IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 239

Originating Summons No 3 of 2020

Between

Singapore Medical Council

… *Appellant*

And

Chua Shunjie

… *Respondent*

JUDGMENT

[Professions] — [Medical professions and practice] — [Professional conduct]

Singapore Medical Council
v
Chua Shunjie

[2020] SGHC 239

High Court — Originating Summons No 3 of 2020
Sundaresh Menon CJ, Tay Yong Kwang JA and Belinda Ang Saw Ean J
18 August 2020

4 November 2020 Judgment reserved.

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

Introduction

1 The present appeal is unusual in that for the first time, as far as we are aware, disciplinary proceedings brought against a provisionally registered medical practitioner have come before the High Court. Before the Disciplinary Tribunal ("the DT"), Dr Chua Shunjie ("Dr Chua") raised a preliminary objection contending that the DT ceased to have jurisdiction to determine the matter upon the expiration of his provisional registration. The DT rejected that objection, and Dr Chua then elected to plead guilty to a total of 4 charges under s 53(1)(*d*) of the Medical Registration Act (Cap 174, 2014 Rev Ed) ("the MRA") on the basis of an agreed statement of facts ("the SOF"). He also consented to two charges being taken into consideration for the purposes of sentencing. The six charges concerned a breach of patient confidentiality and

the publication of inaccurate and misleading statements in a variety of media. The DT ordered that Dr Chua be suspended for a period of 18 months.

2 This is the appeal of the Singapore Medical Council ("the SMC") against the sentence imposed by the DT.

3 In this judgment, we consider whether disciplinary proceedings under the MRA can be brought against provisionally registered doctors after the expiration of their provisional registration. Relatedly, in the context of sentencing, we consider the availability of the sanction of striking off the name of a registered medical practitioner from the Register of Provisionally Registered Medical Practitioners ("RPRMP") and the purpose such a sanction would serve in circumstances where provisional registration has expired. We also consider the application of the analytical framework for sentencing that was set out by this court in *Wong Meng Hang v Singapore Medical Council and other matters* [2019] 3 SLR 526 ("*Wong Meng Hang*") for use in cases such as the present that concern professional misconduct involving dishonesty.

Background

4 Following his graduation from the Duke-NUS Graduate Medical School ("Duke-NUS") in 2015, Dr Chua was granted provisional registration by the SMC on 1 July 2015 pursuant to s 24 of the MRA. Under s 13 of the MRA, such registration would, in conjunction with a valid practising certificate, allow him to practise as a house officer and obtain the certificate of experience needed to apply for either full or conditional registration under the MRA. As a result of a complaint made by a patient against Dr Chua, which formed the basis of one of the charges Dr Chua faced before the DT and which we elaborate on below, he was temporarily suspended from clinical duties on 20 May 2016. This meant that Dr Chua was unable to complete his housemanship within the usual period

of one year, and it necessitated the extension of his provisional registration on 5 August 2016 by four months. Dr Chua eventually completed his housemanship in December 2016 and obtained a certificate of experience.

Disciplinary proceedings leading to the inquiry by the DT

5 During the course of Dr Chua's housemanship, a formal complaint was filed against him with the Chairman of the SMC's Complaints Panel on 25 May 2016, by the Training and Assessment Standards Committee of the Ministry of Health ("the MOH"), alleging a number of instances of professional misconduct. A Complaints Committee was subsequently appointed to inquire into the complaint. The Complaints Committee directed that an investigation be conducted by the MOH's Investigation Unit. Dr Chua was invited to furnish a written explanation in response to the complaint, which he did on 5 December 2016. The Complaints Committee eventually determined that a formal inquiry by a DT was warranted and conveyed its decision to Dr Chua by a letter dated 31 August 2017. This was followed more than a year later by a Notice of Inquiry dated 26 February 2019 setting out a total of six charges under s 53(1)(*d*) of the MRA.

The charges

6 The charges against Dr Chua set out in the Notice of Inquiry fall into two broad categories. The first, which consists of the 1st charge, concerns a breach of medical confidentiality ("the confidentiality charge") by violating guideline 4.2.3.1 of SMC's Ethical Code and Ethical Guidelines (2002 Edition) ("the ECEG"), which states:

> 4.2.3.1 Responsibility to maintain medical confidentiality
>
> A doctor shall respect the principle of medical confidentiality and not disclose without a patient's consent, information obtained in confidence or in the course of attending to the

> patient. However, confidentiality is not absolute. It may be over-ridden by legislation, court orders or when the public interest demands disclosure of such information …

7 The confidentiality charge stems from the patient complaint we have alluded to at [4] above, and it concerns an incident which occurred on or around 27 April 2016 when Dr Chua was posted to the general surgery team at Ng Teng Fong General Hospital and was one of the doctors who examined and treated a patient, and handled the patient's discharge. Following his discharge, the patient returned for a number of physiotherapy sessions. The patient approached Dr Chua as he was unhappy with the length of medical leave he had been issued. It appears that after a phone conversation with the patient, Dr Chua issued an extended medical certificate without meeting the patient or conducting any assessment. Dr Chua was subsequently approached by the patient's employer to clarify the condition of the patient who had refused to resume work and had made a claim for loss of income on the basis of the medical certificate issued by Dr Chua. Without the patient's consent, Dr Chua prepared and issued to the patient's employer a letter on the hospital's letterhead informing the employer of the patient's medical condition, diagnosis and treatment, as well as other information that had been conveyed by the patient in the course of the consultations.

8 The second category of charges, which consists of the 2nd to 6th charges (which we refer to collectively as "the false information charges"), concerns the provision of inaccurate or misleading information in breach of guidelines 4.4.2 and 4.4.3.1 of the ECEG, which read as follows:

> 4.4.2 Standards required of information
>
> In general, doctors may provide information about their qualifications, areas of practice, practice arrangements and contact details. Such information, where permitted, shall have the following standards:

> a. Factual
> b. Accurate
> c. Verifiable
> d. No extravagant claims
> e. Not misleading
> f. Not sensational
> g. Not persuasive
> h. Not laudatory
> i. Not comparative
> j. Not disparaging
>
> …
> 4.4.3 Information in the public domain
>
> 4.4.3.1 Public speaking, broadcasting and writing
>
> All information, whether to fellow doctors or the public must conform to the above standards. This includes information given in the context of education for doctors or the public, in talks, broadcasts and seminars organised by professional bodies or healthcare institutions, or in professional journals.
>
> …

9 The 2nd charge relates to a breach of guideline 4.4.2 read with guideline 4.4.3.1 of the ECEG in a research letter, which is a form of correspondence used for publishing preliminary research or short summaries of primary research, submitted by Dr Chua on or about 16 August 2015 to the British Journal of Dermatology ("the BJD"). There, he presented himself in the author biography as "Chua Shunjie, BEng, MD, *National Skin Centre, Singapore*" [emphasis added]. This gave the impression that Dr Chua was affiliated with the National Skin Centre ("NSC") or that the study was somehow affiliated with the NSC, both of which were inaccurate and misleading. Dr Chua did not hold any official appointment or role in the NSC and the contents of the research letter did not involve either patients or doctors at the NSC.

