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

[2024] SGHC 188

Originating Application No 775 of 2023

In the matter of Section 41(7) of the Dental Registration Act (Cap 76, 2009 Rev Ed) and Order 20 of the Rules of Court (Cap 322, 2021 Rev Ed)

And

In the matter of a Singapore Dental Council Disciplinary Committee Inquiry against Dr Amit Patel

Between

Amit Patel

… *Appellant*

And

Singapore Dental Council

… *Respondent*

JUDGMENT

[Professions — Dentistry and dental practice — Professional conduct]

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Amit Patel
v
Singapore Dental Council

[2024] SGHC 188

General Division of the High Court — Originating Application No 775 of 2023
Hoo Sheau Peng J
19 March 2024

24 July 2024 Judgment reserved.

Hoo Sheau Peng J:

Introduction

1 Following an inquiry, a Disciplinary Committee ("DC") found Dr Amit Patel ("Dr Patel"), a Division 1 dentist registered with the Singapore Dental Council (the "Council"), guilty of five charges of professional misconduct under s 40(1)(*d*) of the Dental Registration Act 1999 (Cap 76, 2009 Rev Ed) ("DRA"), for failing to supervise Dr Low Ee Lyn ("Dr Low"), a dentist conditionally registered under s 14A of the DRA. Pursuant to its powers under s 40(2) of the DRA, the DC ordered a suspension of 15 months and imposed a penalty of $30,000.

2 This is Dr Patel's appeal against his conviction, and the orders made against him. Having considered the parties' submissions, I dismiss Dr Patel's

appeal against conviction, but allow his appeal against the orders. These are my reasons.

Background facts

3 Sometime around August 2015, Dr Patel commenced work with the Malo Clinic Nuffield Dental Clinic (Serangoon Gardens) ("the Clinic"). Dr Samintharaj Kumar ("Dr Kumar") was in charge of the operations of the Clinic, being one of the clinics within the Nuffield Group.[1] Despite being a 40% shareholder of the Clinic, Dr Patel avers that he did not receive any dividends. He also did not have "any control in terms of scheduling of dentists" at the Clinic, as this was an aspect managed by Dr Kumar and his management team.[2]

4 Sometime around October 2016, Dr Low was hired by the Nuffield Group to work at the Clinic.[3] One of the conditions of her registration was that she could only practise dentistry under the supervision of a supervisor duly approved by the Council or a fully registered Division 1 dentist.[4] Prior to that, on 23 September 2016, the Council had given its approval for Dr Patel to act as Dr Low's supervisor.[5]

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1 Record of proceedings ("ROP") at p 291 at para 6.

2 Dr Amit Patel's Affidavit (dated 1 August 2023) ("PA") at pp 6–7 para 24.

3 ROP at p 295 para 24.

4 ROP at p 391 para 1(c).

5 ROP at p 393 para 5.

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Events of 3 December 2016

5 In the early hours of Saturday, 3 December 2016, Dr Patel's pregnant wife suddenly started experiencing labour contractions.[6] Dr Patel needed to care for his wife and accompany her to the hospital. Thus, he sent Dr Kumar the following WhatsApp messages:[7]

> [03/12/2016, 4:44 am] Amit Patel: Hey please standby incase [*sic*] u need to *cover me* today
>
> [03/12/2016, 5:22 am] Amit Patel: I think [my wife] going in to [*sic*] labour
>
> [03/12/2016, 6:40 am] Samin Kumar: Ok
>
> …
>
> [03/12/2016, 6:47 am] Amit Patel: Ee Lyn coming in
>
> [Emphasis added]

6 Although Dr Low was not scheduled to work on 3 December 2016, Dr Patel also sent her similar WhatsApp messages around the same time (the "3 December 2016 Morning Messages"):[8]

> [03/12/2016, 4:45:17 am] Amit Patel: Hey please standby incase [*sic*] u need to *cover me* today
>
> [03/12/2016, 5:22:33 am] Amit Patel: I think you will need to come in
>
> [Emphasis added]

7 Dr Patel's use of the term "cover me" in these messages, especially to Dr Low, assumed considerable significance in the inquiry, with much disagreement over what Dr Patel meant. I will return to discuss this

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6 ROP at p 296 para 25.

7 ROP at p 330.

8 ROP at p 339 paras 8–9 and p 345.

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subsequently (at [48] below). In any event, after sending these messages to Dr Low, Dr Patel also called her that morning (the "3 December 2016 Call"). The differing accounts of the conversation are as follows.

8 Dr Patel claimed that he informed Dr Low to go to the Clinic to ensure that his appointments with his patients were cancelled, and to explain why they needed to be rescheduled. As he was going to be on paternity leave for two weeks, should some patients insist on being treated urgently, he would be contactable. He would also be able to go the Clinic for any cases requiring his urgent attention during the two weeks of paternity leave.[9] In contrast, in her witness statement dated 6 July 2022, Dr Low stated that Dr Patel had informed her that his wife was in labour, and that he had to take emergency leave. However, as "[p]atients had already been booked … he needed [her] to cover for him".[10] Dr Patel also informed her that "if there were any issues, he was contactable at any time and would come to the Clinic should [Dr Low] require assistance."[11]

9 In any event, on 3 December 2016, Dr Low attended to five of Dr Patel's patients.[12] She did so unsupervised. Dr Patel and Dr Low also exchanged some

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9 PA at p 12 paras 41 and 43.

10 ROP at p 340 para 11.

11 ROP at p 340 para 11.

12 ROP at p 297 para 28.

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further WhatsApp messages later that night as follows (the "3 December 2016 Night Messages"):[13]

> [03/12/2016, 9:41:32 pm] Amit Patel: Thanks for covering today, if you can do Monday as well let me know though no pressure. Have a look at the list and let me know
>
> [03/12/2016, 9:58:44 pm] Ee Lyn Low: Hey you're welcome man …
>
> [03/12/2016, 11:55:05 pm] Ee Lyn Low: As for Monday, I'll have a look tmrw [*sic*] in the clinic and hopefully the internet will be working too …

Events of 4, 9, 11 and 13 December 2016

10 On 4, 9, 11 and 13 December 2016, Dr Low treated patients unsupervised, either by Dr Patel or any Division 1 dentist. These were her own patients, as opposed to Dr Patel's patients. She claimed to have done so as she was scheduled to work under Dr Patel's supervision for those days but was not informed by either Dr Kumar or Dr Patel *not* to work despite Dr Patel's absence, and she did not want to seem unhelpful.[14] Over those four days, Dr Low saw a total of 35 patients.[15]

11 Although Dr Patel was aware that Dr Low was practising on these dates, he asserts that he was of the understanding that the Clinic had arranged for a replacement Division 1 dentist to supervise Dr Low while she attended to her patients during this period.[16] He had been unable to supervise Dr Low personally as his wife was experiencing significant birth complications. In fact, on

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13 ROP at p 332.

14 ROP at p 340 paras 13–14.

15 ROP at pp 340–341 paras 13–15.

16 ROP at p 300 para 45.

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3 December 2016, he had informed Dr Kumar that he had to commence his paternity leave immediately, ahead of his intended leave.[17]

12 As for his patients, Dr Patel points to the WhatsApp messages exchanged between him and Dr Low on 4 December 2016, with the latter informing him that the Clinic "shuffled [his] Monday patients" without any issues.[18] The "Monday" in question would have been 5 December 2016. Therefore, notwithstanding the 3 December 2016 Night Messages, Dr Low did not attend to any of Dr Patel's patients on 5 December 2016. Thereafter, despite being on paternity leave, Dr Patel returned to the Clinic to see two patients on 6 December 2016, one patient on 8 December 2016 and one patient on 12 December 2016.[19]

Investigations and charges

13 On 13 December 2016, the Council's inspecting officer, Dr Chen Fee Yuen ("Dr Chen"), carried out a routine inspection at the Clinic. Upon discovering that Dr Low was practising dentistry without supervision, a complaint was filed against Dr Patel on 2 May 2017.[20] A Notice of Complaint was sent to Dr Patel on 5 May 2017,[21] and on 13 February 2019, he was served with a formal Notice of Inquiry.[22]

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[17] ROP at p 299 paras 41–42.

[18] ROP at p 332.

[19] PA at p 15 para 51.

[20] ROP at p 393 para 7.

[21] ROP at p 393 para 8.

[22] ROP at p 394 para 11.

14 Five charges of professional misconduct were brought against Dr Patel. The first charge reads as follows:[23]

> **First Charge**
>
> "That you, **Dr. Amit Patel**, are charged that on or about 3 December 2016, whilst practicing as a dentist at Malo Clinic Nuffield Dental Clinic (Serangoon Gardens) located at 57 Serangoon Garden Way, Serangoon Garden Estate, Singapore 555953 ("**Clinic**"), failed to supervise one Dr. Low Ee Lyn ("**Dr. Low**") being a dentist who was conditionally registered under Section 14A of the Dental Registration Act (Cap. 76) ("**Act**"), to wit: -
>
> **PARTICULARS**
>
> (a) On or about 23 September 2016, you were approved by the Singapore Dental Council ("**Council**") as Dr. Low's supervisor pursuant to Section 14A(4)(a) of the Act;
>
> (b) On or about 3 December 2016, you allowed Dr. Low to practice dentistry independently from you at the Clinic and you failed to supervise her; and
>
> (c) You breached your duties as Dr. Low's supervisor, as set out in, inter alia, the Council's Circular SDC 11:4 Vol 4 dated 30 July 2014, Circular SDC 8:4 Vol 5 dated 7 December 2015, and Circular SDC 8:4 Vol 5 dated 11 January 2016, and you are thereby in breach of Regulation 16 of the Dental Registration Regulations ("**DRR**") and Section 3 of the Council's Ethical Code and Ethical Guidelines ("**ECEG**"),
>
> and your aforesaid conduct constitutes an intentional, deliberate departure from the standards observed or approved by members of the profession of good repute and competency, and that in relation to the facts alleged you have been guilty of professional misconduct under Section 40(1)(d) of the Act.
>
> [emphasis in original]

[23] ROP at pp 6–7.

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The other four charges are materially similar, save that they concerned the dates 4, 9, 11 and 13 December 2016.[24] Dr Patel pleaded not guilty to all five charges.[25]

The DC's decision

15 In respect of its decision to convict Dr Patel, and to impose a 15 months' suspension with a penalty of $30,000, the DC rendered its reasons on 26 June 2023 (the "Decision").[26]

16 The DC noted that reg 16 of the Dental Registration Regulations (2009 Rev Ed) ("DRR") stipulates that "[e]very registered person shall observe the Council's pronouncements on professional matters and professional ethics issued from time to time". The DC determined that the Council's Circular SDC 11:4 Vol 4 dated 30 July 2014 (the "2014 Circular"), Circular SDC 8:4 Vol 5 dated 7 December 2015 (the "2015 Circular"), and Circular SDC 8:4 Vol 5 dated 11 January 2016 (the "2016 Circular") (collectively, referred to as the "Circulars") are pronouncements within the meaning of reg 16 of the DRR (Decision at [11] and [17]).

