IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 250

Originating Summons No 5 of 2019

Between

Singapore Medical Council

… *Appellant*

And

Dr Soo Shuenn Chiang

… *Respondent*

JUDGMENT

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

Singapore Medical Council
v
Soo Shuenn Chiang

[2019] SGHC 250

High Court — Originating Summons No 5 of 2019
Sundaresh Menon CJ, Andrew Phang Boon Leong JA and Judith Prakash JA
8 July 2019

18 October 2019 Judgment reserved.

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

Introduction

1 For the second time within a short span, this court is faced with a potential miscarriage of justice in a case involving alleged medical misconduct. Once again, the Singapore Medical Council ("the SMC"), which is prosecuting the case, has changed its position from that which it maintained before the Disciplinary Tribunal ("the DT"); once again, the task of the DT was made more difficult by the decision of the respondent, on this occasion, Dr Soo Shuenn Chiang ("Dr Soo"), not to contest the charge or the facts upon which it was based; and once again, the DT failed to carefully consider all the relevant facts and circumstances before it pronounced the respondent guilty. On this occasion, the DT then meted out a sentence that was in excess of both that sought by the SMC and that submitted by Dr Soo. And once again, an outcry from the medical profession sparked a reaction from the SMC.

2 Dr Soo is a consultant psychiatrist at the Department of Psychological Medicine and the Director of the Neuroscience Clinic at National University Hospital ("NUH"). At the material time in March 2015, he was an associate consultant psychiatrist at NUH. He was charged with: (a) failing to verify the identity of a caller claiming to be the husband of one of his patients ("the Husband") before issuing, in reliance on information provided by the caller, a memorandum containing confidential medical information about that patient ("the Memorandum"); and (b) then failing to take appropriate steps to ensure that the confidential medical information in the Memorandum was not accessible to unauthorised persons. Before the DT, Dr Soo pleaded guilty to a charge of professional misconduct under s 53(1)(*d*) of the Medical Registration Act (Cap 174, 2014 Rev Ed) ("the MRA") for failing to maintain the medical confidentiality of that patient ("the Complainant"). In those proceedings, both the SMC and Dr Soo agreed that the Complainant's brother ("the Brother"), who is also the Husband's cousin, had been the caller and had falsely claimed to be the Husband; he had also subsequently collected the Memorandum from Dr Soo's clinic staff. As Dr Soo pleaded guilty, the DT turned to sentencing. It ordered Dr Soo to pay a penalty of $50,000 and made a number of other commonly-made disciplinary orders: see *Singapore Medical Council v Dr Soo Shuenn Chiang* [2018] SMCDT 11 ("GD") at [32]. Neither Dr Soo nor the SMC initially appealed against the DT's decision, even though both parties had submitted for a fine of a much smaller sum – not less than $20,000 in the case of the SMC, and no more than $5,000 in the case of Dr Soo.

3 After the DT published its GD a few months later, the SMC applied to the High Court for a review of the DT's decision on the ground that the penalty of $50,000 imposed on Dr Soo was manifestly excessive and/or seriously or unduly disproportionate. This was motivated by concern that the DT's decision

could lead to defensive practices in the medical profession. After news of these developments became public, the Brother published a post on Facebook seeking to provide his account of the events. In his post, the Brother claimed that he had not impersonated the Husband, who in fact had contacted Dr Soo. The SMC presumably then interviewed the Brother and the Husband before applying to us for leave to admit into evidence their respective statutory declarations. These set out an account of the circumstances under which the Memorandum had been prepared by Dr Soo and collected by the Brother that was different from the account set out in the Agreed Statement of Facts dated 16 November 2018 ("the Agreed Statement of Facts"), based on which Dr Soo had pleaded guilty before the DT. The account presented in the Brother's and the Husband's statutory declarations was also somewhat different from the account posted by the Brother on Facebook. On the basis of the version of the facts provided in the Brother's and the Husband's statutory declarations, the SMC amended its application to the High Court to seek the setting aside of Dr Soo's conviction and sentence.

4 We begin by setting out in some detail the facts leading to this appeal because our decision hinges on a close examination of them.

The facts

The charge against Dr Soo

5 The charge against Dr Soo ("the Charge") which was set out in the Notice of Inquiry dated 24 May 2018 ("the Notice of Inquiry") reads as follows:

> That you, [Dr Soo], a registered medical practitioner under the [MRA] are charged for [*sic*] *failing to maintain [the] medical confidentiality of a patient*, [the Complainant], in that whilst attending clinic at [NUH] on 20 March 2015, *without verifying the identity of a caller* claiming to be [the Complainant's] husband, and in reliance of [*sic*] the information provided by

> the said caller, you issued a memo addressed to "Ambulance staff / Police in charge", and *failed to take appropriate steps to ensure that [the Complainant's] confidential medical information contained in the memo was not accessible to unauthorised persons*, amounting to a breach of Guideline 4.2.3.1 of the 2002 edition of the Singapore Medical Council Ethical Code and Ethical Guidelines.
>
> …
>
> and that in relation to the facts alleged, your aforesaid conduct amounts to such serious negligence that it objectively portrays an abuse of the privileges which accompany registration as a medical practitioner, and that you are thereby guilty of professional misconduct under section 53(1)(*d*) of the [MRA].
>
> [emphasis added]

6 It is evident from the italicised portions of the Charge that its gravamen was a failure to maintain the medical confidentiality of the Complainant by: (a) failing to verify the identity of a caller who claimed to be the Husband before issuing the Memorandum in reliance on information provided by the caller; and (b) then failing to take appropriate steps to ensure that the Complainant's confidential medical information in the Memorandum was not accessible to unauthorised persons.

Background to the disciplinary proceedings

7 There is some history to the Charge. On 19 January 2015, the Complainant was brought and admitted to NUH by the Husband after she took an overdose of Tramadol. On the next day, 20 January 2015, she was reviewed by Dr Soo, who diagnosed her with adjustment disorder with depressed mood and alcohol misuse, and noted that she bore a risk of self-harm and presented with a history of depression. She was discharged later that day with a memorandum referring her to a family service centre. That memorandum also stated that the Husband had been informed of her proposed treatment plan and

was supportive of it. The Complainant's medication was handed over to the Husband and her family members for safekeeping. The Complainant subsequently defaulted on her follow-up appointment at NUH.

8 Two months later, on the morning of 20 March 2015, Dr Soo was in the midst of a clinic with a roster of 17 patients scheduled to see him when he received a telephone call from a caller who informed him that the Complainant was suicidal and needed to be brought to the Institute of Mental Health ("IMH") for an urgent assessment of her suicide risk ("the Call").

9 Dr Soo evidently accessed the Complainant's electronic records, and at or around 10.28am, he made a contemporaneous record there ("the Call Note"). The Call Note recorded the following:

> …
>
> *Husband called*
>
> Felt *his wife* is unwell
>
> Been talking to herself, verbalising suicidal ideation
> Noted recent stress that her son apply PPO [Personal Protection Order] against her while she continues to be violent towards him
> Felt his moving out of house had trigger her low mood
>
> Tried to send her to IMH but the ambulance staff and police has not been enforcing it.
>
> Wish to get help
>
> Plan:
> Memo to request for assessment at IMH in view of suicide threats
>
> [emphasis added]

10 It is evident from the italicised portions of the Call Note that Dr Soo was under the impression that the caller was the Husband. It also seems clear to us

that whoever it was who called Dr Soo was in possession of a number of key pieces of information about the Complainant, including the following:

(a) the fact that Dr Soo was the consultant who had previously attended to the Complainant when she was admitted to NUH in January 2015;

(b) the Complainant's personal information and identification details, without which, we were subsequently informed, Dr Soo would not have been able to access her electronic records; and

(c) the Complainant's medical state, which, as it happened, was consistent with her history of depression and the risk of self-harm and suicidal ideation.