10 The 3rd and 4th charges relate to breaches of guideline 4.4.2 read with guideline 4.4.3.1 of the ECEG and concern a pair of letters Dr Chua sent to two academic publications. The 3rd charge concerns a clinical letter, which is a form

of correspondence used to describe patient cases of novel and extraordinary significance, submitted in August or September 2015 to the Journal der Deutschen Dermatologischen Gesellschaft ("the JDDG") and published in March 2016, in which Dr Chua claimed that his co-authors included one "Mark Pitts". The 4th charge concerns a letter submitted in September 2015 to the Obstetrics & Gynecology Journal ("the OGJ") and published in January 2016 responding to a previously published article, and in which Dr Chua claimed that his co-authors included "Mark Pitts" and "Peter Lemark". These were both inaccurate and misleading because there were no such co-authors.

11 The 5th and 6th charges relate to a breach of guideline 4.4.2 of the ECEG and concern a pair of applications that Dr Chua made to the Centralised Institutional Review Board ("CIRB") on or about 1 July 2015 and 28 October 2015 respectively, seeking approval to conduct two studies. In these, Dr Chua claimed that he was a member of the Singapore General Hospital's ("SGH's") Dermatology Department. These claims were inaccurate and misleading because at the time of the applications, Dr Chua was not in any way involved with SGH's Dermatology Department.

The inquiry by the DT

12 At the inquiry before the DT, which took place over three days in June and November 2019, Dr Chua initially raised a preliminary objection against the DT's jurisdiction. In summary, Dr Chua argued that under s 53(1) read with s 53(2) of the MRA, a DT's powers could only be exercised in respect of a registered medical practitioner as defined by the MRA ("RMP"). Dr Chua submitted that he had ceased to be a RMP upon the expiration of his provisional registration in December 2016. As against this, the SMC appears to have originally taken the position that the DT would have jurisdiction over Dr Chua

so long as he had been a RMP at the time of the conduct forming the subject matter of the charges against him. The SMC later clarified that its position was that Dr Chua remained a RMP even after the expiry of his provisional registration because his name was still on its electronic register.

13 The DT agreed with the SMC's submissions and held, adopting a purposive interpretation of the MRA, that it sufficed that the misconduct occurred whilst the doctor in question was a RMP. Since there was no dispute that Dr Chua was a RMP at the material time, the DT found it had jurisdiction to determine the matter.

14 Following this, Dr Chua elected to plead guilty to four of the six charges (namely, the 1st, 2nd, 5th and 6th charges) ("the proceeded charges") with their particulars set out in the Notice of Inquiry, and admitted to the SOF without qualification. Dr Chua also consented to having the 3rd and 4th charges taken into consideration for the purposes of sentencing ("the TIC charges").

The DT's decision on sentence

15 The DT accepted Dr Chua's plea of guilt and the only remaining issue was the question of sentence. On this, the three-member DT arrived at a split decision. The majority disagreed with the position of the SMC and concluded that Dr Chua's misconduct did not warrant a striking off order. The majority decided instead to impose a suspension for a period of 18 months. The minority, on the other hand, considered that a striking off order was called for.

16 The majority sought to apply the sentencing framework set out in *Wong Meng Hang* ([3] *supra*). It noted that cases where striking off orders had been made involved conduct at the "extreme spectrum of the culpability and harm matrix, with medical negligence as a predominant factor", and that

"[d]ishonesty [had] also played a major part in these cases". Dealing first with the confidentiality charge, the majority considered that Dr Chua's breach of patient confidentiality was not serious because he had seen the patient before, and that a striking off order would only be appropriate in cases involving recalcitrant offenders. As for the false information charges, these did not concern misconduct within the professional realm, in the sense that that they did not pertain to the care of patients, and did not bring disrepute to the medical profession. Rather, they concerned research integrity issues that were unrelated to medical practice. The majority also took into account the fact that, with the exception of 3rd and 4th charges where the letters with fictitious co-authors were published by the JDDG and OGJ, the remaining charges did not involve the inaccurate affiliations claimed by Dr Chua being put into the public domain. Further, no harm had been caused to patients.

17 Separately, the majority thought it relevant that Duke-NUS, having investigated and found Dr Chua's research work dating back to his time as a student to be generally sound and well-supervised, had not seen fit to revoke his degree, and that he would have been eligible to practise had the charges not been brought against him. The majority also took into consideration a number of factors which it regarded as mitigating: (a) Dr Chua was a young medical graduate and committed the breaches as a result of his excessive enthusiasm to gain entry into the NSC's Seamless Dermatology Training Programme; (b) he had been divorced and lost the support of his family as a result of the disciplinary proceedings; (c) he was not gainfully employed and would have to repay MOH if he failed to fulfil his bond; and (d) he had apologised and expressed deep remorse in his letter of explanation to the SMC. In all the circumstances, the majority considered that the appropriate sentence would be a suspension for a term of 36 months, but then reduced this to a term of 18 months on account of the fact that Dr Chua had already been unable to practise

during the three year period when the disciplinary proceedings were ongoing and had endured considerable stress on this account. Dr Chua was also ordered to: (a) give an undertaking to the SMC that he would not engage in similar conduct; (b) take steps to rectify the errors made including by writing to the publications and institutions concerned; and (c) pay the costs and expenses of the SMC.

18 The minority, on the other hand, agreed that each incident on its own might not have warranted a striking off order, but thought that the entirety of Dr Chua's conduct, particularly the numerous false statements made by him, could not be dismissed as "misguided assumptions" or as being confined to issues of research integrity. Rather, these demonstrated a pattern of dishonesty and a troubling lack of integrity. The minority noted in relation to the TIC charges, that even after investigations had commenced, Dr Chua had not acted honestly in his responses to the Complaints Committee and had attempted to convince it that he had tried his best to contact the co-authors. This, however, was entirely fictitious because there were no such co-authors. Applying the analytical framework set out in *Wong Meng Hang*, the minority concluded that the dishonesty manifested by Dr Chua had the potential to undermine the standing and reputation of the medical profession as a whole. These were not one-off aberrations, but reflected a persistent course of behaviour. Furthermore, when the articles containing the false statements of affiliation were written, Dr Chua was in the process of seeking admission to NSC's Seamless Dermatology Training Programme and his actions, seen in this light, were clearly motivated by his desire to secure a personal benefit in terms of gaining admission to this prestigious programme.

19 The minority also considered that since Dr Chua had committed serious breaches of the medical profession's ethical rules, his personal mitigating

circumstances should not be accorded any weight. The evidence against him was overwhelming and he had obfuscated in his response to the Complaints Committee instead of admitting to the charges at the earliest opportunity. Dr Chua had also mounted an unmeritorious preliminary objection to the DT's jurisdiction and failed to take steps to retract the articles with misleading information. These were inconsistent with his claims of deep remorse over his actions. In the circumstances, the minority concluded that the appropriate sanction was a striking off order.

Preliminary issue: whether the DT had jurisdiction to inquire into the matter and impose the sanction of striking off

20 Before we address the parties' arguments on sentence, we first deal with the preliminary issue of jurisdiction. Although Dr Chua did not appeal against the DT's decision, as this went to jurisdiction, if not in terms of the proceedings as a whole, at least in terms of the applicability of possible sanctions, we invited the parties to address us on the specific question of whether the sanction of striking off could be imposed in circumstances where the medical practitioner subject to disciplinary proceedings was only provisionally registered at the time of the misconduct or at the time of the inquiry. We also wished to be addressed on the purpose that such a sanction would serve, given that ss 24(2A) and 32(1)(*cb*) of the MRA seemed to empower the SMC to cancel a medical practitioner's provisional registration and remove his or her name from the RPRMP. We therefore invited the parties to tender further written submissions on these points.