17 In interpreting the Circulars, the DC found that they imposed an obligation on Dr Patel "to ensure that Dr Low … practised under the supervision of a fully registered Division 1 dentist in close physical proximity and that Dr Low did not work without supervision at all material times" (Decision at [24]). Apart from the Circulars, the DC also relied on the decision in *Singapore Dental*

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24 ROP at pp 7–10.

25 ROP at p 10 para 7.

26 ROP at pp 5–21.

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Council Disciplinary Committee Inquiry for Dr Campbell Matthew Angus Christopher ("*Dr Campbell*") dated 17 March 2021, where the disciplinary committee explained that supervision necessarily entailed "the supervisor having the ability to oversee the treatment that each and every patient receives from the conditional registrant". It also entailed "an ability for the supervisor to immediately step in and take over a procedure being performed by the conditional registrant should this be required for the safety or best interests of the patient" (Decision at [23]).[27]

18 Consequently, the DC found Dr Patel to be in breach of the Circulars, and thus reg 16 of the DRR, as he had intended for Dr Low to take over and treat his patients without supervision on 3 December 2016 (Decision at [36] and [45]). Further, he knew that Dr Low would be working without the supervision of a fully registered Division 1 dentist on 4, 9, 11 and 13 December 2016, and therefore offered to go into the Clinic when there was a need for supervision (Decision at [37]–[38]).

19 The DC rejected Dr Patel's claim that he should not be faulted, as he had simply assumed that the Clinic had made the necessary arrangements for those subsequent dates, since there was no evidence that Dr Patel had taken any steps to ensure that such arrangements were indeed made (Decision at [42]). Dr Patel was aware of the duties required of him as set out in the Circulars but had failed to ensure that Dr Low practised under proper supervision. Thus, he had intentionally and deliberately departed from the standards observed or approved by members of the profession of good repute and competency, and thus guilty of professional misconduct under s 40(1)(*d*) of the DRA (Decision at [46]–[47]).

[27] Respondent's Bundle of Authorities at p 223 para 17(c).

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20 As for the orders, the DC found the appropriate sentencing framework to be that set out in *Wong Meng Hang v Singapore Medical Council and other matters* [2019] 3 SLR 526 ("*Wong Meng Hang*"). It found that the harm arising from Dr Patel's breaches fell in the moderate category as Dr Low had attended to 41 patients over the course of five days, and his culpability fell in the medium category (Decision at [49]). Additionally, the DC determined that Dr Patel had gained financially as the total takings for the patients Dr Low attended to amounted to $7,885.60 (Decision at [50]). The DC accorded some mitigatory weight to Dr Patel's personal circumstances, *ie*, his wife's sudden and complicated pregnancy, but none to the fact that he had an otherwise unblemished track record and good professional standing (Decision at [59] and [61]). It also found that there was no inordinate delay in the prosecution of Dr Patel's matter (Decision at [56]–[58]). Thus, it imposed a suspension of 15 months and a penalty of $30,000 for the five charges.

Issues to be determined on liability

21 In the appeal against liability, Dr Patel argues that the DC erred in finding that the elements of the five charges, *ie,* of an intentional and deliberate departure from professional standards, were made out against him beyond reasonable doubt. Broadly, his arguments relate to two areas.

22 First, Dr Patel contends that the DC had wrongly relied upon the 2014 Circular and 2015 Circular in determining the appropriate standard expected of supervisors, and thus, had incorrectly articulated the standard of conduct expected of supervisors when they go on leave. In particular, he argues that in the absence of a Division 1 dentist-supervisor, it is the duty of the

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employer-clinic to make the necessary arrangements for the conditionally registered supervisee to be supervised at all times.[28]

23 Second, even if the applicable standard of conduct required supervisors to make the arrangements, in their absence, for the supervisees, Dr Patel had taken adequate steps to meet the standard. The question is whether any failure to react to unexpected events amounted to an intentional and deliberate failure, and he argues that it does not. Further, he submits that the DC made significant errors in relation to factual aspects of the case, such as by misattributing statements to Dr Patel and misinterpreting Dr Patel's instruction to Dr Low to "cover" him.[29]

24 In short, Dr Patel submits that there was no intentional and deliberate departure from any applicable standard of conduct required of him.[30] I note that in Dr Patel's affidavit in support of the appeal, he alluded to other grounds of appeal. Ultimately, he did not rely on those other complaints.

25 In response, the Council broadly agrees with and adopts the DC's findings and reasoning. It argues that the DC correctly found that Dr Patel's conduct amounted to an intentional and deliberate breach of his duty to supervise Dr Low, and that sufficient evidence has been led to establish Dr Patel's guilt on the five charges beyond reasonable doubt.[31]

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[28] Appellant's Written Submissions at paras 21, 25, 29–35.

[29] Appellant's Written Submissions at paras 21, 26, 36–60.

[30] Appellant's Written Submissions at para 21.

[31] Respondent's Written Submissions at para 10(b).

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26 Based on the parties' cases, the two main issues to be determined are as follows:

(a) what the standard of conduct applicable to the supervisors of conditional registrants is; and

(b) whether Dr Patel's conduct constituted an intentional and deliberate departure from the standard of conduct applicable to him as a supervisor such that he is guilty of professional misconduct.

The role of the court

27 Before moving to deal with the issues proper, I briefly set out the role of the court in an appeal against a decision by a disciplinary committee. As held in *Gobinathan Devathasan v Singapore Medical Council* [2010] 2 SLR 926 (at [28]–[29]), the court will typically be slow to interfere with the findings of a disciplinary committee unless the committee's findings are "unsafe, unreasonable or contrary to the evidence". Such deference is accorded in light of the fact that the disciplinary committee is a "specialist tribunal with its own professional expertise", and that it has the added benefit of hearing oral evidence from both sides. Nevertheless, the court may overturn a disciplinary committee's decision and findings if it is of the view that the decision was not reached in "accordance with law and/or the established facts". With these principles in mind, I turn to the merits of the appeal against liability, beginning with the standard of conduct expected of supervisors.

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The applicable standard of conduct

28 Dr Patel does not dispute that circulars issued by the Council constitute pronouncements which dentists are required to observe in accordance with reg 16 of the DRR. Rather, the nub of Dr Patel's contentions concerns *which* of the Circulars the DC was entitled to take into consideration and the appropriate interpretation of the relevant Circulars, when determining the duties imposed on him as a supervisor of a conditional registrant. Specifically, Dr Patel argues that the DC incorrectly found that the 2014 Circular and 2015 Circular impose obligations on supervisors to ensure that conditional registrants are supervised, since the supervisors are not the intended target audience of these circulars. Instead, these circulars target the employer-clinics and conditional registrants.[32] In this regard, the 2014 Circular and 2015 Circular are addressed to "all Employers" and "Employers and Dentists under Conditional Registration" respectively.[33] As for the 2016 Circular, while Dr Patel accepts that it is a general circular directed to "[a]ll registered Dental Professionals", it is merely a reminder that "dentists registered under Conditional Registration … are required to work under supervision of a fully registered dentist in a particular employment approved by the Council".[34]

29 Taken together, Dr Patel argues that the Circulars do *not* impose an obligation on a supervisor to ensure that a conditional registrant is supervised at work at all times. Rather, such an obligation falls on the employer-clinic, as it is also the role of the employer-clinic to arrange for a replacement supervisor

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32 Appellant's Written Submissions at paras 30–33.

33 ROP at pp 401 and 405.

34 ROP at pp 408–409.

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while the supervisor is away.[35] The employer-clinic would be in the best position to ensure that the conditional registrant is supervised, in the absence of their supervisor, given its control over the parties' scheduling.[36]

30 In response, the Council argues in support of the DC's finding that Dr Patel had accepted that all the Circulars constituted pronouncements on professional matters and ethics which he was bound to follow, pursuant to reg 16 of the DRR.[37] As such, it was entitled to consider the Circulars when determining Dr Patel's duties (Decision at [16]).[38] As for the interpretation of the Circulars, the Council argues that apart from the ordinary meaning and reading of the Circulars, due regard must also be given to how dentists interpret them, as well as the purpose behind each of the Circulars. To read the 2014 and 2015 Circulars as *not* imposing any obligations on supervisors would be to adopt a skewed interpretation as it would allow supervisors to "escape liability for failing to supervise the supervisee simply by blaming the [employer-clinic] for failing to make the necessary arrangements for supervision by another fully registered Division 1 dentist and/or blaming the supervisee for not refusing to treat any patients without supervision".[39]

31 At the hearing before me, counsel for the Council argued that, as with most professional regulations, there may be an unwritten understanding amongst professionals or practitioners that a certain elevated standard applies despite the plain reading of the regulations or pronouncements. Therefore, the

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35 Appellant's Written Submissions at paras 33–34.

36 Appellant's Written Submissions at para 34.

37 Respondent's Written Submissions at para 17.

38 Respondent's Written Submissions at para 17.

39 Respondent's Written Submissions at paras 20–25.

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Council submits that supervisors, such as Dr Patel, have an "absolute" liability to ensure that conditional registrants, such as Dr Low, "adhered to the regulations and guidelines of the Council" which includes "*only* work[ing] under the supervision of a fully registered dentist" and remaining "supervised at all times while practising dentistry" [emphasis added].[40]

32 I begin by observing that Dr Patel is right in pointing out that the 2016 Circular is general in nature. Directed at all "[a]ll registered Dental Professionals", it basically reminds all dentists, including supervisors, that conditional registrants are required to work under supervision. This circular, however, provides limited guidance on what supervision entails. In this connection, I turn to the other two circulars. Although Dr Patel is also right in pointing out that the 2014 Circular and 2015 Circular are not directly addressed to supervisors, in my view, the DC was correct to rely on them to determine the role and responsibilities of supervisors, and therefore, the standard of conduct expected of them.

33 I begin with the 2014 Circular, and address the preliminary point of the applicability of the 2014 Circular to supervisors. While the 2014 Circular is only addressed to "Employers" of conditional registrants, it sets out the roles and responsibilities of not only the employer of conditional registrants, but also their "*supervisor*", and the "director/head of department". Clearly, those portions are applicable to those concerned. Hence, although the 2014 Circular is not addressed to supervisors, given its nature, I would have expected the employers of supervisors to disseminate the circular to the supervisor, or to inform the

40 Respondent's Written Submissions at paras 26–27.

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supervisors of its contents, so that supervisors would be apprised of their role and responsibilities towards supervisees.

