by both Dr Ong and SMC.

75 First, *Deshan* and *Azman* are both of little assistance because they involved respondent doctors who had pleaded guilty to very different acts. In *Deshan*, the respondent doctor had pleaded guilty to a charge under s 53(1)(c)

of the MRA for recording upskirt videos of two females at a supermarket and was sentenced to a term of suspension of four months. In *Azman*, the respondent doctor had pleaded guilty to a charge under s 53(1)(b) of the MRA of outraging the modesty of a female passenger on a bus by exposing his undergarment and groin. Neither of these cases involved an interaction with a patient.

76 As for the case of *Dr AAB* cited by SMC, the factual circumstances of that case are distinguishable from the present case. *Dr AAB* involved a doctor who engaged in a sexual relationship with a patient, which would arguably been of significantly more harm than the present case. In addition, the respondent doctor in *Dr AAB* had been charged with three other offences involving the medical records of patients, which included the tampering of patient records and the improper disclosure of patient information to a third party. In contrast, while the intended purpose of Dr Ong's conduct was to allow Dr Chan to engage in sexual relations with K, it is important to bear in mind that the gravamen of the charge in the present case was Dr Ong's failure to accord K with courtesy, consideration, respect and without exploitation. That said, even considering the fact that the respondent doctor in *Dr AAB* had chosen to plead guilty to the charges that were proceeded against him, we are of the view in any case that the suspension of two years meted out in that case was likely too lenient in light of the gravity of the offences involved, and do not consider this case a relevant precedent.

77 As for the UK cases involving sexual misconduct committed by doctors which were cited by SMC, those cases are of limited value because they involve a different statutory regime for misconduct and also involve factual circumstances more similar to those found in *Dr AAB*.

78 The circumstances surrounding Dr Ong’s misconduct are “novel” in that they involve an attempt by a doctor to procure a sexual benefit for another member of the profession. In the absence of useful sentencing precedents, we turn to consider the appropriate sentence with reference to the offence-specific factors. In our judgment, because of the medium degree of culpability and moderate harm which resulted from Dr Ong’s conduct, a lengthy period of suspension was warranted. In these circumstances, we find that the DT’s sentence of eight months’ suspension was manifestly inadequate and think the appropriate “starting point” in this case is a term of suspension of two years. We now turn to the final step in the analysis, which is to consider the effect of any relevant offender-specific mitigating or aggravating circumstances, if any.

Relevant mitigating and aggravating circumstances

79 Dr Ong submitted in mitigation that he had an unblemished record as a medical practitioner, that he had a very low propensity for re-offending, that no sexual advances were eventually made on K, and that he had expressed remorse over the crude comment he had made about K.

80 In *Ang Peng Tiam v Singapore Medical Council* [2017] 5 SLR 356 (“*Ang Peng Tiam*”) at [105], we accepted that an offender’s long and unblemished record may be regarded as a mitigating factor if it allows the court to infer that the offender had acted “out of character” and was unlikely to re-offend. However, we also observed that the mitigating value of a clean record may be displaced in the face of a need for general deterrence, and in light of the possible negative impact on public confidence in the medical profession where a senior and eminent member of the medical profession is convicted (*Ang Peng Tiam* at [106]).

81 In the present case, we agree that no mitigating weight should be accorded to Dr Ong’s record for two reasons. First, this being a case that does not involve his clinical judgment or professional expertise, the weight of his unblemished record is of little relevance. Further, the fact that Dr Ong was a senior doctor of more than 20 years’ standing, amplifies the negative impact his misconduct would have had on public confidence in the medical profession. Second, and more importantly, we agree with the SMC that a key sentencing objective in the present case is that of general deterrence. It is imperative that a clear message be sent to the medical profession that such conduct is utterly unacceptable, and that harsh consequences will befall those who might be considering similar acts.

82 A genuine sign of remorse might warrant a reduction in the sentence received by the offender. However, while Dr Ong has expressed remorse over the crude remark he made about K, his oral testimony paints a different picture of how he truly feels:

Q: Dr Ong, it didn't occur to you then that you should, instead of deleting these messages, keep those messages so that you can explain yourself and show those messages within their full context?

A: You know all the rest of the messages that have been exhibited by Serene Tiong. There's nothing there I want to -- to show my wife. There's nothing there I would like to show her. And that's the only thing that was on my head at that point in time. *I never considered SMC getting involved. There was nothing sexual or any professional misconduct. And that's my stand to this day.*

[emphasis added]

As can be seen from Dr Ong’s reply in cross-examination, he did not genuinely believe that what he did was “sexual or [involved] any professional misconduct”. In our view, Dr Ong’s claimed remorse had no mitigatory value.