The parties' submissions

21 The SMC in its further submissions took the position that the MRA clearly contemplated that a striking off order could be made against a

provisionally registered medical practitioner ("Provisional RMP"). According to the SMC, the names of Provisional RMPs would be placed on the RPRMP, one of five different registers established under s 19 of the MRA. Since s 53(2)(*a*) of the MRA empowered a DT to "remove the name of [a] registered medical practitioner from the appropriate register", this would include the RPRMP and it followed that a DT would have the ability to make a striking off order against a Provisional RMP. As for the effect of ss 24(2A) and 32(1)(*cb*) of the MRA, the SMC contended that s 24(2A) was enacted in order to broaden the range of options for dealing with Provisional RMPs by empowering the SMC, at least in certain circumstances, to cancel a medical practitioner's provisional registration without having to go through a formal disciplinary process. In this sense, it was not meant to displace the powers of a DT inquiring into the conduct of a Provisional RMP. In any case, the SMC did not think the pre-requisites for invoking s 24(2A) of the MRA were made out in respect of Dr Chua.

22 The SMC also elaborated on the purpose which a striking off order would serve in respect of a Provisional RMP. Pursuant to s 56(2)(*a*) of the MRA, a striking off order would trigger a 3-year restriction on any subsequent application the doctor might make for restoration to the appropriate register, and when applying for restoration, he or she would also have to satisfy the additional requirements set out in rr 65(1) and (4) of the Medical Registration Regulations 2010 (S 733/2010) ("the MRR"), which would filter out any frivolous applications. Additionally, a striking off order would have the effect of signalling to the profession that the misconduct in question was wholly unacceptable. Furthermore, the fact that such an order had been made would generally also be a relevant consideration that would be taken into account by a foreign accreditation body, if the doctor in question were to seek registration to practise in a foreign jurisdiction.

23 The SMC supplemented these submissions orally through its counsel, Mr Kevin Ho. Mr Ho submitted that the MRA distinguished between a grant of provisional registration to a doctor for a period of time and the actual registration of that doctor on the RPRMP. The former permitted the doctor in question to do certain things for the specified period and such permission would automatically expire once that period had elapsed. The latter on the other hand, conferred a particular status and the registration of a doctor on the RPRMP would persist until one of at least three contingencies occurred: (a) the doctor successfully applies for and obtains registration on a *different* register constituted under s 19 of the MRA; (b) the SMC acts, for cause, to remove the doctor from the register under limited circumstances enumerated in the MRA; or (c) a striking off order is made as a result of disciplinary proceedings commenced against the doctor. Here, although the time period had expired and Dr Chua could not do the things that a provisional RMP could do, his status as such remained in place because his name remained on the RPRMP given that none of the stated contingencies had taken place.

24 As against this, Dr Chua, in his further written submissions, contended that a purposive interpretation of the MRA would lead to the conclusion that upon the expiration of a doctor's provisional registration, he or she would cease to be registered under the MRA and the onus would be on the Registrar of the SMC ("the Registrar") to update and remove that person's name from the RPRMP. It followed that there was no statutory basis for making a striking off order against him because his provisional registration had expired on 5 December 2016 and he was no longer a Provisional RMP at the time of the inquiry. Dr Chua also contended that even if his name remained on the RPRMP, the SMC ought to have cancelled his provisional registration and removed his name from the RPRMP pursuant to ss 24(2A)(*b*) and 32(1)(*cb*) of the MRA, instead of commencing formal disciplinary proceedings. Aside from these

points, while Dr Chua did not appear to dispute the SMC's submissions on the purpose of striking off a Provisional RMP, he advanced a number of reasons why such an order should not be imposed in the present case. We elaborate on these below when dealing with the appropriate sentence.

25 In his oral submissions, counsel for Dr Chua, Mr Julian Tay, raised an additional argument to the effect that s 39(2) of the MRA precluded the referral of the original complaint made against Dr Chua to the Chairman of the SMC's Complaints Panel because that complaint related to matters that should properly have been dealt with under s 32 of the MRA. We deal with this below.

Our decision

Whether a doctor subject to disciplinary proceedings must be a registered medical practitioner at the time of the inquiry

26 We first deal with the question of whether a doctor subject to disciplinary proceedings must be a RMP at the time of the inquiry. With respect, we do not agree with the conclusion of the DT in the proceedings below that it was irrelevant whether the doctor subject to disciplinary proceedings was a RMP at the time of the inquiry, so long as he was such at the time of the misconduct complained of.

27 In the first place, it is clear that disciplinary proceedings under the MRA lie only against persons who are RMPs. Under s 39 of the MRA, the disciplinary mechanism is first engaged by the making of a complaint against a "registered medical practitioner", which is defined under s 2 of the MRA as including a "person registered under this Act". It is not disputed between the parties, and rightly so in our view, that a person registered under any of the five registers

constituted under s 19 of the MRA, including the RPRMP on which Dr Chua was registered, would satisfy this criteria.

28 The question, then, is whether a DT inquiring into the conduct of a RMP continues to have jurisdiction in the event that the person in question loses his or her status as a RMP. In our judgment, the answer to this is in the negative. This is borne out by ss 53(1) and (2) of the MRA, which provide as follows:

> Findings of Disciplinary Tribunal
>
> **53.**—(1) Where a registered medical practitioner is found by a Disciplinary Tribunal —
>
> (*a*) to have been convicted in Singapore or elsewhere of any offence involving fraud or dishonesty;
>
> (*b*) to have been convicted in Singapore or elsewhere of any offence implying a defect in character which makes him unfit for his profession;
>
> (*c*) to have been guilty of such improper act or conduct which, in the opinion of the Disciplinary Tribunal, brings disrepute to his profession;
>
> (*d*) to have been guilty of professional misconduct; or
>
> (*e*) to have failed to provide professional services of the quality which is reasonable to expect of him,
>
> 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).

29 Section 53(1) of the MRA makes explicit reference to findings of the DT made against "a registered medical practitioner". This must, as a matter of logic, refer to a person who remains registered under the MRA at the time of the findings. Given the definition set out in s 2 of the MRA (see [27] above), it seems to us that a person whose name is no longer on any of the registers established and maintained under the MRA simply cannot be considered to be a RMP. There is nothing in the text of the MRA to support a construction that the definition of a RMP in s 53 of the MRA is somehow wider than that applicable in other provisions of the Act so that it could encompass persons who were RMPs at the time of the alleged misconduct, but had ceased to be so by the time of the DT's inquiry. In this regard, we do not accept the notion that the statutory objectives of the MRA to uphold standards of practice within the medical profession and maintain public confidence in it, can be invoked to support an interpretation that is inconsistent with the text of the Act. This is because, as the Court of Appeal recognised in *Tan Cheng Bock v Attorney-*

General [2017] 2 SLR 850 at [50], the exercise of interpreting a statute purposively cannot become an excuse for rewriting it.