34 Notwithstanding that the 2014 Circular is addressed to employers, it is not Dr Patel's position that he did not know of its contents, or that generally, supervisors would not know of its contents. Indeed, it seems to me that the circular would be the source of information for any queries by a supervisor of his role and responsibilities. In fact, this was what transpired in Dr Patel's case. As noted by the DC, from 5 to 12 February 2016, there was an email exchange between Dr Patel and Dr Chng Chai Kiat ("Dr Chng"), the Executive Secretary of the Council, which began with the former making inquiries about the duties expected of him as a supervisor of a conditional registrant.[41] Specifically, in an email on 11 February 2016 to Dr Patel, Dr Chng attached the portion from the 2014 Circular listing the responsibilities of a supervisor (Decision at [20]) in response to Dr Patel's queries.[42] This was well before Dr Patel assumed his role of supervising Dr Low in October 2016.

35 In the 2014 Circular, one of the listed duties of a supervisor is to "ensure that the conduct and practice of the supervisee adheres to the regulations and guidelines of the Council".[43] As further highlighted by the DC, in the cross-examination before it, Dr Patel acknowledged this to be his duty, accepting that he was responsible for ensuring that the conditional registrant abides by the regulations and guidelines set out by the Council (Decision at [21]).[44]

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41 ROP at pp 411–417.

42 ROP at pp 413–414.

43 ROP at p 402.

44 ROP at p 86; Notes of Evidence (4 November 2022) at p 63 lines 5–11.

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36 This brings me neatly to the 2015 Circular. Addressed to "Employers and Dentists under Conditional Registration", the 2015 Circular provides, *inter alia,* that all conditional registrants "must work in the approved clinic and be supervised by an approved Division I dentist *at all times*" [emphasis in original omitted; emphasis added in italics]. Reading this stipulation together with the requirement in the 2014 Circular, that a supervisor is to ensure that a conditional registrant's practice complies with the Council's guidelines, a supervisor has to ensure that a conditional registrant is supervised *at all times while at work* to properly discharge his responsibilities. In fact, in the email on 11 February 2016 to Dr Patel, Dr Chng highlights this requirement, stating that "[a]ll conditional registered dentists have to be working under supervision at all times".[45] Again, as pointed out by the DC, Dr Patel accepted this position, and stated in his witness statement of 5 July 2022, that he is aware that as a supervisor, he is "required to supervise the conditionally registered dentist at all times".[46]

37 In terms of what supervision entails, I give due deference to the position of the DC that supervision requires "close physical proximity" of the supervisor to the supervisee. This is likely because the supervisor must have the ability to oversee the treatment accorded by the supervisee to each and every patient, and to immediately step in and take over a procedure being performed by the supervisee if and when necessary. This position follows that articulated in *Dr Campbell* (see [17] above). In my view, this position is eminently sensible, and is ultimately for the safety and best interests of patients.

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45 ROP at p 413.

46 ROP at p 300 para 49.

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38 One key contention is whether, when going on leave or on leave, the obligations of a Division 1 dentist *qua* supervisor can be said to extend to a positive duty to make the necessary arrangements for another fully registered Division 1 dentist to supervise the supervisee. Here, I am inclined to agree with Dr Patel that it cannot be the case that it is incumbent on *him* to make the necessary arrangements for another supervisor to replace him. As he points out, the ability to schedule and roster dentists is an ability and power squarely within the purview of the employer-clinic. There is little room for a supervisor, such as himself, to make the necessary arrangements for a replacement supervisor, much less guarantee that his employer has found a suitable replacement before taking leave – particularly if the leave is brought about by an emergency. Such a circumscription of a supervisor's duty is also supported by the plain reading of the Circulars. For instance, while the 2014 Circular includes a section detailing an employer-clinic's obligation to "ensure another Division 1 dentist is assigned to oversee the work of [a] conditional registrant" should the assigned supervisor be away for less than 30 days, no corresponding obligation or responsibility is found under the section outlining the responsibilities of a supervisor.[47]

39 That said, I agree with the Council it is not in every case that a supervisor's responsibility can be limited to simply informing the employer-clinic of the need to make the necessary arrangements for a replacement supervisor. Along the same vein, it may not suffice for a supervisor to simply rely on a prior understanding with the supervisee that he is not to practise unsupervised. In *Singapore Dental Council Disciplinary Committee Inquiry against Dr Lam Ying Keat* ("*Dr Lam*") dated 31 May 2019, the

[47] ROP at p 402.

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disciplinary committee observed that the Council had issued numerous circulars reminding "both conditionally registered dentists as well as their supervisors of the requirement for supervision" and the need to comply with this requirement, to ensure that the "public confidence in the dental profession" is maintained.[48] This clearly indicates that the Circulars are issued with an intent to address *both* the supervisor and supervisee as well as to stress the importance of ensuring that the latter is properly supervised. If the supervisor's responsibility is pitched too low, this might indeed lead to the situations warned of by the Council where a supervisor could be incentivised to shirk his supervisory duties by blaming the employer-clinic or the supervisee. It would not be satisfactory if a supervising dentist could be allowed to evade liability by relying on his assumptions that the employer-clinic or the conditional registrant would comply with their respective obligations.

40 In light of the foregoing, drawing from the Circulars, I am in agreement with the DC's finding that supervisors are responsible for ensuring that conditional registrants are supervised at all times while at work. What this means in terms of steps that a supervisor is required to take clearly encompasses personal and close supervision of the conditional registrant's work; not instructing, permitting or allowing the conditional registrant to treat patients unsupervised; and explicitly instructing the conditional registrant not to treat any patients unless he is being duly supervised at work.

41 Further, the supervisor should take adequate steps to check and verify that the supervisee does not work without due supervision, and to *stop* the supervisee from treating any patients when he is not duly supervised at work.

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48 Respondent's Bundle of Authorities at pp 210–211 paras 21–22.

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Not only does this fall within the supervisor's duty to supervise, but it is also part of the supervisor's duty to ensure that the supervisee complies with the guidelines. When going on leave or on leave, I suggest that such steps could *include* checking and verifying with the employer-clinic and or the conditional registrant as to whether the conditional registrant has been assigned a replacement supervisor, and if so, who that replacement supervisor is. Where there are concerns as to whether a replacement supervisor can be assigned in time, or whether a replacement supervisor has been assigned, the supervisor should caution the conditional registrant against working without due supervision.

42 Ultimately, the necessary steps to be taken by the supervisor depends on the facts of each case. The measures I have set out flow logically from the requirement to supervise and are by no means exhaustive. Contrary to what Dr Patel alludes to, not *all* steps have to be explicitly listed in any guidelines so as to form the standard of conduct expected of a supervisor. At the end of the day, an assessment on the adequacy of the steps taken to supervise would depend on the facts and the circumstances of the case, including the personal circumstances faced by a supervisor at the material time.

43 In this connection, contrary to the DC's finding and the Council's submission, I do not agree that the supervisor's responsibility, to ensure a conditional registrant's adherence to the guideline to work under supervision is "absolute" (see [31] above and Decision at [46(b)]). This goes too far. Along the same vein, I have some reservations about the DC stating that there is a "strict liability" on Dr Patel to ensure that Dr Low was working under the supervision of a Division 1 dentist (Decision at [42]). In so far as such views suggest that a supervisor is liable so long as a conditional registrant is found

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working without due supervision, even if the blame squarely rests elsewhere, the position pitches the bar for liability on the part of the supervisor too low. In each case, the inquiry remains whether, in acting or failing to act, the supervisor has fallen short of the standard expected of supervisors, and breached his duties and responsibilities. Therefore, it is not accurate to describe the supervisor's liability as "absolute" or "strict". In fact, as I shall discuss below, the charges are framed to require "intentional and deliberate" departures from the applicable standard.

44 As a final clarificatory point, I emphasise that the duty on supervisors to ensure that conditional registrants are supervised at all times while at work does not detract from the duty placed on the employer-clinic to ensure that another Division 1 dentist is assigned when the existing supervisor is on leave (which I have alluded to at [38] above). These two duties can operate concurrently to ensure that professional standards are upheld.

Whether Dr Patel was guilty of intentional and deliberate professional misconduct

45 I now turn to consider whether Dr Patel's actions on 3, 4, 9, 11 and 13 December 2016 constituted departures from the standard of conduct expected of him, and whether such departures were intentional and deliberate.

The breach on 3 December 2016

46 In relation to the first charge, the parties' submissions largely focus on the 3 December 2016 Morning Messages (see [6] above). To reiterate, Dr Patel messaged Dr Low to be "on standby [in case she] need[ed] to cover [him]" and subsequently, for her to "come in". Dr Low was not scheduled to work that

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morning. The interpretation of the phrase "cover me" is at the heart of the dispute.

47 The DC found that Dr Patel's use of the term "cover" was intended to be an instruction from Dr Patel to Dr Low to attend to and treat his patients, rather than to reschedule or provide explanations to them about his situation (Decision at [36]). In arriving at this finding, the DC also accepted Dr Low's evidence in her witness statement, about what transpired during the 3 December 2016 Call. According to Dr Low, Dr Patel told her to "cover" him and that he was contactable at any time should she require assistance (see [7] above). In doing so, the DC rejected Dr Patel's claim that during the conversation, he only told Dr Low to cancel his appointments and to address the patients' concerns (Decision at [34]–[35]). The DC found that it would not make sense for Dr Low to require assistance for the simple task of rescheduling patients and addressing their worries (Decision at [36]). Hence, Dr Patel had actually intended for Dr Low to treat his patients.

48 Dr Patel argues that the DC had misinterpreted what he meant by "cover me". While he acknowledges that he could have been clearer in his instructions to Dr Low, he remains adamant that he did not intend for Dr Low to take over his patients and treat them.[49] He needed Dr Low to be the one to "cover" him, even though he only instructed her to carry out administrative tasks, because the "reception staff would change frequently". Thus, he wanted someone he "could trust to oversee" the rescheduling of patients, as well as to address "any dental related queries which could come up".[50] In support of this explanation, he points

[49] Appellant's Written Submissions at para 59.

[50] ROP at p 296 para 26.