It is also evident from the Call Note that Dr Soo was given the impression that the situation was urgent, in that the police and an ambulance had been summoned to take the Complainant to IMH but to no avail because of her refusal to accede to their requests.

11 Dr Soo wrote the Memorandum almost immediately at or around 10.32am. The Memorandum contained the Complainant's name, NRIC, age and gender, and it stated as follows:

> To: Ambulance staff/ Police in charge
>
> Re: [The Complainant]
>
> *The above mentioned was seen at NUH on 20th Janu[a]ry 2015.*
>
> *She subsequently defaulted [on] her follow up at NUH psychological medicine clinic.*
>
> *Her husband had called up* to raise concern over her *recent* suicidal threats past few day [*sic*].
>
> She will need an assessment at IMH to assess the suicide risk.

> Kindly assist the family in ensuring that she gets a suicide risk assessment at IMH.
>
> …
>
> [emphasis added]

12 It is evident from the italicised portions of the Memorandum that Dr Soo had contemporaneously checked the record of the Complainant's previous visit to NUH and taken note of the fact that the Complainant had not followed up on her past treatment. The Memorandum also reinforces the point we made earlier (at [10] above) that Dr Soo was under the impression that the person who made the Call was the Husband. We are also satisfied that Dr Soo was cognisant of the Complainant's past risk of suicide and self-endangerment, as reflected in his reference to her "recent" threats of suicide. The Memorandum further evidences Dr Soo's opinion that the Complainant should undergo a suicide risk assessment at IMH.

13 Dr Soo left the Memorandum with his clinic staff, with instructions that it should be handed to the Husband. However, unknown to Dr Soo, it was the Brother who collected the Memorandum from the clinic staff later that day.

14 Three days later, on 23 March 2015, the Complainant discovered that Dr Soo had issued the Memorandum, and that it was in the Brother's possession. The Brother had earlier applied to the Family Court on behalf of the Complainant's son for a Personal Protection Order ("PPO") against the Complainant, and the Brother and the Complainant were still in the midst of those proceedings. During the exchange of documents on 23 March 2015 in connection with those proceedings, the Complainant saw the Memorandum among the documents that the Brother submitted to the Family Court.

15 According to the Complainant, she called NUH on 30 March 2015 to inquire about the Memorandum and asked to speak to Dr Soo. He, however, was on leave. Dr Soo called the Complainant back on 13 April 2015, and this eventuated in his writing a letter addressed to her dated 14 April 2015 as follows:

> **CLARIFICATION ON HOSPITAL MEMO**
>
> Thank you for taking time to speak to me today. I understand from our telephone conversation on 13 April 2015 that you have not been brought to IMH. You are also concerned that our earlier memo referring you to [IMH] for a suicidal assessment could be used to give an erroneous impression of you.
>
> We wish to clarify that it was based on the previous information *provided by your family* that we assisted with the memo for the recommendation. We will clarify with you in the future should [a] similar situation arise.
>
> We hope the above clarifies.
>
> [emphasis added]

Disciplinary proceedings leading to the inquiry by the DT

16 The Complainant then lodged a complaint against Dr Soo with the SMC by way of a statutory declaration dated 11 August 2015 ("the Complaint"). This was done pursuant to s 39(1) of the MRA. In her account, the Complainant asserted that the Brother had deceived Dr Soo into writing the Memorandum, and that he had done so with a view to using the Memorandum to support his case in the Family Court proceedings. The Complainant averred that the Brother had called Dr Soo on 20 March 2015 claiming to be the Husband and claiming that she (the Complainant) was suicidal and needed to go for an assessment at IMH. The Complainant's grievance with Dr Soo was that he had accepted the caller's account without arranging an appointment with her or otherwise communicating with her to verify the details.

17 A Complaints Committee was appointed to inquire into the Complaint. On its direction, an investigation was conducted by the Investigation Unit of the SMC. The Investigation Unit wrote a letter dated 4 February 2016 to Dr Soo enclosing the Complaint, and invited him to furnish the Complaints Committee with a written response or explanation pursuant to ss 44(1) and 44(2) of the MRA. The letter informed Dr Soo that his written explanation "may be used as evidence in the course of the proceedings", and that he should address the allegations set out in the Complaint. He was also asked to answer the following questions:

> a) Whether you did establish the identity of the caller before issuing the memo dated … 20 March 2015?
>
> b) If you did, how did you verify?
>
> c) Who did you give the memo, dated 20 March 2015, to?
>
> d) Were you not concerned about breaching … your patient's medical confidentiality in issuing a memo about your patient's medical condition to another person without the permission of your patient?

18 Dr Soo provided a brief written explanation by way of a letter dated 19 February 2016 as follows:

> Regarding the allegations, I will answer in full below:
>
> a) *The caller identified himself as [the Complainant's] husband* in the midst of my clinic. Under the time pressure, *I did not asked [*sic*] adequate questions to verify the identity of the caller. I made the assumption that her husband … had contacted me* since I had communicated with him previously.
>
> b) *I did not verify the caller's identity in detail.*
>
> c) I prepared a memo for the caller to collect from my clinic *in the good faith that it was her husband who will [*sic*] be collecting the memo*, to ensure the safety of the patient.
>
> d) While I am concerned that confidentiality might be breached, *there are instances when it is ethically appropriate to breach confidentiality* i.e. to prevent harm to patient

> (prevent suicide) and for benefit of patient (in view [of the fact] that patient defaulted [on her] follow up).
>
> Secondly, in the memo, *I took effort [*sic*] not to reveal either her medical or psychiatric condition.*
>
> …
>
> When the [Complainant] was seen by myself on the 20th January 2015 in NUH, there were multiple risk factors that suggest [*sic*] that she might be at risk of self-harm. This was compounded when she defaulted [on] her subsequent appointment. There were adequate clinical reasons to suspect she might be of [*sic*] risk to self from her past medical and psychiatric history.
>
> The memo was prepared in good faith, in the midst of a busy clinical session, to prevent harm in a patient with significant risks of self-harm. I am apologetic that the memo was not used as it was intended … and cause [*sic*] undue distress to [the Complainant].
>
> [emphasis in original omitted; emphasis added in italics]

19 The Complaints Committee did not subsequently take any statements from the Brother or the Husband, essentially because Dr Soo admitted that he had not verified the caller's identity in detail. Dr Soo himself appeared to have assumed that the Complainant was correct in her assertion that the Brother had falsely claimed to be the Husband.

20 On 3 April 2017, the Complaints Committee wrote to Dr Soo informing him that it had ordered a disciplinary tribunal to hold a formal inquiry into the Complaint. The Notice of Inquiry was later served on Dr Soo by the SMC's solicitors. It set out the Charge (see [5] above) along with its particulars, and also enclosed the expert report of A/Prof Dr Daniel Fung Shuen Sheng ("Dr Fung") dated 24 May 2018 (referred to hereafter as "Dr Fung's report" where appropriate to the context). In summary, the particulars in the Notice of Inquiry included the following:

(a) On 20 March 2015, Dr Soo received a telephone call from the Brother, who claimed to be the Husband.

(b) Dr Soo did not verify the caller's identity by checking the Complainant's medical records for the Husband's name and contact number, or by contacting the Complainant directly.

(c) Dr Soo failed to take steps to ensure that the means by which the Memorandum was communicated was secure, and that it would not be accessible to unauthorised persons.

(d) A reasonable and competent doctor in Dr Soo's position would have: (i) obtained the caller's name and NRIC; (ii) checked the Complainant's medical records to ascertain whether information about the caller was available there and, if so, verified the caller's identity based on that information, or, if such information was not available, called the Complainant directly to verify the caller's identity before preparing the Memorandum; and (iii) given instructions only then to the clinic staff to release the Memorandum to the verified caller.