30 This is further supported by the nature of the sanctions that the DT is empowered to impose under s 53(2) of the MRA. These include, under ss 53(2)(*a*) and 53(2)(*b*) of the MRA, a striking off order and a suspension order. Both these sanctions would make no sense at all in the context of a person who is not registered on one of the registers under s 19 of the MRA because in such a setting, there would be no register from which that person's name can be removed or suspended from.

31 We also note that s 37A(3) of the MRA accords the SMC a wide latitude to prevent a RMP from seeking voluntary removal of his or her name from any of the registers constituted under s 19 in circumstances where: (a) there is evidence that the RMP has engaged in conduct bringing disrepute to the profession; (b) there is evidence that the RMP has been convicted of an offence implying a defect in character rendering him or her unfit to practise; or (c) formal disciplinary proceedings have been commenced against the RMP. The clear purpose of the provision is to allow the SMC to scrutinise requests for deregistration and prevent RMPs from invoking the voluntary removal provisions in s 37A of the MRA where there is evidence of serious misconduct or where disciplinary proceedings have already been commenced, and this is explicable on the basis that such deregistration would mean the person is no longer amenable to disciplinary proceedings. This too points to the conclusion that a DT constituted under the MRA only has jurisdiction where the person subject to disciplinary proceedings remains a RMP. As an aside, while it is not necessary for us to come to a conclusion on this point for the purposes of this appeal, we leave open the question whether the deregistration of a former RMP may be set aside upon the SMC showing that such deregistration was a

consequence of any material non-disclosure or withholding of relevant information on the part of the doctor. Further, the SMC might also consider imposing as a condition of any such request for deregistration a confirmation by the doctor that all relevant facts and materials bearing on the application have been disclosed to the SMC.

Whether Dr Chua was a registered medical practitioner at the time of the DT's inquiry

32 It follows from the above analysis that the DT would not have had jurisdiction to hear the matter if Dr Chua had ceased to be a RMP by the time of the inquiry. In our judgment, however, Dr Chua was (and remains) a RMP because his registration on the RPRMP did not terminate immediately upon the expiry of his provisional registration on 5 December 2016.

33 We broadly agree with Mr Ho's submission that the MRA distinguishes between the grant of provisional registration to a doctor for a period of time and that doctor's actual registration on the RPRMP, as outlined at [23] above. A close examination of the provisions of the MRA leads to the conclusion that the expiration of the period of time stipulated by the SMC in its grant of provisional registration does not result in the automatic deregistration of the doctor, whose name therefore remains on the RPRMP until one of *only* a limited number of events takes place. We elaborate.

34 First, the doctor may apply for registration on a different register constituted under s 19 of the MRA. This occurs pursuant to s 24(3), which provides as follows:

> (3) Any person who is provisionally registered shall be registered in the Register of Provisionally Registered Medical Practitioners and *on a person becoming registered otherwise than provisionally his name shall be removed from such register.*

[emphasis added]

It can be observed from this that the removal of such a medical practitioner's name from the RPRMP occurs only at the point where he or she has *successfully* obtained registration on another register.

35 Second, the name of a Provisional RMP may be removed by the *Registrar* in specifically enumerated circumstances pursuant to s 31 of the MRA, which reads as follows:

> **Alterations in registers**
>
> **31.** The Registrar *shall* —
>
> (*a*) insert in a register any alteration which may come to his knowledge in the name or address of any person registered under this Act;
>
> (*b*) insert in a register such alterations in the qualifications, additional qualifications and other particulars in the register as are required to be altered under this Act;
>
> (*c*) correct any error in any entry in a register;
>
> (*d*) remove from a register the name of any person whose name is ordered to be removed under this Act;
>
> (*e*) remove from a register the name of any person who is deceased;
>
> (*f*) remove from a register the name of any person who has not renewed his practising certificate for a continuous period of not less than 2 years, and who cannot be contacted or sent any document using his particulars in the register; and
>
> (*g*) remove from a register the name of any person who has requested and shown sufficient reason for his name to be removed from that register, unless an inquiry has or proceedings have commenced under Part 7 against that person.
>
> [emphasis added]

It is evident that s 31 of the MRA concerns certain powers and duties of the Registrar in respect of the different registers constituted under the MRA.

Specifically, the Registrar is empowered to maintain the registers and to this end, has the *power* to effect corrections on the relevant register (under ss 31(*a*)-(*c*)) and the *obligation* to remove RMPs from the relevant register in certain circumstances (under ss 31(*d*)-(*g*)). The latter are all concerned with the proper maintenance of the registers and arise essentially as an administrative consequence of events such as the death of the RMP or pursuant to an order for removal being made, such as, by a DT or this court or by the SMC in certain situations, or the inability to contact the RMP.

36 Third, the *SMC* may *optionally* order the removal of a RMP's name from a register pursuant to s 32(1) of the MRA, the provisions of which stand slightly apart from those of s 31:

> **Power of Medical Council to remove names from registers**
>
> **32.**—(1) Notwithstanding the provisions of this Act, the Medical Council *may*, upon such evidence as it may require, order the removal from the appropriate register the name of a registered medical practitioner under any of the following circumstances:
>
> (*a*) if he has been registered with conditional registration and the conditional registration has been cancelled by the Medical Council under section 21(6);
>
> (*b*) if he has been temporarily registered under section 23 and has contravened or failed to comply with any condition or restriction imposed by the Medical Council;
>
> (*c*) if he has been registered in the Register of Specialists and —
>
> (i) his name has been removed from the Register of Medical Practitioners; or
>
> (ii) he has contravened or failed to comply with any condition or restriction imposed by the Medical Council under section 22;
>
> (*ca*) if he has been registered in the Register of Family Physicians and —
>
> (i) his name has been removed from the Register of Medical Practitioners; or

> (ii) he has contravened or failed to comply with any condition or restriction imposed by the Medical Council under section 22A;
>
> (*cb*) if his provisional registration has been cancelled by the Medical Council under section 24(2A);
>
> (*d*) if he has obtained registration fraudulently or by incorrect statement;
>
> (*e*) if his degree for registration under this Act has been withdrawn or cancelled by the authority through which it was acquired or by which it was awarded;
>
> (*f*) if he has had his registration in any other country withdrawn, suspended or cancelled by the authority which registered him;
>
> (*g*) if he has failed to serve the Government or such other body or organisation as directed by the Government for such period as may be specified in any undertaking given by him to the Government.
>
> [emphasis added]

As can be observed, s 32 of the MRA concerns the powers of the SMC, which can *order* the name of a RMP to be removed from a register. This is a power vested in the SMC and the order would be directed to the Registrar who would be obliged to act upon the order pursuant to s 31(*d*) of the MRA. The SMC may exercise this power upon such evidence as it may require. The SMC when it acts under s 32 does not do so pursuant to a formal inquiry, even though the effect of the exercise of its power under that provision closely resembles the sanction of striking off. But these powers are all consequential upon a factual condition which typically would not require a formal inquiry. These include, for instance, cancellation of conditional registration, fraud or false statement leading to the registration in the first place or revocation of a degree that was the basis of the registration. Crucially, s 32(1)(*cb*) of the MRA empowers the SMC to order the removal of the name of a RMP from the RPRMP where his or her provisional registration is cancelled under s 24(2A). Section 24(2A) of the MRA, in turn, provides for the cancellation of the registration of a Provisional RMP who has

failed to comply with the conditions of his provisional registration, or if the SMC forms the view that the RMP is unfit to practise, taking into account the reports of one or more RMPs supervising the Provisional RMP and the reviews of any RMPs or healthcare professionals working with the Provisional RMP. Notably, this power is a matter which is left to the SMC's *discretion*.