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to the fact that a large majority of his patients with appointments for 3 December 2016 were rescheduled, with Dr Low only seeing five of them. Further, when Dr Low informed him that the receptionist had "shuffled" his patients for the subsequent dates, he responded with "ok" instead of displeasure.[51] He also points to the fact that Dr Low had rescheduled all of his patients on 5 December 2016, *ie,* the Monday pursuant to the 3 December 2016 Night Messages. By way of reminder, in those messages, he requested Dr Low to "do Monday as well" (see [9] above). Therefore, his instructions were simply limited to the rescheduling of patients.[52] As for the 3 December 2016 Call, he asserts that he was "very clear" that he "did not ask Dr Low to see any patients" during the call, although he admits that he could not recall whether he had specifically reminded Dr Low not to practise without supervision.[53]

49 In response, the Council argues that the DC's finding of what Dr Patel meant by "cover me" should be upheld. First, the Council points to the shifting explanations given by Dr Patel for the meaning of the words "cover me".[54] In cross-examination, when questioned on what "cover me" meant, Dr Patel first stated that he had sent that to put Dr Kumar and Dr Low "on notice that something was happening" and "to put them on alert".[55] He then changed his position to state that he did not "think "cover me" meant anything at that point" and it was him just "trying to say that [he was] not going to be available" on

51 Appellant's Written Submissions at para 60; ROP at p 296 para 27.

52 Appellant's Written Submissions at paras 60(c)–60(d); ROP at p 332.

53 Appellant's Written Submissions at paras 44–45; PA at p 13 paras 44–45.

54 Respondent's Written Submissions at para 30.

55 ROP at p 124; Notes of evidence ("NE") (4 November 2022) p 101 lines 13–23.

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that day.[56] When pressed further, Dr Patel conceded that the normal understanding of "cover" in the medical practice means "see my patient".[57]

50 Next, the Council argues that Dr Patel's claim that he did not trust the receptionist to reschedule his patients was "baffling and contrary to the evidence".[58] There turned out to be no issue when the Clinic's administrative staff reshuffled his patients. More pertinently, in the 3 December 2016 Call, if Dr Patel had only intended for Dr Low to reschedule his patients, it would not have made sense for Dr Patel to inform Dr Low to contact him should she require assistance. Dr Patel's assistance would not be needed for mere rescheduling.[59] In this regard, the Council highlights that Dr Patel was aware of Dr Low's evidence in her witness statement, especially her version of the contents of the call. However, he had elected not to cross-examine her, thereby accepting her testimony as true.[60]

51 Having considered the arguments, I am completely unpersuaded by Dr Patel's explanation that, when read in context, his use of "cover me" in the 3 December 2016 Morning Messages was meant to instruct Dr Low to reschedule his patients. Instead, for broadly similar reasons stated by the DC and relied on by the Council, I fully agree with the DC that Dr Patel intended Dr Low to attend to his patients, where possible, in his stead even if unsupervised. I make three points.

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56 ROP at p 212, NE (4 November 2022) p 189 lines 9–16.

57 ROP at p 213, NE (4 November 2022) p 190 lines 9–19.

58 Respondent's Written Submissions at para 32.

59 Respondent's Written Submissions at para 32.

60 Respondent's Written Submissions at paras 37–38.

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52 First, I agree with the Council that based on Dr Patel's shifting evidence of what he meant by "cover me", as well as his concession that that phrase generally means to "see my patient", the irresistible inference to be drawn is that Dr Patel intended for Dr Low to attend to his patients, if required, in his stead. Contrary to Dr Patel's contention, I do not think the term "cover me" is vague and ambiguous. In my view, its plain and ordinary meaning is clear. More importantly, its meaning is well understood within the medical and dental profession to refer to an arrangement for a colleague to attend to the patients of the requesting party. While I am mindful of the stressful situation Dr Patel was in, due to his wife suddenly going into labour, I do not find this to be a sufficient reason to explain away his *deliberate* use of the specific term "cover" when instructing Dr Low.

53 I say the choice of "cover" is fairly deliberate, as Dr Patel uses the word repeatedly throughout the events of 3 December 2016. Dr Patel first used it in a message to Dr Kumar prior to the 3 December 2016 Morning Messages. Even if the specific message to Dr Low was a cut and paste of the message to Dr Kumar, it nonetheless shows Dr Patel *repeating* the choice of the term. Further, in the 3 December 2016 Night Messages, he thanked Dr Low for covering him. If it was truly Dr Patel's intention for Dr Low to only reschedule his patients, he could have simply thanked her for that. Instead, he repeated the use of the term "cover".

54 Second, and more importantly, I concur with the Council's argument that Dr Patel's proffered reasons for his use of "cover", to refer to rescheduling his patients, is at odds with the surrounding circumstances. As the Council points out, it does not make sense why Dr Patel needed to specifically call Dr Low to come into the Clinic that Saturday, on a day she was not scheduled

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to work, [61] just to reschedule his patients. Indeed, as Dr Patel accepted in cross-examination, Dr Low subsequently relied on a receptionist to reshuffle some of Dr Patel's patients and that "there weren't any issues" with that.[62] This fact, along with the lack of any evidence supporting Dr Patel's claim that he could not trust the reception staff because of alleged frequent changes in personnel, undermines Dr Patel's claim that he had to call Dr Low in to "cover" him by merely overseeing or carrying out the straightforward administrative task of reshuffling patients and addressing their queries, and nothing more.

55 I also reject Dr Patel's claim that the actual rescheduling of all his patients (that he was supposed to see on 5 December 2016) after the 3 December 2016 Night Messages, where he said to "do Monday as well", is indicative that his instructions for 3 December 2016 were only to reschedule his patients. I observe that in the very same message that night where Dr Patel asked Dr Low to "do Monday as well", he prefaced that request by thanking Dr Low "for covering him" that day, and indicated that she should review Monday's list, but there should be "no pressure" to "do Monday as well". Dr Patel's use of "covering" is quite telling.

56 For one, as explained above, Dr Patel's 3 December 2016 Night Messages undermines his explanation that he had merely mistakenly used a vague term in the early hours of 3 December 2016 to request Dr Low to assist in rescheduling his patients. By that night, the emergency had somewhat abated, and he had the opportunity to convey the simple instruction for Dr Low to reschedule his patients for 5 December 2016. He did not do so. More

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[61] ROP at p 376 para 7.

[62] ROP at p 134, NE (4 November 2022) at p 111 lines 1–5.

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importantly, I fail to understand why Dr Patel should be concerned about Dr Low feeling any pressure arising from his request in relation to 5 December 2016 if she was only expected to reschedule patients (or at most, to talk to those patients with queries).

57 To recapitulate, given that Dr Low was not expected to work on Monday, 5 December 2016, Dr Patel's instruction to Dr Low that there was "no pressure" for her to "do Monday *as well*" indicates that he intended for Dr Low to go to work, despite not being scheduled to do so, and to attend to any of his patients who could not be rescheduled. This interpretation of Dr Patel's instruction is most aligned with the circumstances and the plain understanding of "cover". In fact, this instruction also reflects what actually transpired on 3 December 2016, with Dr Low attending to only five out of a longer list of patients scheduled for that day. It further coheres with Dr Patel's qualification that there was no pressure on Dr Low to "do Monday", since she might have to take on additional patients on a day that she was not meant to be working even if she was not supervised. Finally, such an interpretation is supported by Dr Low's explanation to Dr Chen on 2 June 2017 where she stated that she only attended to the patients she was unable to cancel and she felt comfortable seeing, while rescheduling patients with higher risks of complications.[63] The fact that all of Dr Patel's patients on 5 December 2016 were ultimately rescheduled, and that there was no need for Dr Low to attend to any of them, is quite beside the point.

58 This leads me to my third and final point, which relates to the 3 December 2016 Call. Before delving into the details of the call proper, I wish

[63] ROP at p 543 para 7.

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to address Dr Patel's failure to cross-examine Dr Low. Dr Patel argues that the DC wrongly concluded that in deciding not to cross-examine Dr Low, he had accepted Dr Low's evidence, despite him presenting a different version of the events. He argues that the burden was for the DC to evaluate the evidence and make a proper finding, not for him to cross-examine Dr Low, particularly since her evidence was unclear.[64]

59 In *Yeo Kwan Wee Kenneth v Public Prosecutor* [2004] 2 SLR(R) 45, the court held that "[a]ny testimony left unchallenged may be treated by the court as undisputed and therefore accepted by the opposing party" (at [35]). Dr Low's evidence – specifically on the instructions conveyed to her by Dr Patel through his phone call to her – went unchallenged by Dr Patel. Even putting aside Dr Low's evidence of her understanding of "cover me" during the call, her assertion that Dr Patel informed her that he was contactable and could go to the Clinic should she require assistance went unchallenged by Dr Patel. His subsequent claim that his offer (to go to the Clinic during his leave) was limited to treating patients who may insist on being seen by him urgently and thus require his expertise,[65] was also not raised in his witness statement.

60 Dr Patel's offer of assistance to go to the Clinic to provide supervision makes little sense if his version of "cover me" is accepted. It is quite unlikely that a dentist, even one who is conditionally registered like Dr Low, would need help for simple administrative tasks such as rescheduling patients. It is even more implausible that the supervisee would require assistance from her supervisor, like Dr Patel, to do such tasks, and not to treat patients. Indeed, Dr

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64 Appellant's Written Submissions at paras 65–66.

65 PA at pp 12–13 para 43(d).

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Patel's offer to assist Dr Low further indicated his acknowledgment that Dr Low could proceed to practise without supervision. In this connection, the DC's treatment of the evidence cannot be faulted.

61 At the end of the day, it was baffling why, upon an alleged direct instruction simply to reschedule, *if* conveyed in the phone call, Dr Low would proceed to take on additional work and see five of Dr Patel's patients (knowing full well she would be in breach of the guidelines). Rather, it appears that based on what was conveyed to her, Dr Low proceeded to attend to the patients she could not reschedule or felt comfortable treating, and rescheduled the ones she could reschedule or that she did not feel comfortable treating. This would also explain why the patients she treated on 3 December 2016 generally had simpler and more routine dental procedures.[66]

62 In light of all of the above, and the fact that Dr Patel does not claim that he was unaware that Dr Low was unsupervised on 3 December 2016, I am led to the inexorable conclusion that Dr Patel intended for Dr Low to treat some of his patients on 3 December 2016 when he informed her to "cover" him, despite being aware that she would be unsupervised. As such, I see no reason to disturb the DC's finding that there was a breach by Dr Patel of his duties and responsibilities as a supervisor on 3 December 2016. Based on the discussion above, it seems to me clear that the breach was deliberate and intentional as Dr Patel *knew* that Dr Low should not practise unsupervised but instructed her to do so regardless. The first charge is made out.

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[66] ROP at p 716; ROP at p 663 para 61.