21 The Charge and the Notice of Inquiry did not seem to take issue with the fact that Dr Soo would be releasing the Complainant's confidential medical information to someone other than the Complainant. Rather, the focus was on: (a) what steps Dr Soo should have taken, but did not in fact take, to verify the identity of the caller; and (b) what steps Dr Soo should have taken, but evidently did not take, to ensure that the information would be released only to the caller. The SMC also asked Dr Fung, who is the Chairman of the Medical Board and a Senior Consultant at IMH's Department of Developmental Psychiatry, to provide an expert opinion in relation to the Complaint. In summary, after

reviewing the Complaint, Dr Soo's written explanation of 19 February 2016 and the Complainant's medical records from NUH, Dr Fung opined that:

> (a) The Memorandum contained confidential medical information pertaining to the Complainant because it contained personal identifiers, such as her name, NRIC, age and gender, and also mentioned her symptoms (suicidal threats) and associated clinical condition (which required follow up at NUH's psychological medicine clinic).
>
> (b) Dr Soo was concerned that the Complainant was suicidal and mentally disordered, and believed that she might have been dangerous to herself. He wrote the Memorandum in order to enable the police to act on this concern, and he was justified in the circumstances in disclosing the Complainant's confidential medical information without her permission. Dr Soo's response to the Call was appropriate in terms of trying to get expeditious help for the Complainant.
>
> (c) However, Dr Soo, by his own admission, did not verify the identity of the person he was releasing the Complainant's confidential medical information to. Dr Soo did not take sufficient care to ensure that the Memorandum was not accessed by unauthorised persons as he did not verify the identity of the person who made the Call and did not ensure, through his clinic staff, that the Memorandum was released only to the verified caller. Medical confidentiality had thereby been breached.

The inquiry by the DT

22 On 30 November 2018, the DT heard the parties. Dr Soo pleaded guilty to the Charge with its particulars as set out in the Notice of Inquiry, and admitted without reservation to the Agreed Statement of Facts. The Agreed Statement of

Facts elaborated on the particulars in the Notice of Inquiry and stated, among other things, that:

> (a) Dr Soo did not verify the identity of the person who made the Call by first obtaining his name, NRIC or contact number and thereafter checking the Complainant's medical records for the Husband's name, NRIC and contact number, or by contacting the Complainant directly before issuing the Memorandum.
>
> (b) Dr Soo left the Memorandum with his clinic staff, with instructions that it should be handed to the Husband, who had called earlier that day.
>
> (c) Thereafter, Dr Soo did not take steps to ensure that the means by which the Memorandum was communicated was secure, or that it was accessible only to authorised persons, by giving instructions to his clinic staff to release it only upon verification of the identity of the person collecting it.

23 In the circumstances, the DT found Dr Soo guilty of professional misconduct under s 53(1)(*d*) of the MRA. Because Dr Soo had chosen not to contest the Charge or the facts upon which it was based, there was no hearing on or inquiry into the facts grounding the Charge. The DT proceeded to consider the appropriate sanction to impose on Dr Soo. In so doing, it had sight of Dr Fung's report and heard submissions by counsel. As we have already noted, the SMC sought a fine of not less than $20,000, while Dr Soo sought a fine not exceeding $5,000.

24 In his submissions before the DT, Dr Soo submitted that the Brother had deceived him and had been able to do so because the Brother was already in

possession of information pertaining to the Complainant's medical history (GD at [14]). In his written plea in mitigation, Dr Soo also stated that his mistake was in not verifying the identity of the recipient of the Memorandum personally, even though he had asked his clinic staff to hand it specifically to the Husband.

25 At the end of the hearing, the DT ordered that Dr Soo: (a) pay a fine of $50,000; (b) be censured; (c) give a written undertaking to the SMC that he would not engage in the conduct complained of or in any similar conduct; and (d) pay the costs and expenses of and incidental to the proceedings, including the costs of the SMC's solicitors (GD at [32]). In coming to its decision, the DT considered that in the circumstances of the case, there was clearly harm caused to the Complainant in the form of "psychological and emotional distress" (GD at [24]), including through the misuse of the Memorandum (GD at [25]).

26 The DT subsequently issued its GD on 17 December 2018. The SMC served notice of the DT's order on Dr Soo on 19 December 2018. Pursuant to s 55(1) of the MRA, the last day for either party to appeal to the High Court against the DT's order was 18 January 2019. By that date, neither party had appealed against the DT's decision. The GD was subsequently published on 5 March 2019.

The events leading to the appeal before this court

27 Following the publication of the GD, the SMC filed Originating Summonses Nos 5 and 6 of 2019 ("OS 5" and "OS 6" respectively) on 13 March 2019. OS 6 was an application for an extension of time to file and serve an appeal against the DT's decision, and OS 5 was the substantive application for a review of the DT's decision on the ground that the penalty of $50,000 imposed on Dr Soo was manifestly excessive and/or seriously or

unduly disproportionate. The supporting affidavit for OS 6 stated that since the publication of the GD, members of the medical profession and the public had expressed concern that the DT's decision could lead to defensive practices among the medical profession and, in particular, give rise to reluctance in the profession to assist caregivers who might approach doctors with *bona fide* requests. The SMC also noted that the penalty of $50,000 significantly exceeded that which it had sought before the DT. It is not at all clear to us why the SMC recognised and raised this concern only after the outcry over the DT's decision.

28 Matters then took a different turn. As we have noted above (at [3]), on 16 March 2019, the Brother published a post on Facebook essentially stating that he had learnt of the case two days earlier, and claiming that he had never impersonated the Husband and that Dr Soo in fact "did the necessary" when communicating with "[the Complainant's] *husband*" [emphasis added] over the telephone. Following the publication of this post, the SMC contacted the Brother and the Husband to obtain their respective accounts of the material events. Their respective accounts had evidently not been previously known to either the parties or the DT.

29 In the meantime, on 3 April 2019, we granted a consent order in terms of the SMC's application in OS 6.

30 On 22 May 2019, the SMC amended OS 5 pursuant to O 55 r 5 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("the Rules of Court") to seek the setting aside of Dr Soo's conviction and sentence. The SMC also filed Summons No 3 of 2019 ("SUM 3") for leave to adduce further evidence, specifically, the statutory declarations made by the Brother and the Husband, both dated 6 May 2019, which set out their respective accounts of the

circumstances under which the Memorandum had been prepared by Dr Soo and collected by the Brother. Dr Soo consented to the application in SUM 3.

31 The SMC contended that in view of the fact that the Brother's and the Husband's statutory declarations presented an alternative account of the circumstances under which the Memorandum had been prepared and collected, the factual basis on which Dr Soo had pleaded guilty to the Charge could not be said to have been established beyond a reasonable doubt. The SMC further considered that Dr Soo's conviction, which had been premised on his admission to the Agreed Statement of Facts, was in the circumstances unsafe, and that any amended charge could not be proved beyond a reasonable doubt. The SMC was also of the view that in any event, there had been no professional misconduct under s 53(1)(*d*) of the MRA on Dr Soo's part.

32 Dr Soo did not disagree with the SMC's position.

The further evidence in SUM 3

33 The material aspects of the Brother's account in his statutory declaration were as follows:

> (a) On 20 March 2015 *at around 2.00pm*, the Brother called Dr Soo, introducing himself as the Complainant's younger brother and saying that he was calling on the Husband's behalf. Dr Soo then asked the Brother for his identification number, as well as for the Complainant's name, identification number and address and the circumstances under which she had been admitted to NUH in January 2015. Dr Soo verified that the Brother could answer his questions before starting the conversation concerning the Complainant's medical condition.

(b) The Brother asked Dr Soo if he could collect the Memorandum and Dr Soo said that he could since he was a member of the Complainant's "immediate family". The Brother subsequently collected the Memorandum from the receptionist at Dr Soo's clinic after writing his name and signing off in a logbook. The receptionist had verified what he wrote in the logbook against his identification card.