37 In our judgment, the co-existence of these provisions, namely, s 24(2A) of the MRA, which provides for the cancellation of a Provisional RMP's registration, and s 32(1)(*cb*), which provides for the removal of the provisional RMP's name from the RPRMP at the discretion of the SMC, very strongly point to the conclusion that a medical practitioner's provisional registration is just not the same as having his or her name on the RPRMP, and that it is possible for a medical practitioner's provisional registration to have lapsed or been cancelled while that person's name remains on the register. Otherwise, there would be no need for the MRA to confer separately on the SMC, the discretionary power under s 32(1)(*cb*) to order the removal of a doctor's name from the RPRMP *after* the SMC itself has cancelled his or her provisional registration under s 24(2A).

38 Fourth, a provisional RMP may have his or her name ordered to be removed from the RPRMP at the conclusion of disciplinary proceedings brought pursuant to s 53(2)(*a*) of the MRA (see [28] above). There is also a limited provision for a Complaints Committee to order the removal of a RMP's name from the appropriate register by consent following its inquiry into a complaint under s 49(1)(*g*) of the MRA.

39 Finally, we add that there is a further way by which the SMC can act to remove the name of a RMP from a register which was not raised by the parties. This is pursuant to s 58(2) of the MRA where a Health Committee concludes

that the RMP's fitness to practise is impaired by reason of his or her physical or mental condition.

40 The upshot of all this is that upon obtaining provisional registration, Dr Chua would have been registered on the RPRMP and his name would remain there until one of the aforementioned contingencies occurred. Save in that situation, and contrary to Dr Chua's submission, this would be so notwithstanding the lapsing of his provisional registration on 5 December 2016. The effect of the lapsing or expiration of this provisional registration is that from that date, upon the expiry of his practising certificate, Dr Chua would not be able to carry out or perform any regulated activities as a provisional RMP; but his name nonetheless would and does remain on the register. Dr Chua did not successfully obtain registration on a different register constituted under s 19 of the MRA. None of the specified events triggering mandatory deregistration under s 31 of the MRA had occurred; nor is there any suggestion that the SMC had exercised any of its powers under the MRA to order the removal of Dr Chua's name from the RPRMP. It follows that Dr Chua's name remains on that register and he is accordingly a RMP amenable to disciplinary proceedings under the MRA.

41 This conclusion also makes sense bearing in mind the general scheme of the MRA. If it were the case that a Provisional RMP would automatically be deregistered from the RPRMP upon the expiry of his or her provisional registration, it would be practically impossible or at least highly unrealistic, to expect that disciplinary proceedings could be brought against such a person because the inquiry would have to be completed within the typically short period of time for which provisional registration is commonly granted.

42 We do not think that any of Dr Chua's other arguments affect this analysis. We first address Dr Chua's contention that the SMC ought to have cancelled his provisional registration and removed his name from the RPRMP pursuant to ss 24(2A)(*b*) and 32(1)(*cb*) of the MRA. This is misconceived because a prerequisite to the SMC acting under s 32(1)(*cb*) of the MRA is that Dr Chua's registration must have been cancelled under s 24(2A)(*b*). The short point is that this never happened.

43 For much the same reason, we reject the submission advanced by Mr Tay on Dr Chua's behalf concerning s 39(2) of the MRA. Section 39(2) of the MRA provides that the SMC shall not refer a complaint or information to the chairman of the Complaints Panel if it touches "on the matters referred to in [s 32 of the MRA]". The result of this is that formal disciplinary proceedings cannot then be commenced. However, as we have already noted, the SMC's power under s 32 of the MRA had never arisen in relation to Dr Chua because his provisional registration was never cancelled under s 24(2A)(*b*). In the circumstances, s 39(2) of the MRA is simply not engaged on the facts of this case.

Purpose of imposing the sanction of striking off

44 We also agree with the SMC's submissions as to the purpose of imposing a striking off order in the case of a provisional RMP. Such an order cannot be described as an empty or meaningless sanction because it triggers a number of important professional consequences. A doctor subject to a striking off order is prevented by s 56 of the MRA from seeking restoration to the appropriate register (meaning the RPRMP in the case of Provisional RMPs) for a period of three years from the date of removal. In addition, any application for restoration must satisfy the additional requirements set out in rr 65(1) and (4) of

the MRR which include, amongst others: (a) a statutory declaration in the requisite form accompanied by a statement explaining the grounds for the application; (b) any relevant documents or information required by the SMC; and (c) two certificates of identity and good character signed by RMPs who are unrelated to the doctor seeking restoration and have at least 10 years' standing. It is only after these requirements are satisfied that an application for restoration will be referred to the SMC for consideration. Taken together, the stringency of the restoration process goes a long way towards ensuring that only doctors who have been successfully rehabilitated are eventually restored to the appropriate register. A striking off order also has consequences for a doctor who is outside Singapore because that fact would typically have to be disclosed in any application to practise in a foreign jurisdiction (see, for instance, r 15(2)(*e*) of the MRR). Whether such an order should be imposed on Dr Chua here is, of course, a wholly different matter altogether and one which we now turn to address.

Whether the sentence imposed by the DT was manifestly inadequate

The parties' submissions

45 The SMC's position is that the sentence imposed by the DT was manifestly inadequate, and that an appropriate sentence would be a striking-off order or a suspension for a period of 36 months. The SMC argued that the majority wrongly applied the sentencing matrix in *Wong Meng Hang* ([3] *supra*), which was only applicable to cases where deficiencies in a doctor's *clinical care* caused harm to a patient. It contended that the majority was wrong to draw a distinction between misconduct occurring in a research as opposed to a clinical setting such that the former would invariably be treated with greater leniency. The SMC also submitted that the majority erred in failing to accord

sufficient weight to the dishonest nature of Dr Chua's conduct and finding, instead, that his conduct was derived from "misguided assumptions". This was said to have been contrary to the SOF which Dr Chua admitted to without qualification as well as the documentary evidence placed before the DT.

46 According to the SMC, a proper application of the principles set out in *Wong Meng Hang* on dealing with dishonest conduct should have led to the conclusion that a striking off order ought to be made here because Dr Chua's conduct demonstrated a fundamental lack of integrity. Dr Chua acted as he did in relation to the confidentiality charge in order to distance himself from his earlier mistake of having issued an extended medical certificate without having examined the patient. As for the 2nd to 6th charges, these concerned Dr Chua's conduct in seeking to secure admission to the NSC's Seamless Dermatology Training Programme. In this regard, he made inaccurate and misleading statements to embellish his publications list and this plainly had the potential to harm the standing of the medical profession in Singapore. The SMC also contended that the majority had placed undue weight on the mitigating factors, and further submitted that a striking off order would be consistent with both local and foreign case law concerning professionals who had misrepresented their qualifications, affiliations, or employment.