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63 As a final note, I wish to briefly address Dr Patel's claim that the fact that Dr Low did not notify him of any concern regarding a potential breach of the condition of her conditional registration shows that Dr Low was on a frolic of her own, for which he should not be liable.[67] In my view, it is not inconceivable that given Dr Patel's clear message to "cover" him, Dr Low would be reticent about expressing her concerns, if any, to Dr Patel. Indeed, Dr Low explained that she felt that she was "unable to refuse to see the Clinic's patients and cancel appointments *and go against the instructions of [her] superior*" [emphasis added].[68] As I stated above, I do not think liability is absolute. For instance, a supervisor whose supervisee decides to practice unsupervised against the former's *explicit* instructions, would likely not be liable of misconduct. However, I do not find the lack of messages from Dr Low to Dr Patel, to express her concerns, indicative that the former was on a complete frolic on her own, so as to detract from the DC's conclusion with regard to Dr Patel's liability.

The breaches on 4, 9, 11 and 13 December 2016

64 I move to the events forming the second to fifth charges. It is undisputed that on the dates in question, Dr Patel was aware that Dr Low was practising at the Clinic.[69] She was originally scheduled to work on those days. The dispute centres on whether Dr Patel was aware that Dr Low was unsupervised at work, and whether Dr Patel had taken adequate steps to ensure that Dr Low worked under due supervision. There is also the corollary question of whether Dr Patel's breaches on those dates, if any, were intentional and deliberate.

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67 Appellant's Submissions at paras 54 and 69.

68 ROP at p 340 para 12.

69 ROP at p 300 para 45.

65 The DC observed that there was no evidence that Dr Patel took any steps to ensure that the Clinic made any arrangements for another fully registered Division 1 dentist to supervise Dr Low. In fact, no such arrangements were ever made (even for the original paternity leave period which was to commence on 9 December 2016) (Decision at [42] and [44]). Dr Kumar admitted to this in his email on 4 January 2017 to the Council in which he stated that the Clinic did "not have any other fully registered dentist able to supervise Dr Low" at that time.[70] It is also pertinent to highlight that although he was on paternity leave, Dr Patel had returned to the Clinic on 6, 8 and 12 December 2016 to treat some of his patients. However, he made no attempt to check with the Clinic or Dr Low who her assigned supervisor was (Decision at [43]). The DC found that he knew that Dr Low was practising without the due supervision on the relevant dates, and that he had failed to ensure she would be duly supervised (Decision at [46]).

66 Dr Patel argues that he *had* taken the necessary steps to prepare the Clinic, Dr Kumar and Dr Low that he would be going on paternity leave.[71] Despite the suddenness of his wife going into labour, he had duly updated Dr Kumar of the development, and assumed that Dr Kumar would make the necessary arrangements for a replacement supervisor for Dr Low.[72] He also claims that he trusted Dr Low to stick to their alleged plan of her only practising if another fully registered Division 1 dentist was available, and to take leave if there was no one available to do so, as well as not to practise unsupervised.[73] At the hearing, Dr Patel's counsel also highlighted that Dr Low did not raise any

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70 ROP at p 444.

71 Appellant's Written Submissions at paras 36–37.

72 Appellant's Written Submissions at paras 38–39.

73 Appellant's Written Submissions at paras 37 and 41.

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concern of being unsupervised to Dr Patel. As such, Dr Patel was caught off guard by the fact that Dr Low was attending to patients without proper supervision.[74]

67 In contrast, the Council argues that Dr Patel must have intended, or at least been aware, that Dr Low would have attended to patients without supervision. The Council relies on Dr Low's witness statement where she stated that she was "scheduled to work" on those subsequent dates. As she was not informed by Dr Patel "not to work", she proceeded to attend to her patients.[75] The Council also posits that Dr Patel's defence – that he thought that the Clinic would have arranged for someone else to supervise Dr Low – is a mere afterthought. In this connection, the Council relies on WhatsApp messages between Dr Patel and Dr Kumar after the inspection on 13 December 2016 by Dr Chen, where Dr Patel did not express any surprise that Dr Low was unsupervised (the "13 December 2016 Messages").[76]

68 At this juncture, it is useful to outline some key concessions and admissions made by Dr Patel during cross-examination. When questioned on whether he informed Dr Low not to practise unless she was supervised on 4 December 2016 or any of the subsequent dates, he admitted that he did not do so, although he explained that this was because "he had already told her this prior to [his] leave".[77] He also admitted to not making any effort to check with the Clinic or Dr Low as to whether she was being supervised after 3 December

74 See also, Appellant's Written Submissions at paras 49–50.

75 ROP at p 340 para 13.

76 ROP at pp 437–438.

77 ROP at p 118, NE (4 November 2022) p 95 lines 8–18.

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2016.[78] When questioned on why he did not take any further steps to ensure that Dr Low was supervised, Dr Patel explained that he was "encumbered" by the birth of his child and his wife's early delivery and birth complications.[79] However, he later acknowledged that from 4 December 2016 onwards, he was not incapacitated from going to the Clinic to check, since he did go to work on some days (namely on 6, 8 and 12 December 2016) to attend to his other patients.[80] Finally, he accepted that in the 13 December 2016 Messages, he "expressed no surprise that Dr Low was found to be unsupervised",[81] although he attempted to justify this apparent lack of surprise by saying that he might have expressed his surprise in prior conversations with Dr Kumar.[82]

69 As I held above (at [40]), although there was no duty on Dr Patel to make the necessary arrangements for a replacement supervisor for Dr Low, it was sorely insufficient for Dr Patel to simply *assume* that a replacement supervisor had been assigned because he had informed Dr Kumar of his situation. Despite his personal circumstances, from 4 December 2016, at the very least, Dr Patel could have taken steps to check on whether Dr Low had been assigned a supervisor, and if so, who that supervisor was.

70 It is also necessary to emphasise that Dr Patel *had* returned to the Clinic on 6, 8 and 12 December 2016. As canvassed above (at [68]), his defence that he had been too occupied by his wife and child to check on Dr Low is severely undermined by the fact that he *had* been able to return to the Clinic during his

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78 ROP at p 146, NE (4 November 2022) p 123 lines 14–17.

79 ROP at pp 118–119, NE (4 November 2022) p 95 lines 24 – 25 and p 96 lines 1–2.

80 ROP at pp 119–120, NE (4 November 2022) p 96 lines 11–24 and p 97 lines 1–8.

81 ROP p 161, NE (4 November 2022) p 138 lines 1–3.

82 ROP p 161, NE (4 November 2022) p 138 lines 3–7 and 12–23.

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paternity leave. Notably, Dr Low was also at the Clinic on two of those dates, namely 6 and 8 December 2016.[83]

71 In this connection, I agree with the Council that Dr Patel's lack of surprise that Dr Low was unsupervised weakens his claim that he was caught entirely off-guard by the fact that Dr Low had not been properly supervised. Dr Patel's attempt to justify his lack of reaction to Dr Low's conduct is entirely unsubstantiated as he was unable to point to *any* prior conversation with Dr Kumar (or indeed any other party) where he made his surprise known. It is pertinent to note that in the 13 December 2016 Messages, he said that he would explain the lack of supervision on his part to the Council as attributable to his urgent paternity leave, but he continued in a subsequent message by acknowledging that "he [presumably Dr Chen] said another supervisor shud [*sic*] be arranged".[84] Significantly, from the available 13 December 2016 Messages, Dr Patel appears not to have made a *single* mention to Dr Kumar about the failure of the Clinic to make the necessary arrangements for a replacement supervisor. Dr Patel sought to justify this absence by way of his desire to avoid pushing blame and getting into an argument with Dr Kumar.[85] Even then, his silence detracts from a finding that Dr Patel had genuinely assumed that the Clinic made the necessary arrangements.

72 It was also telling that in his written explanation to the Council dated 26 May 2016, Dr Patel stated that prior to 13 December 2016, he "had informed all clinic staff and Dr Low to call [him] should Dr Low require [his] supervision

83 ROP at pp 479–482 and 484–486.

84 ROP at p 438.

85 ROP at p 160, NE (4 November 2022) at p 137 lines 16–18.

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at the Clinic".[86] However, no one called him by 13 December 2016, which then led him to *assume* that proper supervisory arrangements had been made.[87] As an aside, I note Dr Patel's complaint that the DC had wrongly attributed these statements as being found in Dr Patel's witness statement (see Decision at [37]). Be that as it may, once again, Dr Patel's offer to go to the Clinic to supervise Dr Low does not support his claim that, all along, he thought she would be duly supervised by a replacement supervisor.

73 From the foregoing, it would appear to me that the only reasonable inference to be drawn is that Dr Patel was aware that no such arrangements for a replacement supervisor had been made. Thus, I agree with the DC's finding that Dr Patel was aware that Dr Low had continued to work while unsupervised on those dates.

74 At this juncture, it bears reiterating that on 3 December 2016, Dr Patel had effectively instructed Dr Low to attend to his patients *unsupervised*, and requested her to consider doing so again for 5 December 2016 (see above at [62]). He also offered to go to the Clinic to render assistance, if so required, on those dates. Having already instructed Dr Low to attend to *his* patients unsupervised, it was all the more incumbent on Dr Patel to then clearly instruct her not to attend to *her own* patients without due supervision (if that was what he truly intended). His claim that he simply trusted her not to practise unsupervised,[88] and that he thus made no attempt to instruct her not to attend to *her* patients (see above at [68]) rang hollow.

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86 ROP at p 451.

87 ROP at p 451.

88 See, *eg*, PA at p 11 para 39.

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75 In *Jen Shek Wei v Singapore Medical Council* [2018] 3 SLR 943 (at [141]), the court affirmed that if a medical practitioner "knows of the applicable standard of conduct but chooses not to comply with it, such non-compliance is an intentional and deliberate departure from the applicable standard". Here, it cannot be seriously disputed that Dr Patel was aware of his duties as supervisor, which include, *inter alia*, taking steps to ensure that the conduct and practice of his supervisee, Dr Low, adhere to the Council's guidelines – particularly since such duties were directly conveyed to him (see above at [34]–[35]). Hence, even assuming that he did not know for certain that Dr Low was unsupervised on the relevant dates, *ie*, 4, 9, 11 and 13 December 2016, given his prior instructions for 3 December 2016 to "cover" him, it was woefully insufficient for him to simply rely on an assumption that Dr Low would only work under due supervision, without taking *any* steps to verify or ascertain the matter with the Clinic or Dr Low, despite being in the position to do so. In my view, such a decision to shirk his supervisory duties to take adequate steps (as elaborated on at [41]–[42] above) constitutes a clear and intentional departure from the standard applicable to him.

