Lecture

Medicine and Law: Comparative Perspectives on Professional Conduct and Discipline*

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Colleagues from the Medical and Legal Professions. Distinguished Guests. Ladies and Gentlemen.

Introduction

I am grateful to the Academy for inviting me to deliver the inaugural Academy of Medicine Professional Affairs Lecture. It has only been a short time since I had the great honour to deliver the 23rd Gordon Arthur Ransome Oration last July.[1] On that occasion, I explored what defines a professional and outlined some of the challenges that test the commitment of our respective professions to honour, public service, and excellence.[2] I also discussed three specific aspects of professional practice that our professions should give careful consideration to. These are, first, nurturing and mentoring new entrants to the profession; second, improving accessibility and affordability to professional services; and third, serving with excellence and ethics.[3]

Today, I would like to develop a key theme that is closely associated with that third aspect, which is the issue of professional discipline. As professionals, we undertake years of study in order to provide essential services to the public. But those we serve can be gravely harmed if our work is carried out negligently or fraudulently. It is for the sake of the protection of the public, therefore, that the professions have always sought to regulate themselves and to punish those of their number who are guilty of misconduct. In this regard, formal disciplinary proceedings provide not only a means for a profession to enforce its standards, but also an avenue for it to communicate to the public, as well as to underscore to its members, the values and ethos which undergird its work.[4] Given this objective of professional discipline, which, it seems to me, applies in common to the professions, we might ask the following questions: How, and to what extent, do different professions deal differently with similar misconduct? And are these differences justified?

In the course of this lecture, I hope to outline some thoughts on these questions by comparing the legal and medical professions. I propose to divide my lecture into four parts. First, I will examine the concept of professional discipline and the need for self-regulation. Second, I will provide a brief overview of the similarities in the disciplinary frameworks and processes that govern our respective professions as well as the ethical values that underpin them. Third, I will discuss the different ways in which the medical and legal professions sanction dishonest members and consider whether the present disparity that seems to prevail in at least one significant respect, may be justified. Finally, I will turn to consider some common principles that the disciplinary tribunals of both our professions should bear in mind in deciding on an appropriate sanction.

Professional Discipline and Self-Regulation

I begin by examining the concept of professional discipline. When we encounter the expression "discipline" in the context of the professions, it is usually used as a verb, where it means to "bring under control" or to "chastise … [or] punish".[5] However, the word "discipline" is a noun before it is a verb. Its etymology may be traced to the Latin words *"discipulus"*, which means pupil, and *"disciplina"*, which means teaching.[6] The pedagogical origins of the word gives us a clue as to its meaning. Used as a noun, "discipline" refers variously to (a) an activity that provides mental or physical training, (b) the system of rules of conduct which such activity entails, and (c) the controlled behaviour that is the product of such training. It will not escape your attention that there is a logical sequence to this: a "discipline" is an activity built around a system of rules of conduct that aims to produce in its adherents controlled conduct – one is disciplined by one's discipline, so to speak.[7]

Viewed in this light, there is a vital link between the concept of discipline and the notion of what it means to be a professional. As my predecessor, Wee Chong Jin CJ,

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stressed, discipline is the first virtue of a profession.[8] This is so in at least three ways. First, a profession must be disciplined in its devotion to the learned art which is its calling. Secondly, a profession must be disciplined in conduct and deed, as it strives to be worthy of the trust reposed in it by the members of the public, which have entrusted to the profession some of the most important aspects of their lives. Thirdly, a profession must be disciplined in its devotion to public service, because it exists in the first place, not for the private interests of its members, but for the public whose interests it serves.[9]

Professional Discipline and the Protection of the Public

This brings me to the first aspect of professional discipline which bears on the present discussion, which is that it is itself a form of public service. When the professions discipline their own—and this is where I revert to the use of the word as a verb—the purpose is not only to punish deviant conduct, but also, and perhaps more importantly, to protect the public by deterring future defaults and to uphold public confidence in the integrity of the profession. As one academic explains, professional discipline advances the public interest in two key ways:[10]

Firstly, the conduct of individual members of the profession is regulated in order to ensure that the public is properly served. Secondly, it is recognised that it is a valid objective to protect the profession itself, because a vibrant, self-governing profession which has the public's interest at its heart is itself in the best interests of the public.