83 For these reasons, we are satisfied that the appropriate sentence in Dr Ong's case is a term of suspension of two years. In our judgment, the relevant sentencing principle of general deterrence, as well as the need to protect public confidence and uphold the standing of the medical profession, justify the length of suspension we have imposed.

Dr Chan

84 In Dr Chan's appeal against his sentence, he argues that the DT erred in finding the harm occasioned by Dr Chan's conduct was moderate because (a) public confidence in the medical profession would not be eroded; (b) no harm was caused to K; (c) there was no abuse of power in a doctor-patient relationship as K was not Dr Chan's patient; and, (d) that the Messages were private and confidential communications.

85 The SMC argues that the term of suspension of five months was manifestly inadequate for the following reasons. First, the SMC argues that the DT erred in finding that Dr Chan's conduct fell within the lower end of the moderate range. In particular, the fact that Dr Chan – who was a doctor himself – had facilitated Dr Ong's abuse of the trust of a patient, would significantly harm public confidence in the medical profession. Second, SMC argues that Dr Chan's level of culpability falls at the higher end of the low range, and that the DT had erred in similarly failing to consider that Dr Chan's conduct was premeditated and intentional. Third, SMC argues that a term of suspension of nine months is consistent with the sentences that have been meted out in respect of sexual misconduct, citing the same cases and arguments it had raised in relation to Dr Ong's case.

Our decision regarding Dr Chan's sentence

86 The facts relating to Dr Chan's conduct were largely similar to those for Dr Ong, save for a few material differences which we highlight here:

- (a) Dr Chan was the recipient of the contact information of K, and as such played a more "passive" role than Dr Ong (see [71] above).
- (b) K was not Dr Chan's patient, and he therefore did not have a doctor-patient relationship with K (see [56] above).

87 Notwithstanding these facts, Dr Chan's role cannot be understated. He had colluded with Dr Ong despite knowing that K was Dr Ong's patient. After having received the contact information of K, he proceeded to contact K, although he did not eventually follow through by meeting K or attempting to engage in sexual relations with her.

88 Applying the same sentencing approach we adopted with regard to Dr Ong, we consider the harm that was caused to the public confidence in the medical profession to be significant. There can be no doubt that the public would regard with consternation the fact that one doctor had abetted another doctor's abuse of the trust of a patient for his potential personal benefit. In the circumstances, we see no reason to find that the harm occasioned by Dr Chan should be lower than the harm occasioned by Dr Ong.

89 As for Dr Chan's culpability, we accept the fact that he had not actively sought the contact information of K, though he did then use it to contact her. That being said, Dr Chan admitted that he knew that K was Dr Ong's patient at the time the Messages were exchanged, and following from our holding as to the proper interpretation of the Messages and inferences to be drawn from them,

it would have been obvious to Dr Chan that Dr Ong would not have had the consent of K to share her contact information with Dr Chan *for the purpose* of his potential sexual gratification. Indeed, this was why they had to strategise how Dr Chan would initiate his contact with K. In the circumstances, we assess his culpability as “medium”. Taking these considerations into account, we find that the DT’s sentence of five months’ suspension was manifestly inadequate and that the term of suspension should be significantly longer.

90 For the same reasons we have stated in respect of Dr Ong, no mitigatory weight should be placed on Dr Chan’s unblemished record, having considered Dr Chan’s seniority and the need for general deterrence.

91 In these circumstances, we think that a sentence of 18 months’ suspension is appropriate for Dr Chan and is also compatible with the sentence imposed on Dr Ong having regard to the relative culpability of each doctor.

92 As for Dr Chan’s argument that the DT erred in ordering him to bear the full costs and expenses of the disciplinary proceedings, we see no merit in this. While the proceeded charge against Dr Chan was amended to remove reference to Guideline C1, we agree with the SMC that Dr Chan’s defence was not prejudiced by the amendment and there is no reason for making a partial costs order against the SMC.

Conclusion

93 For these reasons, we dismiss both the appeals of Dr Ong and Dr Chan in OS 3 and OS 4 respectively. We allow both the appeals of the SMC in OS 5 and OS 6.

(a) We order that Dr Ong’s term of suspension be increased to two years. The DT’s orders that Dr Ong be censured, provide a written undertaking, and pay the costs of the DT and Interim Orders Committee (“IOC”) proceedings, shall stand.

(b) We order that Dr Chan’s term of suspension be increased to 18 months. The DT’s orders that Dr Chan be censured, provide a written undertaking, and pay the costs of the DT and IOC proceedings, shall stand.

94 Unless the parties are able to come to an agreement as to the costs of these appeals, they are to furnish brief written submissions (limited to seven pages) on the appropriate costs order within 14 days of this judgment.

Sundaresh Menon
Chief Justice

Andrew Phang Boon Leong
Justice of the Court of Appeal

Tay Yong Kwang
Justice of the Court of Appeal

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