34 The material aspects of the Husband's account in his statutory declaration were as follows:

(a) One *afternoon*, the Brother called Dr Soo and introduced himself as the Brother calling on behalf of his brother-in-law (the Husband) regarding his sister (the Complainant).

(b) The Brother asked Dr Soo whether he (the Brother) could collect the Memorandum if the Husband could not, and Dr Soo said that he could. The Brother subsequently collected the Memorandum.

35 In both the Brother's and the Husband's statutory declarations, they also revealed that the police had interviewed them, and according to the Brother, this was because NUH had made a police report against him. The status of these police investigations is not before us and, in any case, is not known to us.

36 In respect of the further evidence, Dr Soo submitted that the Brother's and the Husband's statutory declarations contained information that he had been unable to provide during the inquiry by the DT because of the passage of time and the absence of contemporaneous documentation.

Prior to the hearing of the appeal before this court

37 Arising from these developments, on 3 July 2019, we raised a number of concerns. We had been told by the SMC that it had not approached either the Brother or the Husband with the Charge and the Notice of Inquiry prior to the proceedings before the DT, at least partly because Dr Soo had chosen to plead guilty. We were concerned, in the circumstances, as to whether the Brother's and the Husband's accounts had been put to the Complainant. After all, it was her complaint that had led to these proceedings, and in as much as material assertions in the Complaint were now being challenged, it seemed only fair that the Brother's and the Husband's accounts be put to her. The SMC at this stage seemed to us to be very keen to rely on the Brother's and the Husband's accounts and to abandon the Complainant's account, perhaps because it had been rattled by the medical profession's cry that the DT's decision would fuel the practice of defensive medicine. We were concerned by this and directed the parties to address us on three specific points: (a) the Complainant's position on the factual averments contained in the Brother's and the Husband's statutory declarations; (b) whether there was any record kept by Dr Soo that would corroborate the Brother's account of Dr Soo having asked for his identification number and various other details; and (c) whether it was the SMC's case that disclosure of the Complainant's confidential medical information to the Husband without first obtaining the Complainant's permission would have been permissible.

38 Counsel for Dr Soo wrote in on 4 July 2019 with Dr Soo's instructions. That letter (referred to hereafter as "Dr Soo's Letter" where appropriate to the context) stated that apart from the Call Note (see [9] above), Dr Soo was unable to locate any other record to corroborate the Brother's account of Dr Soo having asked for his identification number and various other details. Due to the passage

of time, Dr Soo was not able to recall specifically the details of the Call on 20 March 2015. However, based on the words "Husband called" in the Call Note, Dr Soo believed that he would have been informed that he was speaking to the Husband. Dr Soo would also have been provided with the Complainant's name and identification number in order to enable him to locate and access her electronic records during the Call. Dr Soo recalled accessing the Complainant's electronic records, and recalled that the information the caller provided to him corresponded with the information in these records as to the circumstances of the Complainant's previous admission to NUH in January 2015 and her default on her subsequent follow-up appointment at NUH. We digress to note that this is consistent with the observations we made at [10] and [12] above. Dr Soo did not, however, record details of any other information that he might have sought in order to verify the caller's identity because his focus then was on documenting the clinical information and the reason why the Memorandum requesting the Complainant's assessment at IMH was necessary. Dr Soo also explained that the Call Note was brief because: (a) he had made the note while talking to the caller and going through the Complainant's medical records; (b) his priority after the Call was to draft the Memorandum urgently; and (c) he then had to return to his patients in his clinic that morning. Dr Soo was also not personally aware of and was not able to locate the logbook the Brother referred to in his statutory declaration, and was not able to identify the receptionist who had apparently handed the Memorandum to the Brother (see [33(b)] above).

39 Counsel for the SMC wrote to the court on 5 July 2019 enclosing a further affidavit dated 5 July 2019 setting out the steps it had taken to ascertain the Complainant's position on the factual averments contained in the Brother's and the Husband's statutory declarations. The SMC's further affidavit annexed a statutory declaration signed by the Complainant dated 4 July 2019. In that

statutory declaration, the Complainant stated, among other things, that she remembered asking Dr Soo who the caller was. He told her that it was the Husband, but when he mentioned that the caller had a good command of English, she surmised that it must have been the Brother claiming to be the Husband in order to get Dr Soo to issue the Memorandum. The Complainant averred that the Brother was not telling the truth in claiming that he had in fact introduced himself as her brother when he spoke to Dr Soo, and pointed out that the Brother had instead said in his Facebook post that it was the Husband who had called Dr Soo (see [28] above). As with Dr Soo, the SMC too was unable to locate any record to corroborate the Brother's account of Dr Soo having asked for his identification number and various other details. In particular, the inability of either party to locate the logbook in which, according to the Brother, the receptionist at Dr Soo's clinic had made him write his name and sign off suggests to us that there was no such logbook.

40 The SMC also stated that it was its case that disclosure of the Complainant's confidential medical information to the Husband without first obtaining the Complainant's permission would have been permissible. The SMC premised this on Guideline 4.2.3.1 of the SMC Ethical Code and Ethical Guidelines (2002 Edition) ("ECEG 2002"), Dr Fung's report (including para 18 thereof) and Guideline 2b of the Ministry of Health National Medical Ethics Committee's Guidelines on the Practice of Psychiatry 1997 ("Guidelines on the Practice of Psychiatry 1997"). The SMC noted that Dr Soo had good reason to suspect that the Complainant posed a significant risk of suicide. As suicidal tendency was considered a psychiatric emergency requiring expeditious intervention, Dr Soo was therefore justified in issuing the Memorandum to enable the police to act on this concern in accordance with s 7 of the Mental Health (Care and Treatment) Act (Cap 178A, 2012 Rev Ed) ("the MHCTA") in

order to avert any danger that might be posed by the Complainant to herself. According to the SMC, providing family members of a patient with a memorandum to get help for the patient was a common practice in psychiatry.

At the hearing of the appeal before this court

41 On 8 July 2019, we heard the parties on OS 5 and SUM 3. We granted the SMC leave to admit into evidence the Brother's and the Husband's statutory declarations. Pursuant to an application by the SMC, we also ordered that these statutory declarations and the Complainant's statutory declaration dated 4 July 2019 be sealed.

42 As we have mentioned above, following the amendment to OS 5, the SMC sought the setting aside of Dr Soo's conviction and sentence. It contended that Dr Soo's conviction was unsafe because the factual basis on which he had pleaded guilty to the Charge could not be established beyond a reasonable doubt, and any amended charge could not be proved beyond a reasonable doubt; alternatively, there had been no professional misconduct under s 53(1)(*d*) of the MRA. Dr Soo did not disagree with the SMC's position.

43 During the hearing, we put to counsel the difficulties we had with the SMC's position on appeal. The SMC's premise was that there was a reasonably sufficient and stable substratum of facts based on which its appeal could proceed. However, this was not the case, given that there were now conflicting accounts of the circumstances under which the Memorandum had been prepared by Dr Soo and collected by the Brother. Furthermore, none of the evidence had been tested by cross-examination. Dr Soo had pleaded guilty to the Charge and admitted to the Agreed Statement of Facts, and had not appealed against the DT's decision or applied to withdraw his plea. We also pointed out to counsel

that the Brother's account in his statutory declaration, in which he stated that he had introduced himself as the Complainant's brother when calling Dr Soo on 20 March 2015, was exculpatory and could be seen to be self-serving. This was especially troubling given the inability to corroborate any of the very meticulous ways in which the Brother claimed his personal information and particulars had been sought and recorded by Dr Soo. Apart from these points, which we highlighted at the hearing of this appeal, we note that the claim in both the Brother's and the Husband's statutory declarations that the communication with Dr Soo had taken place in the *afternoon* of 20 March 2015 (see [33(a)] and [34(a)] above) is plainly wrong since it is evident from the Complainant's electronic records that the Call was made at or around 10.28am that day (see [9] above). We also note (as did the Complainant (see [39] above)) that in his Facebook post, the Brother claimed that the Husband was the one who had communicated with Dr Soo (see [28] above), whereas in his statutory declaration, he claimed that he was the one who had made the Call and spoken to Dr Soo about the Complainant's medical condition (see [33(a)] above). In addition, the particulars accompanying the Charge, as set out in the Notice of Inquiry, had stated that the Brother had claimed to be the Husband (see [20(a)] above), and this had been accepted by both the SMC and Dr Soo in the proceedings before the DT (see [2] above). In view of all these circumstances, we asked counsel for the SMC why the appropriate course of action was not for us to remit the matter to the DT for a rehearing to be conducted so that the evidence could be tested under cross-examination and the facts found on this basis.