47 The SMC submitted, in the alternative, that the majority should not have applied the sentencing discount to its initial view that a 36-month suspension would be appropriate. It contended that the majority arrived at this decision without submissions from the parties, and failed to give the SMC the opportunity to explain the time it had taken to investigate and prosecute the case; the delay was not in fact inordinate given the issues involved and Dr Chua's failure to be forthcoming with the Complaints Committee at the investigation stage.

48 Dr Chua, on the other hand, sought to defend the majority's decision. Dr Chua contended that the majority correctly identified the relevant factors in assessing whether a striking off order should be imposed, and properly considered the factors set out by this court in *Wong Meng Hang* in arriving at its decision. Specific to the confidentiality charge, Dr Chua argued that it concerned an isolated incident which occurred in his first year as a houseman and there were no precedents for imposing a striking off order in such cases that did not involve recalcitrant offenders. As for the 2nd to 6th charges, Dr Chua submitted that they did not involve the most serious forms of misconduct in a research setting as these charges did not involve the falsification or fabrication of research data or plagiarism. Dr Chua also argued that no harm had been caused and that even the potential for harm was low given that only two of the publications (namely those that were subject of the 3rd and 4th charges) had been published; the remaining material was not in the public domain and was incapable of causing harm to the reputation of the medical profession in Singapore. Dr Chua further contended that his conduct stemmed from misguided assumptions rather than dishonesty and that he had not been motivated by the aim of gaining an advantage for himself. Taken together, his misconduct was not sufficiently serious and there could not therefore be said to have been a persistent lack of insight such as to warrant a striking off order. As for the length of the suspension imposed by the majority, Dr Chua submitted that the one-half discount was justified on the basis that it took almost three years from the time of the complaint to the issuance of the Notice of Inquiry on 26 February 2019. This was comparable to other cases where sentencing discounts had been imposed on account of SMC's inordinate delay in prosecuting matters. Dr Chua further suffered a unique form of prejudice in addition to his personal mitigating circumstances in that, unlike in the case of

fully registered medical practitioners, he was unable to practise whilst disciplinary proceedings were ongoing for a period of more than three years.

49 In his further written submissions, Dr Chua also submitted that a striking off order was unnecessary because he was in any case unable to practise medicine following the expiration of his provisional registration on 5 December 2016. He also cited the fact that he faced a liability to pay substantial liquidated damages and mentioned some other personal mitigating factors.

The applicable sentencing principles

50 Before we address the parties' arguments, we briefly set out the relevant sentencing principles.

51 In *Wong Meng Hang* ([3] *supra*), we observed that public interest considerations are accorded primacy in sentencing for disciplinary cases. To this end, the key sentencing principles of general and specific deterrence are relevant, with the former being the central operative sentencing objective in most disciplinary cases. Considerations of fairness to the offender are also relevant and may, in certain cases, warrant a reduction in sentence (at [23]–[26]).

52 Specific to cases where deficiencies in a doctor's *clinical care* caused harm to a patient, we set out a four-step sentencing framework. It was made clear that this framework would *not* be applicable to other types of medical misconduct for which different sentencing considerations might be relevant, and for which the appropriate sentences would fall to be determined by reference to other precedent cases (*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]

53 We also set out a number of principles and factors that may be relevant when considering whether a striking off order should be made (*Wong Meng Hang* at [66]–[67]). In summary, the following factors were identified as relevant, bearing in mind that the ultimate question is whether the misconduct is so serious that it renders the doctor unfit to remain as a member of the medical profession: (a) whether the misconduct involved a flagrant abuse of the privileges accompanying registration as a medical practitioners; (b) whether the misconduct caused grave harm; (c) the culpability of the doctor; (d) whether the misconduct evinced a defect of character; and (e) whether the facts of the case disclosed an element of dishonesty. Moreover, where any of these factors are present, the sanction of striking off may be especially warranted where the errant doctor has demonstrated a persistent lack of insight into the seriousness and consequences of his misconduct.

54 We also outlined an analytical framework dealing specifically with the relevance of dishonesty in sentencing. As to this, we held that misconduct involving dishonesty "should almost invariably warrant an order for striking off

when the dishonesty reveals a character defect rendering the errant doctor unsuitable for the profession" (*Wong Meng Hang* at [72]). This would typically be the case where dishonesty is integral to the commission of a criminal offence which the doctor was convicted of, or when the dishonesty violates the relationship of trust and confidence between doctor and patient. In other situations, the circumstances of the case should be examined to determine whether striking off is warranted with reference to the following non-exhaustive list of factors (*Wong Meng Hang* at [72]–[73]):

> (a) the real nature of the wrong and the interest that has been implicated;
>
> (b) the extent and nature of the deception;
>
> (c) the motivations and reasons behind the dishonesty and whether it indicates a fundamental lack of integrity on the one hand or a case of misjudgement on the other
>
> (d) whether the errant [doctor] benefitted from the dishonesty; and
>
> (e) whether the dishonesty caused actual harm or had the potential to cause harm that the errant doctor ought to have or in fact recognised.

Our decision

55 We apply these principles to the present appeal. At the outset, it should be noted that the four-step sentencing framework set out in *Wong Meng Hang* ([3] *supra*) does not apply to the charges brought against Dr Chua because these do not involve situations where his clinical care had caused harm to a patient. To the extent that the majority appeared to refer to the harm-culpability matrix in its decision, this was in error.

The confidentiality charge

56 We agree with the reasoning of both the majority and the minority that the confidentiality charge did not, on its own, justify a striking off order being

made against Dr Chua. While the SMC argued that Dr Chua's breach of confidentiality was especially serious because it was done to distance himself from a prior mistake he had made in issuing a medical certificate to the patient without examining him (see [7] above), the difficulty with this submission is that it relies on facts which are not found in the SOF or in the charge that Dr Chua pleaded guilty to. The documentary evidence tendered in the proceedings similarly do not assist the SMC's position. The report from Ng Teng Fong General Hospital on the incident placed the blame on Dr Chua's inexperience at the time and did not find that the wrongful issuance of the medical certificate was what prompted the breach of confidentiality.

57 In the circumstances, we think it would be unfair to draw the inference that the SMC invites us to, namely that Dr Chua had committed the breach of confidentiality in order to cover-up his previous mistakes. We also note that no precedents were cited to us in which a striking off order was imposed for a breach of patient confidentiality in similar circumstances.

The false information charges

58 Turning to the false information charges, which comprise the 2nd, 5th and 6th charges and the two TIC charges, we do not, with respect, agree with the conclusion of the majority. In our judgment, the only appropriate sanction given the multiple charges involving dishonesty is a striking out order.

59 As a preliminary point, we do not think that there can be any dispute that the false information charges involved dishonesty on the part of Dr Chua. While Dr Chua contended that his actions were the product of misguided assumptions and suggested that the majority had arrived at the same conclusion, this is not borne out upon close examination of the DT's grounds of decision. Dr Chua appears to have relied on certain statements in the majority's decision

recounting his submission that he had misguidedly assumed he was affiliated with the NSC and the SGH after having worked there. There is nothing in the majority's decision which suggests that it had in fact accepted this submission. In any event, we do not think that it is open to Dr Chua to advance this argument because it contradicts the SOF which he admitted to. As the SMC pointed out in its submissions, the SOF clearly states that Dr Chua *knew* that the claims he had made were misleading, inaccurate and/or untrue.