76 In light of the above, I see no basis to disturb the DC's findings that Dr Patel knew that Dr Low would be working unsupervised, and that Dr Patel had failed to ensure that Dr Low would not do so. His conduct fell short of the applicable standard of conduct expected of a supervisor. Based on the events of 3 December 2016, and his level of knowledge in relation to the subsequent events, I also agree with the DC that his departures from the standard expected of a supervisor were intentional and deliberate.

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Conclusion

77 In sum, I am of the view that the DC did not err in finding that Dr Patel was guilty of intentional and deliberate professional misconduct beyond all reasonable doubt. His actions on 3, 4, 9, 11 and 13 December 2016 fell below the standard of conduct expected of supervisors. Thus, I affirm the DC's decision to convict Dr Patel on all five charges.

Issues to be determined on sentence

78 I turn to the orders made. In essence, Dr Patel argues that the DC erred in how it applied the *Wong Meng Hang* framework to the facts and circumstances of the case, and that its order of 15 months' suspension is manifestly excessive. He also contends that there is no basis for the imposition of the penalty of $30,000. In response, the Council submits that the length of suspension is not manifestly excessive, and that the imposition of a penalty is warranted.

The role of the court

79 Quite briefly, I note that the court will only interfere with a disciplinary committee's decision on sentence if, *inter alia*, there is something clearly wrong with the legal principles applied, the findings are sufficiently out of tune with the evidence (*Low Cze Hong v Singapore Medical Council* [2008] 3 SLR(R)612 at [40]) or the order imposed is manifestly excessive.

Whether the Wong Meng Hang framework is applicable

80 Both Dr Patel and the Council agree that the appropriate sentencing framework to be applied is that set out in *Wong Meng Hang*.

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81 In *Wong Meng Hang*, the court set out the relevant sentencing framework to adopt in disciplinary cases involving serious professional misconduct by doctors that results in "deficiencies in a doctor's clinical care [which] causes harm to a patient" (at [36]). This appears to be the first instance where the court has to consider the applicability of the *Wong Meng Hang* framework in disciplinary proceedings against dental practitioners. In this connection, I agree that in general, the *Wong Meng Hang* framework should apply to disciplinary proceedings against dental professionals for two main reasons.

82 First, the power of a disciplinary committee to impose a suspension under the Medical Registration Act 1997 (Cap 174, 2014 Rev Ed) ("MRA") and the DRA are *in pari materia*. Section 59D(2) of the MRA and s 40(2)(*b*) of the DRA both empower a disciplinary committee to, *inter alia*, suspend the practitioner for a period not exceeding three years.

83 Second, the *Wong Meng Hang* framework takes into account the primacy of public interest considerations, the interests of general and specific deterrence and considerations of fairness to the offender (such as inordinate delay in prosecution). These considerations are equally applicable in the context of disciplinary proceedings against dentists. Much like medical practitioners, patients "repose utmost trust and reliance in matters relating to personal health" in dentists (*Wong Meng Hang* at [23]). Thus, public interest considerations must be paramount to ensure that unequivocal trust in the dental profession is maintained. Considerations of general deterrence are also important here, as evidenced by the Circulars issued by the Council reminding dentists and their employers of the need to ensure that conditional registrants are properly supervised. Considerations of fairness to an offender, especially the prejudice

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arising from any inordinate delay in proceedings, attenuate the harshness of the prior two principles (*ie*, public interest and deterrence), and are also important to dental professionals.

84 That said, as alluded to at [81] above, in *Wong Meng Hang*, the court specifically established the sentencing framework for offences alleging deficiencies in clinical care, but not for other forms of misconduct. In particular, the court was cautious *not* to expand the framework to non-clinical care offences, even though considerations of harm and culpability may remain relevant, as those cases are likely to involve considerations which are specific to the types of misconduct in question which would not arise in clinical care cases. It was further observed that the types of harm caused by those other forms of misconduct may be "markedly different in nature", and that it would therefore not be appropriate to refer to the same matrix (at [36]).

85 However, on 15 July 2020, the Sentencing Guidelines Committee (the "Committee"), appointed by the Singapore Medical Council, published the *Sentencing Guidelines for Singapore Medical Disciplinary Tribunals* ("the Guidelines"). The Guidelines extended the application of the framework to "both clinical and non-clinical care offences".[89] In doing so, the Committee explained that the assessment of "harm" under the framework is broad enough to encompass other forms of harm, such as the damage to public interest.[90] Moreover, as a matter of practicality, it may not be necessary, and may even be difficult, to "maintain a rigid dichotomy between clinical and non-clinical care

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89 Appellant's Bundle of Authorities at p 288 para 17.

90 Appellant's Bundle of Authorities at p 301 para 44.

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offences”.[91] In *Ong Kian Peng Julian v Singapore Medical Council and other matters* [2023] 3 SLR 1756 (“*Julian Ong*”), the court accepted the logic contained in the Guidelines that “the *Wong Meng Hang* framework can and should be extended to other forms of misconduct”, but emphasised “the importance of bearing in mind the nuances of each case” (at [60]–[62]).

86 Bearing in mind the approach set out in *Julian Ong,* I agree with the DC and the parties that the *Wong Meng Hang* framework is applicable to the present case. Indeed, the present case is one such instance where it may be difficult to draw a clear distinction between clinical and non-clinical care offences. While the charges do not involve a deficiency of care directly provided by Dr Patel to patients, his acts impacted the provision of clinical care to patients who were treated by Dr Low whilst unsupervised. Given that misconduct can traverse *both* clinical and non-clinical matters, I agree with the reasoning in the Guidelines that it may not be helpful to impose an overly rigid distinction between such matters, and to apply the *Wong Meng Hang* framework to these charges. That said, I am mindful of the caution that the court must be sensitive to differences in the offences.

87 Having accepted that the *Wong Meng Hang* framework should apply, for ease of reference, I reproduce its four-step approach:

> (a) Step 1 entails identifying the appropriate level of harm and level of culpability (*ie*, the harm-culpability matrix) to determine the seriousness of the offence (*Wong Meng Hang* at [30]–[32]).

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[91] Appellant’s Bundle of Authorities at p 288 para 17.

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(b) Step 2 concerns identifying the applicable indicative sentencing range (*Wong Meng Hang* at [33]–[38]).

(c) Step 3 involves identifying the appropriate starting point within the indicative sentencing range (*Wong Meng Hang* at [42]).

(d) Step 4 requires the decision maker to make adjustments to the appropriate starting point to take into account any offender-specific factors (*Wong Meng Hang* at [43]–[44]).

Application of the Wong Meng Hang framework

88 The DC found that under the harm-culpability matrix, Dr Patel's actions fell into the moderate harm and medium culpability category (Decision at [49]). In relation to harm, the DC found that Dr Low saw 41 patients over the course of five days. Taking into account the potential harm to the patients and to public confidence in the dental profession, the harm should be placed in the moderate category. As for culpability, since there was no urgency in attending to any of the 41 patients, particularly the five that Dr Low saw pursuant to Dr Patel's instruction to "cover" him, and that their appointments could and should have been postponed, Dr Patel's culpability was in the medium band. This placed the starting indicative sentence at 12 months of suspension per charge, which the DC then lowered to six months and ordered for the suspension terms for the first three charges to run consecutively, in accordance with the totality principle, to yield a total of 18 months' suspension (Decision at [52]–[53]).

89 As for offender-specific factors, although the DC accepted that Dr Patel has a "long unblemished track record, good professional standing and that there are no incidents of complaint against [him]" until the present charges, it found that these were merely neutral factors (Decision at [59]). Additionally, it found

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that there was no undue delay in the proceedings so as to warrant a discount to the suspension (Decision at [56]–[58]). However, the DC was mindful of Dr Patel's extenuating personal circumstances at the time and thus applied a discount of three months from the 18 months of suspension, to arrive at a final global order of a suspension of 15 months (Decision at [61]).

90 Additionally, the DC found that Dr Patel had made financial gain as Dr Patel's total takings for the 41 patients seen by Dr Low amounted to $7,885.60 (Decision at [50]). Hence, it imposed a penalty of $6,000 per charge for a total penalty of $30,000 ([Decision at [53]–[54]).

91 Before I apply the *Wong Meng Hang* framework to the present case, I wish to make a few comments on the approach taken by the DC in arriving at the sentence. First, the steps in the framework should be applied on a *per* charge basis. However, the DC appears to have arrived at a global sentence for all five charges before considering the offender-specific factors. Also, the DC considered the effect of the offender-specific factors on the global sentence, instead of how they pertain to each *specific* charge. This error is particularly problematic if the factors (and their weight) are different for each charge, as I shall explain to be the case here. Second, the totality principle should only be applied after a preliminary sentence is arrived at *after* the application of the four-step framework. As explained in *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 ("*Shouffee*") (at [58]), the "totality principle is a consideration that is applied at the end of the sentencing process" to allow the court to take a "last look" at all the facts and circumstances to determine if the sentence is appropriate. The DC erred in considering and applying this principle *before* taking into account any of the offender-specific factors, and then reducing the total sentence on account of Dr Patel's personal circumstances.

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Step 1: Where Dr Patel's offences fall within the harm-culpability matrix

(1) The appropriate level of harm

92 I begin by identifying the appropriate level of harm for each of the charges. As held in *Wong Meng Hang* (at [30(a)]), this factor requires a consideration of the "type and gravity of the harm or injury that was caused to the patient and … to society" as a result of the offence. While regard may be had to *potential* harm, it "should only be taken into account if there was a *sufficient likelihood* of the harm arising".

93 Dr Patel argues that the DC erred in finding that there was moderate harm as the likelihood of harm was low. The procedures performed by Dr Low were "routine and simple dental procedures", and thus not dangerous or likely to cause harm.[92] Moreover, despite being a conditional registrant, Dr Low was an experienced dentist. She had been a fully registered dentist in the United Kingdom, and had practised there between 2009 and 2011.[93] From 2012 to 2013, she practised at Tan Tock Seng Hospital.[94] Thereafter, she left Singapore to join her husband who was working overseas, before returning to Singapore in 2016 to join the Clinic. Also, there was limited damage to public confidence as most of the public could likely empathise with the unenviable position Dr Patel found himself in.[95]

94 The Council argues in support of the DC's decision to peg the level of harm as moderate. It argues that his misconduct bore "substantial potential to

[92] Appellant's Written Submissions at para 78; citing ROP p 663 para 61.

[93] Appellant's Written Submissions at para 78.

[94] Appellant's Written Submissions at para 79.

[95] Appellant's Written Submissions at para 80.