44 The SMC then submitted in the alternative that even proceeding solely on the basis of the Agreed Statement of Facts without relying on the additional information contained in the Brother's and the Husband's statutory declarations,

Dr Soo's conduct did not amount to such serious negligence that it objectively portrayed an abuse of the privileges of being registered as a medical practitioner. Hence, the SMC submitted, Dr Soo was not guilty of professional misconduct under s 53(1)(*d*) of the MRA. This submission was evidently inspired by remarks we had made at the hearing of the earlier of the pair of unfortunate cases referred to at the outset of this judgment, which remarks we later confirmed in our decision in that case: see *Singapore Medical Council v Lim Lian Arn* [2019] SGHC 172. The difficulty with this submission is that it was contrary to the SMC's own expert report, namely, Dr Fung's report, which had been placed before the DT. This report had earlier been relied on by the SMC to support its submission before the DT that Dr Soo *was* guilty of professional misconduct under s 53(1)(*d*), and there had been no submission to the contrary by either party before the DT.

45 To afford us a more complete picture, we invited Dr Soo to clarify his position as to whether he would rather that the appeal be dismissed or that the matter be remitted to the DT for a rehearing if we were inclined to so order. Counsel for Dr Soo informed us that Dr Soo had been prepared for his conviction to stand and had thus decided not to appeal against the DT's decision. He wished above all to put this episode behind him and was not inclined to change his position in this regard. However, counsel was at pains to assure us, Dr Soo would abide by whatever we thought should be done in the interests of justice.

46 We noted that the Agreed Statement of Facts, which elaborated on the particulars in the Notice of Inquiry (see [22] above), was drawn up after Dr Fung had prepared his report. It had thus not been available to Dr Fung at the time he prepared his report. Dr Soo's Letter dated 4 July 2019, which included further details as to the circumstances under which the Memorandum had been prepared

(see [38] above), had likewise not been available to Dr Fung when he prepared his report. In the light of this, we directed the SMC to file and serve a supplementary affidavit by Dr Fung clarifying the conclusions set out in paras 26, 27 and 31 of his report. We also directed Dr Soo to inform the court of any observations he might have arising from the said affidavit. We reserved judgment pending receipt of these materials.

Dr Fung's supplemental report and Dr Soo's response

47 Dr Fung filed and served a supplementary affidavit enclosing his supplemental expert report dated 2 August 2019 (referred to hereafter as "Dr Fung's supplemental report" where appropriate to the context) after having reviewed the Agreed Statement of Facts and Dr Soo's Letter. In summary, Dr Fung stated that had the new information contained in Dr Soo's Letter been provided to him at the outset, he would have opined that Dr Soo *had* obtained sufficient corroboration as to the identity of the person who made the Call, and that his conduct was reasonable and acceptable. Dr Fung concluded by opining that in all the circumstances, Dr Soo *had* taken sufficient care to ensure that the Memorandum would not be accessible to unauthorised persons and *had* acted in keeping with what most psychiatrists would have done amidst a busy practice. There was in the circumstances no breach of medical confidentiality on Dr Soo's part. We discuss Dr Fung's supplemental report below.

48 Counsel for Dr Soo then wrote to us on 15 August 2019 stating that having considered Dr Fung's supplemental report, Dr Soo accepted Dr Fung's conclusions and would not be raising further points in response, except to now submit that his conviction could not stand and ought to be set aside.

The issues before this court

49 The issues before us are the following:

(a) first, whether Dr Soo failed to maintain the Complainant's medical confidentiality by:

(i) failing to verify the identity of the person who made the Call before issuing the Memorandum in reliance on information provided by that person; and

(ii) failing to take appropriate steps to ensure that the Complainant's confidential medical information in the Memorandum was not accessible to unauthorised persons; and

(b) second, if Dr Soo did fail to maintain the Complainant's medical confidentiality, whether his conduct amounted to such serious negligence that it objectively portrayed an abuse of the privileges of being registered as a medical practitioner, such that he was guilty of professional misconduct under s 53(1)(*d*) of the MRA.

50 In addressing these issues, we have chosen to proceed based on the facts set out in the Agreed Statement of Facts and supplemented by Dr Soo's Letter. We disregard the Brother's and the Husband's accounts in their statutory declarations for, among other reasons, those set out at [43] above. In short, we are not satisfied that these accounts are reliable, not least because they have not been tested under cross-examination. Furthermore, as we have already noted (likewise at [43] above), these accounts, when read in the light of the record of the proceedings before the DT ("the Record of Proceedings"), did not afford us a reasonably sufficient and stable substratum of facts on which we could proceed. In these circumstances, the appropriate course of action would have

been for us to remit the matter to the DT for a rehearing if it were material to consider the case on the basis of the Brother's and the Husband's accounts. However, having examined the Record of Proceedings, we were troubled as to whether Dr Soo could properly have been found guilty of the Charge set out in the Notice of Inquiry – in particular, as regards the first issue of whether he even failed to maintain the Complainant's medical confidentiality. This was so even without considering the new factual position that was being advanced. In this regard, we consider the Record of Proceedings to be an admissible factual foundation for our deliberations because Dr Soo had accepted it at the hearing before the DT and the DT itself had proceeded on that basis. We therefore proceed to consider the issues we have set out above in the light of the Record of Proceedings, but supplement it with some of the other materials that were produced subsequently, including, in particular, Dr Soo's Letter and Dr Fung's supplemental report. We observe that neither of these is controversial. Indeed, as we have already noted, Dr Soo's Letter contains factual elements that are entirely consistent with the contemporaneous records (see [38] above). These factual elements should and likely would have been brought forth earlier had Dr Soo not been so keen to put this matter behind him, regardless of the cost to him and, it seems, to the medical profession.

51 In proceeding in the manner outlined in the preceding paragraph, we are acting pursuant to O 55 r 6(5) of the Rules of Court, which provides that we may give any judgment or decision or make any order which ought to have been given or made by the DT.