These two goals may conveniently be referred to as the "specific" and "general" purposes of professional discipline. The specific goal of professional discipline is served when a profession maintains and enforces its standards through the imposition of a suitable sanction for wrongdoing. The purpose of punishment in this context is partly retributive and partly deterrent: wrongdoing must be met with proportionate punishment, and the errant member must be suitably deterred from reoffending. In so doing, the profession is acting to ensure that the quality of the services it provides is maintained at a high level.

As for the general goal of professional discipline, this is served when misconduct is publicly repudiated by the profession, through a disciplinary process that culminates ultimately in the imposition of an appropriate public sanction where due cause is made out. Punishment performs an important communicative and exemplary function here because it marks the seriousness with which the profession views the misbehaviour, and it reinforces the profession's collective commitment to its professional standards. Expulsion is of course the greatest signal of professional disavowal, but even fines and terms of suspension have an important signalling effect.

Indeed, our courts have often stressed that it is this general purpose of professional discipline that is paramount in the disciplinary process.[11] Thus, circumstances that would ordinarily weigh in mitigation of punishment carry less weight in the disciplinary context than it might in the criminal context.[12] In a recent case, the Court of Three Judges had to consider the case of a non-practising solicitor who suffered from severe bipolar disorder. During a hypomanic episode following a precipitous deterioration in his condition, he behaved in an unruly manner at the premises of the Law Society, and made certain false and potentially defamatory remarks against several fellow lawyers. In its judgement, the Court stressed that it had a duty to the public and the administration of justice not to accredit any person as worthy of public confidence when he was not satisfactorily able to establish his right to those credentials. Thus, notwithstanding his diminished personal culpability for these acts, the Court held that the interests of protecting the public and upholding confidence in the profession necessitated that the solicitor be suspended from practice for two years while he sought professional help.[13]

Self-Regulation

There is another aspect to professional discipline which should be discussed, and it is its self-administered nature. While there are many occupations that are regulated, such as builders and plumbers, they are not—unlike the professions—accorded the privilege of *self*-regulation.[14] This is so for several reasons. First, it was historically thought that because the body of knowledge held by members of a profession was esoteric and unknown to the average person, it would be difficult for external regulation to be effective.[15] Second, it was thought that self-regulation would internalise the cost of regulation to the profession, thus obviating the need for the establishment of a public regulatory body paid for by public funds. Third, it was also believed that professions should be self-regulated in order to maintain their independence from the state, thus ensuring that the decisions taken by the professions are free from political interference.[16]

In line with the principle of self-regulation, the Medical Registration Act ("MRA")[17] expressly provides that the Court will not interfere with the findings of a disciplinary tribunal convened by the Singapore Medical Council ("SMC") on issues of medical ethics or standards of professional conduct unless these findings or orders are "unsafe, unreasonable or contrary to the evidence".[18] This does not mean that the Court cannot review the tribunal's findings and orders, but in so doing, it will be mindful that the tribunal is "a specialist tribunal with its own professional expertise and understands what the medical profession expects of its members",[19] and will give proper weight to

its views on how the needs of the public and the profession should be protected.[20]

However, it is important to stress that self-regulation is not a right, but a privilege, and is one that should not be taken for granted. Over time, there has been growing disenchantment with the self-regulatory model, and the modern trend has been for there to be greater co-regulation and greater external representation on the disciplinary boards of the professions.[21] Some amongst you may recall the debate that occurred back in 2010 when the MRA was amended to allow the SMC to appoint a judge, senior lawyer or senior legal service officer to sit on its disciplinary tribunals. This change was introduced to provide the SMC's disciplinary tribunals with more assistance in the face of the increasing legal and procedural complexity of the issues coming before them.[22] On the whole, it seems that disciplinary tribunals appear to have benefitted from the input which these experienced legal professionals have provided as reflected in the quality and rigour of the published decisions of the SMC in recent years.[23]

The short point for present purposes is that as long as the professions enjoy the privilege of self-regulation, we also bear the responsibility of keeping our houses in order. To this end, it is essential that we not only have an effective disciplinary mechanism, but also the conviction to employ it whenever it is appropriate to do so.[24]

Similarities in the Way the Professions Approach Professional Discipline

I turn now to discuss the similarities in the disciplinary regimes for the medical and legal professions in Singapore.