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undermine public health and safety" and could have severe ramifications for future patients who may be treated by improperly supervised dentists.[96] As for the particular harm occasioned in this case, the Council relies on *Dr Campbell*. In that case, the disciplinary committee (at [32(a)(i)]) found that the conduct of the respondent (who was a conditional registrant serving the prisons community) was of moderate harm. Although there was "no actual harm" to his patients, it was said that "[h]is actions in treating at the minimum *hundreds* of inmate patients unsupervised, undermined public health and safety within the prison community" [emphasis in original].[97]

95 In my view, *Dr Campell* does little to assist the Council's submission that the harm occasioned should be pegged at the level of moderate harm. Admittedly, the potential undermining of public confidence could be exacerbated when a supervisor like Dr Patel – as compared to a supervisee like Dr Campbell – is the party flouting the regulations. However, looking at the other aspects of *Dr Campell*, such as the *hundreds* of patients that Dr Campbell treated, and that the patients all belonged to a particularly vulnerable community with limited access to treatment options, *ie*, the prison community, I am of the view that the harm occasioned there is much more severe than the harm in the present case. At this juncture, I should point out that although the DC stated that Dr Low attended to 41 patients, the supporting evidence indicates that there were only 40 patients. This is, however, an immaterial discrepancy.

96 Further, I accept Dr Patel's submission that the DC failed to give sufficient weight to the fact that the procedures performed by Dr Low were

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96 Respondent's Written Submissions at para 46.

97 Respondent's Bundle of Authorities at pp 229–230 para 32(a)(i).

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simple and routine, and that she was an experienced dentist. On the facts, Dr Patel did not insist that Dr Low attend to *all* of his cases on 3 December 2016 (which numbered more than 20 patients). In essence, the arrangement appears to be for Dr Low to attend to patients who had to be dealt with, and that she was comfortable dealing with. As it transpired, these were essentially simple and routine procedures. This was also the tenor of Dr Patel's later message on 3 December 2016, asking her to consider assisting him on 5 December 2016 after reviewing the list. That said, Dr Patel could not be wholly credited for Dr Low's exercise of judgment and restraint in limiting herself to simple and routine procedures within her experience.

97 Ultimately, the potential harm to the individual patients was low. That said, I am of the view that the present harm would fall on the higher end of slight harm. This is because there remained a degree of harm to public confidence in the dental profession which arises when a supervisor fails to ensure that his supervisee works under due supervision. Hence, I agree with Dr Patel that the harm in the present case falls in the category of slight harm, as opposed to moderate harm.

(2) The appropriate degree of culpability

98 I turn next to address Dr Patel's culpability. In *Wong Meng Hang* (at [30(b)]), the court held that culpability may be assessed by reference to, *inter alia,* the extent and manner of the offender's involvement, the extent to which the offender's conduct departed from standards reasonably expected of him, the offender's state of mind and all surrounding circumstances.

99 Dr Patel argues that he had made an honest omission and that his breach was inadvertent. He claims that since he was not the employer-clinic and did

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not have the power to schedule a replacement dentist, he had done all that was in his power to inform Dr Kumar about his situation to try and arrange for a replacement. Hence, his culpability is low. His assumption that there were other dentists available to supervise Dr Low was also reasonable since there were three other Division I dentists at the Clinic.[98] In reply, the Council argues that Dr Patel's culpability was in the medium range as he had intended for Dr Low to attend to his patients, and was fully aware of the standard expected of him but had intentionally and deliberately departed from the standard in failing to supervise Dr Low subsequently.[99]

100 It seems to me that in his argument that he acted honestly and inadvertently, Dr Patel is somewhat rehashing his dispute against conviction. As I have determined above, Dr Patel had *intentionally* and *deliberately* breached the standards expected of him as a supervisor (at [77]). In relation to the first breach on 3 December 2016, I have found that he was directly instructing Dr Low to attend to some of his patients on 3 December 2020, despite being aware that she would not be supervised (at [51]–[62]). That said, as highlighted at [96] above, Dr Patel did not ask Dr Low to see *all* his patients, but only those who had to be dealt with, and that she was comfortable dealing with.

101 As for the remaining dates of 4, 9, 11 and 13 December 2016, again, I similarly accepted that Dr Patel's breaches were intentional and deliberate (above at [76]). He was aware that Dr Low had been unsupervised in treating her own patients. Given that he had previously instructed her to attend to his

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[98] Appellant's Written Submissions at para 84.

[99] Respondent's Written Submissions at para 50.

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patients, he should have, but did not, instruct her *not* to attend to her own patients unsupervised. His lack of surprise subsequently showed that he knew about the lack of supervision, but did not stop Dr Low from working although he had returned to the Clinic to attend to some of his patients. Indeed, the lack of *any* effort on his part to check in on the status of Dr Low's supervision on any one of those dates or warn her against practising unsupervised, points to an intentional and deliberate departure from the standards expected of him as a medical professional.

102 Having said that, I note that for those later dates, Dr Patel's breaches resulted more from a *failure to act* in accordance with the standards expected of him – in other words, they resulted from omissions. This is unlike the instance on 3 December 2016, where he actively instructed Dr Low to attend to some of his patients unsupervised. In this regard, I find his culpability for the later four charges (*ie*, the breaches on 4, 9, 11 and 13 December 2016) to be lower than that for the first charge. I also accept Dr Patel's point that he had taken *some* steps to inform the Clinic, Dr Kumar and Dr Low that he was planning to go for paternity leave and to update Dr Kumar of his need to make arrangements for such on 3 December 2016, inadequate as those steps may be.

103 Based on the above, for 3 December 2016, I see no reason to depart from the DC's finding that Dr Patel's culpability was in the higher end of the medium range. However, for the remaining dates of 4, 9, 11 and 13 December 2016, I would peg his culpability at the middle of the medium range.

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Step 2: Determining the applicable indicative sentencing range

104 Having identified the applicable harm and culpability of Dr Patel for the five charges, I move to identify the applicable starting range. For ease of reference, I reproduce the matrix from *Wong Meng Heng* (at [33]):

Harm / Culpability	**Slight**	**Moderate**	**Severe**
Low	Fine or other punishment not amounting to suspension	Suspension of 3 months to 1 year	Suspension of 1 to 2 years
Medium	Suspension of 3 months to 1 year	Suspension of 1 to 2 years	Suspension of 2 to 3 years
High	Suspension of 1 to 2 years	Suspension of 2 to 3 years	Suspension of 3 years or struck off

105 As indicated by the shaded box above, the indicative sentencing range for each of Dr Patel's charges is a suspension of three months to a year.

Step 3: Determining the appropriate starting point within the indicative sentencing range

106 I now address the appropriate starting point for each of Dr Patel's charges. As stated in *Wong Meng Hang* (at [42]), at this stage, the court will once again look to the level of harm caused and the errant doctor's level of culpability as well as how the present case compares to similar cases. However, this does not mean that the court is double counting any factor, but instead "granulating the facts of [the] case at hand in order to determine the appropriate starting point on the given facts".

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107 Dr Patel argues that the DC's starting point of 12 months per charge is disproportionate to the gravity of the charges.[100] He relies on three previous disciplinary committee inquiries to show that the DC's starting point is manifestly excessive. The three cases broadly concerned supervisors failing to properly supervise their supervisees, and the punishments ranged from a penalty to a suspension of three months.[101] The Council points out that limited weight ought to be accorded to these cases as they were decided before *Wong Meng Hang*.[102] This is pivotal as the court in *Wong Meng Hang* acknowledged that the "indicative sentencing ranges set out in the [harm-culpability] matrix are likely to be heavier than sentences that have tended to be imposed in past cases, [as past cases concerning professional misconduct have been] unduly lenient" and thus of limited relevance as precedents (at [38]).

108 As observed in *Dr Lam*, the requirement for supervision is one which has been regularly emphasised by the Council through the issuance of numerous circulars to "repeatedly and consistently" remind conditional registrants and their supervisors of this requirement (at [21]).[103] In light of the increasing recognition of the importance of supervision, I agree with the Council that the past cases cited by Dr Patel are of limited assistance and relevance to the present case, as the previous sentences imposed were unduly lenient. In any regard, unlike in the present case, in the three cited cases, the respondents pleaded guilty to the charges brought against them.

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[100] Appellant's Written Submissions at para 90.

[101] Appellant's Written Submissions at paras 89–91.

[102] Respondent's Written Submissions at paras 55–56.

[103] Respondent's Bundle of Authorities at p 210 para 21.

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109 In my view, the applicable harm in each of the five charges is broadly similar, and as I stated above, would fall within the higher end of slight harm. This is in light of the potential harm to the public confidence in the dental profession arising from Dr Patel's failure to supervise the conditional registrant under his charge (see above at [96]–[97]). As for Dr Patel's culpability for the five charges, as I stated above, I find that his culpability for the first charge is higher than for the remaining four charges.

110 Consequently, an appropriate starting point for the first charge would be around 11 months of suspension as it falls under the upper end of the slight harm-medium culpability category, though not at the uppermost end. As for the remaining four charges, given the lower culpability, an appropriate starting point would be eight months of suspension *per* charge.

Step 4: Whether there should be adjustments to the starting point to take into account offender-specific factors

111 Dr Patel argues that the DC failed to give due regard to two main mitigating factors in his favour, namely: (a) he was a first-time offender with an unblemished record; and (b) there was an inordinate delay in the prosecution of his case.[104] Conversely, the Council argues that the DC erred in awarding a discount of three months for Dr Patel's personal circumstances at the time of the offence.[105] I will address each of these contentions in turn.

104 Appellant's Written Submissions at paras 95–97.

105 Respondent's Written Submissions at para 60.

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(1) Dr Patel's lack of antecedents

112 I address Dr Patel's argument that due regard was not paid to the fact that he is a first-time offender. Although the DC accepted that he had "an otherwise long unblemished track record, good professional standing" and that there had been no prior instances of complaint before the present charges, it was ultimately of the view that these were merely neutral factors since this is expected of medical professionals (Decision at [59]). In this regard, the Council cites the case of *Ang Peng Tiam v Singapore Medical Council and another matter* [2017] 5 SLR 356 ("*Ang Peng Tiam*") where the court affirmed that "little if any weight will be placed on the fact that the offender has had a long and unblemished record if the key sentencing objective is general deterrence" (at [103]). The Council argues that the same considerations apply here as well as there is a need to send a clear message to supervisors that conditional registrants should be supervised.[106]

113 I agree with the DC and the Council that limited weight should be given to Dr Patel's lack of antecedents and good professional standing. The lack of prior disciplinary proceedings should be expected of most professionals, and the "law must also not be misconstrued as providing those with an established good track record a free pass for misconduct on the basis that it is out of character" (*Ang Peng Tiam* at [103]). The most regard I can give to Dr Patel's unblemished track record is to consider it as a neutral factor.