Our decision

Disclosing the Complainant's confidential medical information to the Husband without first obtaining the Complainant's permission

52 We begin with a preliminary point, which the parties did not dispute. It was the SMC's case that in the circumstances of this case, where Dr Soo had good reason to fear that the Complainant was at risk of suicide, disclosure of her confidential medical information to the Husband without first obtaining her permission would have been permissible (see [40] above). Dr Fung's report supported this position:

> 19. In this instance, Dr Soo had reasons to suspect suicidal risk based on [the Complainant's] past medical and psychiatric history and was trying to ensure the safety of [the Complainant] and to prevent her from committing suicide. Suicidal tendency is considered a psychiatric emergency requiring expeditious intervention. Based on the information available to me, I would agree that she has suicidal risk; namely, because of her previous suicide attempts and alcohol misuse. If I was told that she was making suicidal threats, I would have reason to suspect significant risk of suicide in this instance.
>
> …
>
> 21. Dr Soo was concerned that [the Complainant] was suicidal and mentally disordered, and believed that she may have been dangerous to herself. He wrote the [Memorandum] for the police to act on this concern. I find that under these circumstances, Dr Soo is justified to disclose [the Complainant's] medical information without needing her permission.
>
> …
>
> 30. I would like to add that Dr Soo's response to the [C]all is appropriate in terms of trying to get expeditious help for the [Complainant]. This is a common practice in psychiatry in providing family members with a memo to get help. …

53 Guideline 4.2.3.1 of the ECEG 2002 on "Responsibility to maintain medical confidentiality" states that:

> 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. …
>
> There may be other circumstances in which a doctor decides to disclose confidential information without a patient's consent. When he does this, he must be prepared to explain and justify his decision if asked to do so.
>
> …

54 As to the circumstances under which a doctor may disclose a patient's confidential medical information without her consent, Guideline 2b of the Guidelines on the Practice of Psychiatry 1997 provides that a psychiatrist may make such disclosure "to avert inevitable danger to others". In a similar vein, Guideline C7(5) of the SMC Ethical Code and Ethical Guidelines (2016 Edition) ("ECEG 2016") provides that disclosure of patients' confidential medical information without their consent is generally defensible when, among other situations, "it is necessary in order to protect patients or others from harm" or "where such disclosure is in patients' best interests". The SMC Handbook on Medical Ethics (2016 Edition) ("HME 2016"), which is a secondary source expounding on the ECEG 2016, elaborates that medical confidentiality is not absolute. It may be overridden by "[c]onsiderations of patients' best interests where patients' consent cannot reasonably be obtained", and a doctor may decide to disclose a patient's confidential medical information to prevent potentially serious harm to the patient herself (HME 2016 at C7.2). The HME 2016 elaborates that "[i]n such cases, if an attempt to secure voluntary disclosure is unsuccessful, impossible, or contrary to the very purpose of disclosure", the doctor may disclose the information without the patient's consent. An example of such circumstances is where there is a "risk of serious harm, such as … self-harm". The HME 2016 reminds doctors that "except for

statutory requirements and urgent situations", they "should be slow to decide to breach medical confidentiality".

55 We digress to observe that the way the HME 2016 has phrased the position is unfortunate. In truth, where a psychiatrist reasonably apprehends a real risk that a patient might harm herself and decides to disclose the patient's confidential medical information to prevent that from happening, the psychiatrist is invoking a valid exemption or release from the duty of confidentiality rather than deliberately "decid[ing] to breach medical confidentiality". Leaving that aside, if we were to draw the threads of the foregoing discussion together, it is evident that a doctor may disclose a patient's confidential medical information without her consent when: (a) he reasonably regards it as necessary to protect the patient from potentially serious self-harm; (b) disclosure is in the patient's best interests; and (c) the patient's consent cannot reasonably be obtained. In such circumstances, we consider that the disclosure should be made to those closest to the patient, such as her next of kin.

56 We accept Dr Fung's opinion that upon receiving the Call on 20 March 2015, Dr Soo had good reason to assess that there was a real risk of suicide on the part of the Complainant in the light of her past medical and psychiatric history; and further, that his response in providing her family members with the Memorandum was appropriate, given the objective of attempting to obtain expeditious help from the police or ambulance staff to convey her to IMH for a suicide risk assessment. In this regard, we note that s 7 of the MHCTA states that it shall be a police officer's duty to apprehend any person who is reported to be "mentally disordered" and "believed to be dangerous to himself or other persons by reason of mental disorder", and to take that person without delay to a medical practitioner. In this case, the Husband had brought the Complainant to NUH in January 2015 and had been informed of the Complainant's proposed

treatment plan; further, the Complainant's medication had been handed over to the Husband and her family members for safekeeping (see [7] above). We accordingly accept that in the circumstances, it would have been permissible for Dr Soo to disclose the Complainant's confidential medical information to the Husband without first obtaining the Complainant's permission.

57 The question then is whether Dr Soo took reasonable steps to verify the identity of the person who made the Call so as to ascertain whether the Complainant's confidential medical information could be disclosed to that person.

Failure to verify the identity of the person who made the Call

The need to have due regard to all the circumstances in determining the applicable standard of care

58 We begin with the observation that every doctor who handles patients' confidential information is under a duty to take reasonable care to ensure that such information is not mishandled or released negligently to unauthorised persons. However, as is inevitably the case in such a context, the standard of reasonable care that is expected of a doctor in making inquiries before he releases confidential information that is requested of him will be heavily dependent on all the circumstances at the material time.

59 In this regard, the Court of Appeal observed in *Hii Chii Kok v Ooi Peng Jin London Lucien and another* [2017] 2 SLR 492 that (at [106]):

> … [W]hat is required by a doctor's duty to his patient depends on ***context-specific circumstances*** such as the ***state of the patient*** and whether it is a ***medical emergency***. Accordingly, a *general* rule supported by a responsible body of medical opinion may not be determinative if it is expressed in terms which do not cast much light on the appropriateness of the defendant's conduct in the *specific* circumstances of the case

> before the court. … [emphasis in original in italics; emphasis added in bold italics]

60 The significance of the context-specific circumstances on the standard of care expected of a doctor was also discussed by the Court of Appeal in *Noor Azlin bte Abdul Rahman v Changi General Hospital Pte Ltd and others* [2019] 1 SLR 834 ("*Noor Azlin*") when considering the duty incumbent on doctors dealing with an emergency. The court observed that the standard of care expected of doctors who work in an accident and emergency department "must be informed by the reality of the working conditions in the department and calibrated accordingly", considering that the doctors on duty there are faced with "a high volume of patients, many of whom would have major trauma or life-threatening conditions requiring urgent treatment", and "must make decisions at short notice in a highly pressurised environment" (*Noor Azlin* at [68]). Consequently, it would be unreasonable to expect these doctors to review cases in as much breadth, depth or specificity as a general practitioner or a specialist in an outpatient clinic (*Noor Azlin* at [68]). As noted in Michael A Jones, *Medical Negligence* (Sweet & Maxwell, 5th Ed, 2018) at para 3-093, "[t]he defendant faced with a dilemma or an emergency, having to act on the spur of the moment, will not be judged too critically simply because with hindsight[,] a different course of action might have avoided the harm". The question is what a reasonably competent doctor would have done in the circumstances of the particular emergency concerned.

61 In the case before us, we consider that the relevant facts are these:

(a) Dr Soo was presented with a threatened medical emergency that justified his releasing the Complainant's confidential medical information to the Husband without first obtaining the Complainant's permission (see [52]–[56] above).

(b) Dr Soo was notified of the emergency by a caller who:

(i) represented that he was the Husband, with whom Dr Soo had previously interacted in a similar situation some months earlier;

(ii) had significant *personal information* about the Complainant, which reasonably suggested to Dr Soo that the caller was who he said he was (see [10(b)] above);

(iii) had significant information about the Complainant's *past medical and psychiatric condition*, which information was consistent with Dr Soo's knowledge and information on this (see [10(c)] and [12] above); and

(iv) represented that the Complainant was manifesting symptoms similar to those presented during her earlier admission in NUH in January 2015, which warranted Dr Soo arriving at the reasonable conclusion that the Complainant was in imminent danger of harming herself seriously and that this needed an urgent response (see [52] and [56] above).

(c) It was not practical for Dr Soo to have attempted to contact the Complainant directly to verify the identity of the caller. As we have just noted at [61(a)] above, this was a situation where it was common ground that Dr Soo was justified in releasing the Complainant's confidential medical information to someone other than the Complainant, specifically, to the Husband, without first obtaining the Complainant's consent because of the perceived danger of serious self-harm. In such circumstances, it would seem contrary to good sense, even common sense, to require the doctor to call the patient directly to verify the

caller's identity when the caller is conveying information suggesting that the patient is at imminent risk of mortally injuring herself. What if the patient cannot be reached? Or what if the patient is so ill and so determined to harm herself that she refuses to authorise disclosure of her confidential medical information to her next of kin? Or what if the patient is unaware that such a call has been made by a concerned relative? We digress to say, with the greatest respect, that the SMC's original position on the sort of efforts a physician such as Dr Soo should have taken before acting in what he considered was the best interests of the patient would have been the very epitome of defensive medicine. This is because such a course of action would have been driven by concern over the avoidance of perceived legal risks rather than by the patient's best interests.