60 Under the analytical framework set out in *Wong Meng Hang* ([3] *supra*) for dealing with conduct involving dishonesty (see [53]–[54] above), the present appeal does not fall into the category of cases where the presumptive sanction of striking off would apply because it is not an integral element of an offence involving dishonesty that Dr Chua had been convicted of and it also does not arise in the context of the relationship of trust and confidence between the doctor and patient. The question, then, is whether in all the circumstances Dr Chua's conduct was so serious such as to render him unfit to remain a member of the medical profession. In our judgment, it was.

61 We begin our analysis by considering the first two factors identified in *Wong Meng Hang*, namely, the real nature of the wrong and the interest that has been implicated, and the extent and nature of the deception. Dr Chua's conduct demonstrated a *persistent* pattern of dishonesty which manifested itself in a number of different ways over a relatively short period of time. Not only did Dr Chua provide misleading affiliations to the BJD in the research letter he submitted for publication and the CIRB in applications for approval to conduct studies, he went so far as to invent *fictitious* co-authors in his submissions to the JDDG and OGJ. While we accept that Dr Chua's conduct would have been far more serious had he engaged in outright fabrication of academic achievements or research data (as was the case in some of the precedent cases cited by the

SMC), this does not mean that his misconduct reflected in these charges was not in itself extremely serious. In this connection, we do not think the majority was correct to suggest that Dr Chua's misconduct was somehow less serious because it concerned research integrity issues not falling within the realm of professional misconduct and that it therefore did not bring disrepute to the medical profession. In *Wong Meng Hang*, we noted that the "time-honoured values of honour, integrity and honesty [were] not only important for the legal profession … but also integral to the ethos of the medical profession" (at [71]). It is clear that in the case of legal practitioners, dishonesty occurring outside the strict confines of legal practice (such as in a legal practitioner's personal life) is not treated as being less serious (see for instance, *Law Society of Singapore v Choy Chee Yean* [2010] 3 SLR 560). There is no principled basis for holding that the same should not apply in disciplinary proceedings involving medical practitioners.

62 Turning to the motivations behind the misconduct, it is significant that Dr Chua's conduct was clearly motivated by personal benefit. Indeed, there is no other logical explanation for his actions. Notably, the report of the Honor Code Committee formed to investigate Dr Chua at Duke-NUS concluded that fictitious co-authors and misrepresentations of affiliations had been put forward in order to *increase* his *chances* of getting his papers published. This was also evidenced by the fact that he was found by the majority to have committed these actions out of a desire to gain entry into the NSC's Seamless Dermatology Training Programme. Dr Chua challenged this finding on the basis that only the clinical letter submitted to the JDDG (subject of the 3rd charge) and one of the studies (subject of the 6th charge) were included in his *curriculum vitae.* He further noted that the application to the CIRB containing the inaccurate affiliations (subject of the 6th charge) was only made *after* his application to the training programme had been submitted, which meant that his misconduct in

this regard could not have been prompted by a desire to gain entry into the training programme. In our judgment, this is beside the point and does not detract from the fact that Dr Chua's misconduct was motivated by the desire to burnish his credentials and so enhance the prospects of advancing his career.

63 The final two factors relate to the benefits derived from dishonesty, as well as whether the dishonesty caused actual harm or had the potential to cause harm that the errant doctor ought to have recognised or did in fact recognise. In this regard, both parties focused on whether the publications with inaccurate and misleading statements were in the public domain as the main indicia of the harm actuated by Dr Chua's misconduct and the benefits derived therefrom. While it is true that the presence of inaccurate and misleading information in the public domain is a relevant consideration, we do not attach too much significance to this factor in cases such as the present, which involve academic dishonesty, because this strikes at the very heart of the medical profession's values and the public trust and confidence that is reposed in the medical profession. We therefore do not think much weight can be placed on the fact that only the clinical letter to the JDDG and the letter to the OGJ (subject of the 3rd and 4th charges) were published. In fact, it seems to us that the majority had understated the potential harm of Dr Chua's misconduct. As mentioned in the preceding paragraph, even on Dr Chua's case, he had referenced two of the publications and studies which contained the inaccurate and misleading statements in his application to NSC's Seamless Dermatology Training Programme. There is clear potential harm from Dr Chua's actions because he was seeking admission to the programme at the expense of other candidates who might in fact be more deserving. This is a factor which the majority failed to consider in its decision.

64 On the whole, we are also satisfied that Dr Chua's actions across the proceeded charges and the TIC charges demonstrated a persistent lack of insight

into the seriousness and consequences of his misconduct. As was noted by the minority, the multiple charges showed that Dr Chua had made false statements on several occasions. Even after a complaint had been lodged and he knew he was being investigated, Dr Chua went so far as to attempt to convince the Complaints Committee in his written explanation responding to the complaint that the fictitious co-authors were real. In our judgment, this was further evidence of a dire lack of remorse which is a real impediment to reform; barring the presence of exceptional personal mitigating circumstances, which we now turn to consider, the appropriate sanction would be to impose a striking off order.

Weight to be attributed to personal mitigating factors

65 We do not think that the personal mitigating factors raised by Dr Chua change the above analysis. Dr Chua in his submissions relied on largely the same personal mitigating factors as the majority did in deciding to suspend him for a period of 18 months which may be summarised as follows: (a) personal and financial hardships resulting from the disciplinary proceedings; (b) remorse expressed by Dr Chua; and (c) the SMC's delay of almost three years in prosecuting matters during which he was unable to practise. Although these were raised in the context of determining the appropriate length of suspension in the event we were minded to impose one, we nevertheless consider them from the perspective of whether a striking off order is warranted.

66 In *Law Society of Singapore v Ravi s/o Madasamy* [2016] 5 SLR 1141, the Court of Three Judges observed that the court's concern in disciplinary proceedings against errant solicitors is the protection of the public and upholding public confidence in the integrity of the profession, and it is for this reason that mitigating factors carry less weight in legal disciplinary proceedings

than in criminal proceedings (at [33], citing *Law Society of Singapore v Kurubalan s/o Manickam Rengaraju* [2013] 4 SLR 91 at [48]–[49]). The same considerations apply in medical disciplinary proceedings, where public interest considerations are similarly paramount and at the forefront in determining the appropriate sentence to be imposed (see *Wong Meng Hang* at [24] ([3] *supra*), citing *Ang Peng Tiam v Singapore Medical Council* [2017] 5 SLR 356 ("*Ang Peng Tiam*") at [118]). With respect, it seems to us that the majority accorded undue weight to the personal mitigating circumstances raised by Dr Chua.

(1) Personal and financial hardships

67 We think that the majority was wrong to place any weight on the personal and financial hardships encountered by Dr Chua, which included the fact that he was divorced and had lost the support of his family and that he faced substantial financial liabilities in the form of having to repay the MOH should he fail to fulfil his bond. In the context of criminal proceedings, it is clear that personal hardships faced by accused persons will rarely have any mitigating value (see *Public Prosecutor v BDB* [2018] 1 SLR 127 at [75]). In so far as medical disciplinary proceedings are concerned, the same principles ought to apply in light of the overarching concerns of protecting the public and upholding public confidence in the integrity of the medical profession. While we sympathise with the difficult circumstances faced by Dr Chua, we do not think that this is such an exceptional case as to justify according any mitigating weight to these matters.