[106] Respondent's Written Submissions at para 58.

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(2) Inordinate delay

114 I move to address Dr Patel's claim that there had been inordinate delay in his prosecution. The DC found that no such delay was present as the lapse of time from when Dr Patel was first served with the Notice of Inquiry (on 13 February 2019) to the date of his hearing (on 4 November 2022), was a product of Dr Patel's application (made on 13 March 2020), to have his case heard separately from Dr Low as he did not wish to be prejudiced by her plea of guilt before the same disciplinary committee (Decision at [56], as well as an errata sheet issued by the DC on 7 July 2023). Moreover, limited prejudice befell Dr Patel as he remained gainfully employed in the interim. Hence despite his anxiety and distress, since the delay was not inordinate, no discount was warranted (Decision at [58]).

115 Dr Patel argues that prejudice (arising from anxiety and distress) was occasioned to him as a result of the delayed prosecution of approximately six and half years, from the date Dr Low was found unsupervised to the date the decision was conveyed to him.[107] More significantly, Dr Patel raises the apparent inconsistency in the disciplinary committee's finding that there was an inordinate delay in the prosecution of Dr Low's case – from the date Dr Low received the Notice of Complaint on 5 May 2017 to the date of her hearing on 6 July 2020[108] – and the DC's conclusion that there was no such delay in his case.[109] The Council broadly adopts and agrees with the DC's finding that the time taken in Dr Patel's case is broadly in line with the time taken in previous

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107 Appellant's Written Submissions at para 100.

108 ROP at p 660 para 41.

109 Appellant's Written Submissions at para 98.

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inquiries, and in any regard, that any delay was caused by Dr Patel's own actions.[110]

116 It is undisputed that in *Singapore Dental Council Disciplinary Committee Inquiry for Dr Low Ee Lyn* dated 28 July 2020, the disciplinary committee found an inordinate delay from the date Dr Low received the Notice of Complaint on 5 May 2017 and the date of her hearing on 6 July 2020. Oddly, the disciplinary committee regarded this as a lapse of two years and two months,[111] although this appears to be a period of three years and two months. Notwithstanding what appears to be a typographical error, it appears to me that *had* Dr Patel not applied to have his case heard separately, the earliest date he would have had his case heard would have been 6 July 2020, alongside Dr Low, before the same disciplinary committee. Given that like Dr Low, Dr Patel also received his Notice of Complaint on 5 May 2017, it is not satisfactory that the same period of about three years and two months constituted inordinate delay in Dr Low's case,[112] but not in Dr Patel's case. Even if I were to accept that any subsequent delay occasioned from Dr Patel's decision to have his matter heard separately is entirely a product of his own actions, for parity with the treatment of Dr Low, Dr Patel should still be given the benefit of a finding of inordinate delay.

117 That said, I accept that the prejudice suffered by Dr Low was likely to have been greater than that suffered by Dr Patel. She had to remain conditionally

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110 Appellant's Written Submissions at para 59.

111 ROP at p 660 para 41.

112 ROP at p 663 para 60.

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registered whilst the disciplinary proceedings were pending,[113] while Dr Patel remained gainfully employed (Decision at [58]). However, the fact remains that Dr Patel still suffered anxiety and distress "in having the charge hang over [his] head".[114] He would also have had his career options be limited by the pending proceedings. Consequently, I am of the view that *some* discount would be in order. As for *how* much discount should be accorded, I note that the disciplinary committee did not elaborate on the measure of the discount to be accorded in Dr Low's case save for observing that "[a]n appropriate discount should therefore be applied".[115]

(3) The circumstances surrounding Dr Patel's breaches

118 Next, I address the DC's decision to accord a global discount of three months for Dr Patel's personal circumstances at the material time (Decision at [61]). The Council argues that given the primacy of public interest considerations and the need to send a "clear, deterrent message to the dental profession at large that it is unacceptable for supervisor dentists to leave their supervisee dentists to practice dentistry without supervision under any circumstances" [emphasis in original omitted], limited weight should be given to Dr Patel's personal mitigating circumstances.[116] Indeed, in *Wong Meng Hang,* the court affirmed that factors like the "offender's personal mitigating circumstances and the principle of fairness to the offender … might even have to give way entirely if this is necessary in order to ensure that the interest of the public are sufficiently met" (at [24]).

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113 ROP at p 660 para 44.

114 Appellant's Bundle of Authorities at p 324 para 70(c).

115 ROP at p 660 at para 44.

116 Respondent's Written Submissions at para 60.

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119 While I am cognisant of and appreciate the Council's submissions on the importance of deterrence and the public interests at stake, I am of the view that Dr Patel was faced with truly extenuating circumstances, specifically in relation to the first charge. With Dr Patel's wife suddenly going into labour and experiencing birth complications, these constitute quite exceptional circumstances in relation to this charge. Despite such circumstances, he still made *some* effort to update Dr Kumar. In my opinion, a further discount is warranted for this charge.

120 However, for the four subsequent charges from 4 December 2016 onwards, I am of the view that Dr Patel's personal circumstances cannot justify or explain his breaches. Indeed, the fact that he was able to return to the Clinic on several occasions indicates to me that the situation concerning his wife was no longer as pressing or urgent and thus, cannot account for the breaches of his duty as a supervisor. As such, for the four remaining charges, the public interest of discouraging supervising dentists from attempting to evade responsibility by opting not to take any adequate steps to ensure that their supervisee works with supervision far outweighs any sort of personal mitigating factor that Dr Patel could potentially raise. Thus, no further discount should be accorded to these charges.

121 In summary, for the first charge, I accord a total discount of five months (*ie*, two months for inordinate delay and three months for Dr Patel's personal circumstances) to the initial starting sentence of 11 months to arrive at a final sentence of six months of suspension. As for the remaining four charges, since only a discount of two months should be accorded for inordinate delay, the sentences are reduced from eight months to six months of suspension per charge. I appreciate that the effect is that all five charges carry a sentence of six

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months of suspension, which is identical to the conclusion arrived at by the DC (Decision at [53]). However, as I have explained, it is important to methodically apply the steps in *Wong Meng Hang*.

Totality principle and the "last look"

122 Having arrived at a suspension term of six months per charge, I turn to consider the one transaction rule and the totality principle in determining what Dr Patel's global length of suspension should be.

123 The first charge clearly constitutes a different course of conduct from the subsequent four charges since it concerns a positive act by Dr Patel to instruct Dr Low to attend to his patients, while she was unsupervised, whilst the subsequent charges generally involved his failure to act with due regard to his duty to ensure that that Dr Low did not attend to patients unsupervised.

124 Typically, the one transaction rule provides that offences that constitute a single invasion of the same legally protected interest and are committed close together in time should run concurrently (*Shouffee* at [30]). Here, Dr Patel's four remaining charges concern materially similar facts, resulting in similar breaches over a relatively short period of ten days. Hence, they should be made to run concurrently. Thus, it would be fair and just to have one (instead of two) of the four charges run consecutively to the first charge, and the remaining three charges to run concurrently. This gives rise to an aggregate suspension period of 12 months.

125 In my view, the DC's decision to run the first three charges consecutively results in a manifestly excessive period of suspension of 18 months. As explained above, reducing this by three months on account of his

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personal circumstances is not the correct approach. I am of the view that the global suspension of 12 months is sufficient, and adequately reflects the gravity of Dr Patel's misconduct. As such, I am not minded to further reduce the term of suspension, as this is not a crushing sentence that is not in keeping with Dr Patel's record and prospects. I should add that such a suspension period is also more in line with the suspension of three months meted out to Dr Low. Although Dr Patel was more culpable as the supervisor, and he had also claimed trial to these charges, the initial discrepancy of 12 months' suspension between the two aggregate sentences appeared out of step.

Whether the DC erred in ordering a penalty

126 As mentioned above, the DC imposed a penalty of $30,000 for the five charges on the basis that there was financial gain by Dr Patel (Decision at [50] and [53]–[54]). Dr Patel argues that the DC erred in simply *inferring* that he profited from the takings of the patients.[117] Despite being a minority shareholder, he did not receive any dividends from the Clinic.[118] The unjustness of such an inference is exacerbated by the fact that Dr Patel was not given an opportunity to submit on the appropriateness of a penalty as neither the Council nor Dr Patel had raised the possibility of a penalty in their sentencing submissions.[119] The Council, on the other hand, submits that the DC was entitled to draw its inference from the total taking of $7,885.60 from the patients Dr Low saw and Dr Patel's shareholding in the Clinic.[120] It also argues that the penalty

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117 Appellant's Written Submissions at para 92.

118 Appellant's Written Submissions at paras 85 and 92.

119 Appellant's Written Submissions at para 94.

120 Respondent's Written Submissions at para 53.

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of $30,000 was not manifestly excessive as it is necessary to send a strong deterrent message.[121]

127 The Guidelines provide that a penalty may be "appropriate as an additional sentence, [such as] on top of a suspension order … [w]here there is evidence that the doctor has profited or had intended to profit from the misconduct".[122] Here, I am inclined to agree with Dr Patel that neither the Council nor the DC was able to point to *any* evidence that Dr Patel profited from or intended to profit from the breaches of his supervisory duty. The mere fact that Dr Patel is a minority shareholder is insufficient, particularly given that the Council did not appear to challenge Dr Patel's testimony below that he did not have the power to declare a dividend.[123] In light of this, there does not appear to be any supporting evidence that Dr Patel instructed and allowed Dr Low to practice unsupervised in order to gain any profits, or that he actually gained such a profit. Even accepting that the Clinic received $7,885.60 from the patients that Dr Low saw, it is entirely unclear how any portion of that sum would be distributed to Dr Patel. Consequently, I am of the view that the DC erred in imposing a penalty of $30,000.

Conclusion

128 For these reasons, I dismiss Dr Patel's appeal against his conviction. However, I allow his appeal against the orders made by reducing the period of suspension from 15 to 12 months, and by setting aside the imposition of the

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121 Respondent's Written Submissions at para 54.

122 Appellant's Bundle of Authorities at p 291 paras 20–21.

123 ROP at p 241, NE (4 November 2022) at p 218 lines 7–9.

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penalty of $30,000. Parties are to provide costs submissions within two weeks of this judgment.

Hoo Sheau Peng
Judge of the High Court

N. Sreenivasan SC, Lim Min and Kamini Devadass (K&L Gates Straits Law LLC) (instructed), Lin Ming Khin, Lim Wan Ting Tracia and Poh Jia Wei Daniel (Charles Lin LLC) for the appellant;
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