(d) It was reasonably thought to be necessary to act without delay. This inevitably reduced the time and limited the sort of inquiries that could be undertaken by Dr Soo to verify the identity of the caller. Had Dr Soo tarried in his response and had the Complainant actually harmed herself, Dr Soo would have been facing an altogether different situation with accompanying tragic circumstances.

62 In our judgment, in assessing whether the Complainant's confidential medical information could be disclosed to the caller in these circumstances, Dr Soo was obliged to take *reasonable* steps to verify that the caller was the Complainant's next of kin. As we mentioned earlier, this inquiry must take into account the context-specific circumstances of the case, including whether it was a medical emergency. Given that Dr Soo had an objectively reasonable basis for proceeding on what appeared to be a legitimate call from the Husband reporting a threatened medical emergency involving the risk of serious self-harm by the

Complainant, we find it difficult to fault Dr Soo for acting as he did. In effect, he chose to prioritise acting promptly on information that he reasonably believed to be true and writing the Memorandum in what he believed was the Complainant's best interests over taking unnecessary, inappropriate and potentially harmful steps such as trying to contact the Complainant directly. In our judgment, what Dr Soo did was precisely what was called for in the circumstances.

63 In our judgment, holding Dr Soo to a *reasonable* standard for verifying that the caller was the Husband, which takes into account the context-specific circumstances, appropriately draws the line between what might be considered defensive medicine on the one hand and appropriate medicine on the other.

64 In that light, and in view of Dr Fung's supplemental report, we turn to consider what in fact transpired.

Dr Soo's attempts to verify the identity of the person who made the Call

65 We first consider the efforts that Dr Soo made to verify the identity of the person who made the Call. In his written explanation of 19 February 2016 in response to the Complaint (see [18] above), Dr Soo said that the caller identified himself as the Husband, but under the time pressure that he faced, he did not ask adequate questions to verify the caller's identity. Dr Soo then admitted to the particulars in the Notice of Inquiry and the Agreed Statement of Facts. These stated that Dr Soo did not verify the caller's identity by first obtaining his name, NRIC or contact number and thereafter checking the Complainant's medical records for the Husband's name, NRIC and contact number, or by contacting the Complainant directly (see [20(b)] and [22(a)]

above). This was the account which Dr Soo accepted in the proceedings before the DT.

66 Before us, however, this account was supplemented by the account in Dr Soo's Letter, which contained additional details that were provided in response to the questions we had asked (see [38] above). We do not know if these points had earlier been investigated by his solicitors; they undoubtedly ought to have been. As we have already noted, it was evident that the caller must have provided Dr Soo with some key information about the Complainant, including *her* name and identification number, so as to enable Dr Soo to locate and access her electronic records. Dr Soo duly confirmed this in the aforesaid letter. Dr Soo had also stated in his written explanation of 19 February 2016 that he had considered the Complainant's medical history. It seems likely therefore that the caller must have been able to provide Dr Soo with further information that corresponded with the information in the Complainant's electronic records as to the circumstances of her previous admission to NUH in January 2015 and her default on her subsequent follow-up appointment at NUH. This was similarly confirmed in Dr Soo's Letter.

67 We make two points in this regard. First, while the additional details in Dr Soo's Letter were not before the DT, we have little reason to doubt them. After all, the Call Note had been recorded by Dr Soo contemporaneously in the Complainant's electronic records. As we have already noted, the only way Dr Soo would have been able to access these records was if the caller had provided him with the Complainant's name and identification number. This was all the more so bearing in mind that Dr Soo had seen the Complainant only once two months prior to the Call, and that he was in the midst of attending to a full morning clinic when he received the Call. The additional details in Dr Soo's Letter also did not contradict Dr Soo's account before the DT, and were in fact

supported by the contemporaneous records. Seen in this light, it would be untenable to accept at face value the assertion that Dr Soo had not made *any* efforts at all to verify the caller's identity simply because he had not obtained the caller's name, NRIC or contact number.

68 Second, even though Dr Soo was not able to recall specifically the details of the Call, there was little, if any, reason why he could not have provided the aforesaid additional details (as to the other information on the Complainant that the caller must have given him) in his written explanation of 19 February 2016 in response to the Complaint, or to the DT at the latest. If Dr Soo had provided these additional details earlier, the Complaints Committee might perhaps have been less inclined to determine that a formal inquiry into the Complaint was necessary. It also appears likely that Dr Fung would then have opined, as he subsequently did, that Dr Soo had in fact obtained sufficient corroboration as to the caller's identity (see [47] above). Unfortunately, Dr Soo seemed to us to have been unduly keen to move on from this episode, as a result of which his written explanation of 19 February 2016 did not evidence a real effort on his part to come to grips with just what had transpired. We make this observation because it seems to us unsatisfactory that reliance has been placed on the medical profession's propensity to protest loudly over the decisions of disciplinary tribunals and/or courts, with dire warnings of the spectre of defensive medicine, in order to secure in individual cases the result that is desired and/or perceived to be just. The doctor against whom a charge is brought also has a responsibility to look after his own interests. Dr Soo could have contested the case on liability, and subsequently, even after pleading guilty to the Charge, he could have appealed against at least the sentence imposed on him, but he chose to do neither. It is not unreasonable in such circumstances to hold that he ought to lie on the bed that he has chosen to make for himself. Be

that as it may, the question is whether Dr Fung's revised opinion, as set out in his supplemental report, is justified, and it is to this we next turn.

Whether Dr Soo took reasonable steps to verify the identity of the person who made the Call

69 It bears mentioning that according to Dr Fung's report, the "usual clinical practice" is for a doctor to "obtain the name and NRIC" of a caller who purports to be calling about a patient (at para 26). Dr Fung further opined in his report that the doctor should verify the caller's identity, such as by checking the patient's medical records to see if any information about the caller was available there, or by calling the patient directly (at para 26). Dr Fung noted that in this case, the Complainant's electronic records contained the Husband's name and contact number. It appears that the SMC relied on Dr Fung's report when drafting the particulars accompanying the Charge in the Notice of Inquiry. These particulars included the assertion that "[a] reasonable and competent doctor" in Dr Soo's position would have obtained the name and NRIC of the person who made the Call, and would have verified his identity by checking against the Complainant's medical records to ascertain whether information about him was available there, or, if such information was not available, by calling the Complainant directly (see [20(d)] above).

70 In his supplemental report, Dr Fung stated that while the usual clinical practice was for a doctor to obtain, for verification purposes, the name and identification number of a caller who purported to be calling about a patient, this was not the *only* way in which the doctor could verify the caller's identity. Having been apprised of the additional facts, Dr Fung concluded that Dr Soo had discharged his duty to verify the identity of the person who made the Call by ensuring that the caller was able to provide sufficient information about *the*

Complainant, including *her* name, identification number and medical history. Dr Fung thus considered that even if Dr Soo had not obtained *the caller's* contact number or identification number, it was reasonable and acceptable for him to have treated the caller's ability to provide the aforesaid information about the Complainant as sufficient corroboration that the caller was who he said he was.

71 In so far as the particulars accompanying the Charge suggest that there is only one way in which a reasonable and competent doctor in Dr Soo's position should have verified the identity of the person who made the Call, the Charge would appear to be defective on its face and unsupported by the evidence. This is so given Dr Fung's supplemental report, which concluded that the identity of a person who purported to be calling about a patient could be verified in other ways. In any case, we find ourselves in agreement with Dr Fung's supplemental report in preference to the position reflected in the Charge for the following reasons.