(2) Expression of remorse

68 We also do not think any expression of remorse on the part of Dr Chua had any mitigating value. In *Wong Meng Hang* at [101], we held that an early plea of guilt may be regarded as a sign of remorse and warrant a reduction in

sentence. On the facts, however, we do not find that Dr Chua's plea of guilt was a sign of genuine contrition. Dr Chua in his letter of explanation to the Complaints Committee categorically denied the allegations relating to the false information charges, explained away his actions as being the by-product of inexperience and attempted to convince the Complaints Committee that the fictitious co-authors were real. The available documentary evidence against Dr Chua was also simply overwhelming. Further, as the minority points out in its decision, Dr Chua did not plead guilty at the earliest opportunity, choosing instead to mount a preliminary challenge to the DT's jurisdiction.

(3) The SMC's delay in prosecuting matters

69 The final factor, which merits some discussion, is the SMC's delay in instituting disciplinary proceedings against Dr Chua.

70 In *Wong Meng Hang* ([3] *supra*), we examined the relevance of delay in medical disciplinary proceedings and outlined when it might be appropriate to give a sentencing discount based on the following factors (at [102], citing *Ang Peng Tiam* at [109]–[118]):

> (a) First, there must have been an inordinate delay in the institution or prosecution of proceedings against the offender. This is to be assessed in the context of the nature of the investigations.
>
> (b) Second, the delay must not have been occasioned by the offender.
>
> (c) Third, the offender must have suffered prejudice.
>
> (d) Finally, the underlying rationale of fairness to the offender which justifies the imposition of a sentencing discount in cases of delay may, on occasion, be offset or outweighed by the public interest which demands the imposition of a heavier penalty.

71 Turning to the facts of the case, the complaint against Dr Chua was lodged on 26 May 2016. Following this, the Notice of Complaint was issued to

Dr Chua on 24 November 2016, and he was informed on 31 August 2017 that formal disciplinary proceedings would be commenced against him. The Notice of Inquiry formally setting out the charges was eventually sent on 26 February 2019. While it has taken just over four years for the patient's complaint to reach this court, we do not think that any delay in the present proceedings can be properly described as inordinate. We emphasised in *Ang Peng Tiam* at [111] that the underlying rationale for imposing sentencing discounts in cases involving an inordinate delay in prosecution is the *undue* suffering which the doctor has likely suffered in the form of anxiety, suspense and uncertainty. Here, it took the SMC just over two years and three months to proceed from the Notice of Complaint alerting Dr Chua of the complaint against him to the Notice of Inquiry, with Dr Chua having been informed within a year that the SMC had decided to commence formal disciplinary proceedings against him. While significant, this is still substantially shorter than in other cases where we found the SMC to have occasioned an inordinate delay. By comparison, in *Jen Shek Wei v Singapore Medical Council* [2018] 3 SLR 943, the Notice of Inquiry was sent to the doctor nearly three years after the Notice of Complaint and it took about six years from the time of the complaint for the matter to reach this court. Similarly, in *Ang Peng Tiam*, about four years elapsed between the complaint being brought to the doctor's attention and the issuance of the Notice of Inquiry, with the DT's decision being rendered more than five and a half years after the complaint had been lodged. Finally, in *Lam Kwok Tai Leslie v Singapore Medical Council* [2017] 5 SLR 1168, we observed that a delay of six years for the case to reach this court appeared, on its face, to be an inordinate amount of time to dispose of a matter. Although this matter has not proceeded as expeditiously as one might have wished, the delay is less than had been the case in the other precedent cases.

72 We would also add that a further reason for not applying any sentencing discount on account of any delay is that Dr Chua appears to have contributed in-part to it. As is explained by the SMC in its submissions, Dr Chua was not forthcoming at the investigations stage, particularly where it came to the use of fictitious co-authors. We have already noted above at [68] that Dr Chua had, in his letter of explanation to the Complaints Committee, attempted to persuade it that the fictitious co-authors of some of his publications were real. Coupled with the considerable number of academic publications which the SMC had to review (a total of 104 publications and studies were included in Dr Chua's application to the NSC's Seamless Dermatology Training Programme alone), some of which were located overseas, we do not think that the SMC can be faulted for the amount of time it took to investigate the complaint against Dr Chua.

73 In all the circumstances, it is, strictly speaking, unnecessary for us to consider Dr Chua's argument that a sentencing discount was warranted on account of the prejudice that he suffered in being entirely unable to practise in the three years that disciplinary proceedings were ongoing. We nevertheless briefly discuss the point. Following the expiration of his provisional registration on 5 December 2016, Dr Chua applied to the SMC for conditional registration under s 21 of the MRA. This was refused by the SMC by a letter dated 15 March 2017 on the basis that he was not of good reputation and character. Notably, under s 28(3) of the MRA, the SMC is accorded the discretion to refuse registration to any applicant on a number of grounds, including that the person is not of good reputation and character. Leaving aside the possibility of judicial review, the only recourse afforded to a person refused registration under this section is an appeal to the Minister under s 28(5) of the MRA. Crucially, it does not appear that there is any link between the powers granted to the SMC under s 28(3) of the MRA to refuse registration to a doctor and ongoing disciplinary proceedings against that doctor. Simply put, the SMC was entitled to refuse

Dr Chua conditional registration regardless of the status of the disciplinary proceedings against him. While Dr Chua was undoubtedly worse off than a fully registered medical practitioner, who would otherwise have been able to practise in the interim unless an interim order was made against him under s 59B of the MRA, this arises independently from the disciplinary proceedings against him and we do not think that it constitutes a form of prejudice that ought to have been taken into account in formulating the appropriate sentence.

The appropriate sentence

74 Since we have found that there are no applicable personal mitigating factors in the present case, we see no reason to change the preliminary view expressed at [64] above that the appropriate sanction for the false information charges is a striking off order. The gravity of Dr Chua's misconduct calls for the harshest possible sanction in order to meet the ends of general deterrence and deter would-be offenders from engaging in similar misconduct in the future. This would serve to protect public confidence and uphold the standing of the medical profession.

75 Although the question of a suspension does not arise in the circumstances, we conclude with some observations on the discount which the majority applied to its provisional view that a 36-month suspension should be imposed. The majority proceeded in this way in order to account for the three years Dr Chua had not been able to practise while disciplinary proceedings were ongoing as well as the stress he had to endure during that period. It seems to us that in arriving at its decision, the majority failed to take into account any of the factors identified in *Wong Meng Hang* at [102] ([3] *supra*), choosing instead to apply the one-half discount solely on account of the duration of the disciplinary

proceedings without considering whether this was justified on the facts of the case. As is clear from the discussion above at [69]–[73], it was wrong to do so.

Conclusion

76 For these reasons, we allow the SMC's appeal and order that Dr Chua be struck off the RPRMP with effect from the date of this judgment. The remaining orders made by the DT will remain in place.

77 Unless the parties are able to come to an agreement on costs for the appeal, 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	Tay Yong Kwang Judge of Appeal	Belinda Ang Saw Ean Judge

Ho Mingjie Kevin and Tan Qian Ni Roseanne (Braddell Brothers LLP) for the appellant;
Tay Wei Loong Julian and Kee Shu'en Theodora (Lee & Lee) for the respondent.