72 First, as we have already noted, the steps to be taken by a doctor in any given situation will be intensely dependent on the context and all the surrounding circumstances. The duty of a doctor faced with an emergency request for confidential medical information of a patient who is reasonably believed by the doctor to be in imminent danger of serious self-harm is entirely different from that of another doctor who is, for instance, requested to provide such information to support an application for insurance.

73 Second, it appears from the Complainant's medical records with NUH that information on her next of kin was not specifically documented *as such* by NUH. Her medical records also did not contain the Husband's NRIC. The option of obtaining the name and NRIC of the person who made the Call and

then checking these against the Complainant's medical records was thus not available to Dr Soo. Further, while the Complainant's electronic records did contain the Husband's name and contact number, these were recorded as part of the consultation notes made during the Complainant's admission to NUH in January 2015, and appear to have been taken by another doctor rather than by Dr Soo. Given that the Husband's name and contact number were buried in the consultation notes recorded by another doctor, it would have been unreasonably onerous to have expected Dr Soo to scour the Complainant's electronic records for such information. Such a search would not only have been time-consuming, but might well have proved futile. Given the urgency of the situation that Dr Soo was faced with, we do not think this was a reasonable course of action at all.

74 In our judgment, given: (a) the lack of specific information on the Complainant's next of kin in her electronic records; (b) the caller's ability to provide specific details about the Complainant and her medical history that matched the information in her electronic records (see [61(b)] above); and (c) the fact that the reported medical emergency was consistent with what Dr Soo understood of the Complainant's medical condition, Dr Soo was entirely justified in agreeing to issue the Memorandum for the Complainant's protection.

75 We reiterate that this was a case of a threatened medical emergency involving the risk of the Complainant potentially harming herself seriously. Dr Soo had assessed as much, as evidenced in his written explanation of 19 February 2016 in response to the Complaint, where he explained that he had issued the Memorandum "to prevent harm to patient (prevent suicide) and for benefit of patient (in view [of the fact] that patient defaulted [on her] follow up)" (see [18] above). Dr Soo had made this assessment in the light of the multiple risk factors he had observed of the Complainant in January 2015, which

risk factors were compounded when she defaulted on her follow-up appointment at NUH.

76 In view of these circumstances, Dr Fung opined in his supplemental report that "*[i]n this context wherein Dr Soo was justified in disclosing the [Complainant's] medical records without her consent*" [emphasis added], it was "reasonable and acceptable" for Dr Soo to have treated the caller's provision of information about the Complainant – specifically, her name, identification number and medical history – as sufficient corroboration by the caller that he was who he said he was. We agree with this.

77 We therefore conclude that Dr Soo acted reasonably in agreeing to provide the Memorandum at the request of someone whom he reasonably believed was the Husband and in circumstances where he reasonably believed the Complainant, the subject of the Memorandum, was in danger of seriously injuring herself.

78 This, however, is not the end of the matter because it was also the SMC's case that Dr Soo was liable for failing to take steps to ensure that the Complainant's confidential medical information in the Memorandum was not accessible to unauthorised persons.

Failure to ensure that the Complainant's confidential medical information in the Memorandum was not accessible to unauthorised persons

79 Turning to this issue, we have concerns, first, with how this part of the Charge was framed. In our judgment, this part of the Charge was unacceptably broad in that it purported to hold Dr Soo responsible for the administrative failings of the staff at his clinic. As far as Dr Soo was concerned, he had left the Memorandum with his clinic staff, with instructions that it should be handed to

the Husband (see the Agreed Statement of Facts as summarised at [22(b)] above). In short, the factual basis of the case before the DT was that Dr Soo had specifically instructed his clinic staff that the Memorandum was to be handed to the Husband. It is clear to us, and counsel for the SMC accepted this before us, that there was no duty on Dr Soo's part to personally deliver the Memorandum to the Husband or to personally verify the identity of the recipient. That would have been a clerical or administrative role rather than a medical or professional duty. Dr Soo's instructions were evidently clear and, in our judgment, adequate. Any administrative failings of the clinic staff in handing the Memorandum to the Brother contrary to Dr Soo's instructions would fall outside the scope of Dr Soo's duty to maintain the Complainant's medical confidentiality. This part of the Charge was also overly broad in suggesting that Dr Soo had a duty to *ensure* that no unauthorised person could access the Memorandum. If the Memorandum had in fact been delivered to the Husband as Dr Soo had instructed, Dr Soo could not possibly be held responsible for how the Husband might choose to use or misuse the Memorandum.

80 In this regard, we note that in Dr Fung's report, he stated that "[i]t is common practice for *clinic staff* to obtain the NRIC of the person collecting the memo although I am not aware of universal written work instructions in this respect" [emphasis added]. This is consistent with our view that the responsibility of handing the Memorandum to the Husband after verifying his identity would lie with Dr Soo's clinic staff, and not with Dr Soo himself, for the purposes of ascertaining whether there was any professional misconduct on Dr Soo's part.

81 We note too that before the DT, the SMC submitted that Dr Soo's failure to take steps to protect the Complainant's confidential medical information

resulted in the Memorandum being used in support of an application for a PPO against her, and that the consequences of Dr Soo's misconduct were severe as a PPO to this effect was eventually ordered (GD at [9]). We also observe that the DT, in coming to its decision, considered the potential risk of the Memorandum being further disclosed to unauthorised persons unless the recipients of the Memorandum were restrained from doing so (GD at [27]). In addition, the DT considered that there had clearly been harm caused to the Complainant in the form of psychological and emotional distress, including through the misuse of the Memorandum (see [25] above). With great respect, these considerations were all misplaced. First, as we have pointed out (at [79]–[80] above), Dr Soo cannot be held responsible for any administrative failings of his clinic staff in handing the Memorandum to the Brother contrary to his instructions, instead of handing it to the Husband. Second, Dr Soo cannot be held responsible for any subsequent misuse of the Memorandum by a person who comes into possession of it, at least in circumstances where Dr Soo was not at fault in agreeing to make it available.

82 Consistent with this, upon being made aware that, as stated in the Agreed Statement of Facts, Dr Soo had left the Memorandum with his clinic staff with instructions that it should be handed to the Husband, Dr Fung clarified in his supplemental report that Dr Soo had, in his view, taken sufficient steps to ensure that the Memorandum was not accessible to unauthorised persons. Dr Fung opined that generally, a doctor would not be required personally to hand a memorandum to the intended recipient. Instead, most hospitals would have their own protocols setting out how doctors could hand over confidential information to the intended recipients through their clinic staff. Thus, Dr Fung opined that having given specific instructions to his clinic staff to release the Memorandum to the Husband, Dr Soo had discharged his duty to maintain the Complainant's

medical confidentiality, and the responsibility of verifying the identity of the person collecting the Memorandum then fell on those releasing it, who would have been the clinic staff. We accept Dr Fung's views in this regard, and we therefore find that in all the circumstances, Dr Soo did not fail to maintain the Complainant's medical confidentiality.

83 Having found that Dr Soo did not fail to maintain the Complainant's medical confidentiality, the second issue that we outlined at [49(b)] above, which is whether any breach of medical confidentiality on Dr Soo's part amounted to such serious negligence as to objectively portray an abuse of the privileges of being registered as a medical practitioner and thereby constitute professional misconduct, simply does not arise.

Conclusion

84 Having examined the facts and the evidence before us, we hold that the Charge is not made out and set aside Dr Soo's conviction as well as all the orders made below. As for costs, we order the parties to bear their own costs here and below.

Sundaresh Menon Chief Justice	Andrew Phang Boon Leong Judge of Appeal	Judith Prakash Judge of Appeal

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