Procedural Similarities

Disciplinary proceedings for doctors and lawyers are administered by the SMC and the Law Society respectively, both of which are set up by statute.[25] In broad terms, the disciplinary process in both professions proceeds in three steps:

(a) First, the complaint is reviewed by a committee which determines and recommends whether a formal inquiry should take place or a lesser sanction will suffice.[26] This recommendation may be challenged and an appeal will lie either to the Minister for Health or a High Court Judge, depending on whether the matter concerns a doctor or lawyer.[27]

(b) Second, if the committee is of the view that a formal inquiry is necessary, a disciplinary tribunal will be appointed to conduct one. The difference between doctors and lawyers in this context is that the disciplinary tribunal empanelled by the SMC has the power to apply the most severe sanctions, such as a penalty of up to $100,000, a lengthy suspension of up to three years, or the removal of the doctor from the register.[28] By contrast, only the Court of Three Judges has the power to suspend or strike a lawyer off the rolls.[29]

(c) Third, the matter may be considered by the Court of Three Judges.

For doctors, the Court of Three Judges is strictly an appellate body which reviews the decision of the disciplinary tribunal.[30] However, disciplinary proceedings against lawyers must be brought to the Court of Three Judges whenever a more serious sanction is called for.

I should also mention in passing that in the context of proceedings against lawyers, there is one additional layer which is the inquiry panel which undertakes a more detailed consideration of the matter before it is referred to a disciplinary tribunal. However, it is clear from the foregoing that despite some minor differences, there is in fact a great deal of structural similarity in the way that doctors and lawyers organise their disciplinary procedures. Apart from this, there are also three other key similarities in the way the professions handle issues of professional discipline.

First, in order for a doctor or lawyer to be disciplined, the case against him or her must be proved beyond a reasonable doubt, which is the standard of proof applicable in criminal cases.[31] This reflects the quasi-criminal nature of the proceedings, the gravity of the allegations, and the harsh consequences which may follow from any adverse findings.[32] A finding of misconduct is an extremely serious matter which results in severe financial implications for the professional and his or her dependents. Apart from the direct financial penalty, any finding of misconduct may have untold consequences on his or her career, reputation, relationships, and health.

Second, the grounds on which a lawyer or doctor may be disciplined are broadly similar. The grounds for sanction which are common to both professions include conviction for an offence implying a defect of character which makes the professional unfit for the profession,[33] misconduct in the discharge of one's professional duties,[34] and, more generally, conduct which is unbefitting or which brings disrepute to the profession.[35] Notably, this is not confined to acts performed in a professional capacity, but instead extends to instances of misconduct in the professional's personal life.[36]

Third, the range of sanctions that may be imposed for serious disciplinary cases is similar. Medical and legal professionals may be censured, fined, suspended, or even removed from the register of approved practitioners.[37] The maximum financial penalties that may be imposed against them are also identical. Following legislative amendments to the LPA in 2008 and the MRA in 2010, the maximum fine that may be imposed against both doctors and lawyers is now $100,000.[38] The only notable difference is the length of

the suspension that may be ordered. In proceedings against doctors, a term of suspension of between three months and three years may be imposed;[39] for lawyers, there is no minimum term but, on the other hand, the suspension can last as long as five years.[40]

Focus on Ethical Conduct and Professional Values

Apart from the similarities in procedure, there is also a common emphasis on ethical conduct and the importance of professional values. This is best illustrated by reference to Dr Susan Lim's case, the facts of which should be familiar to most of us. Briefly, Dr Lim was the primary care physician for a member of the Bruneian royal family. In 2005, she issued invoices totalling about $3.8m for her services; in 2006, this figure increased to $7.5m; and for the period from January 2007 to June 2007, the value of the invoices before she cancelled a number of them, and including an amount for services rendered by some others totalled $26m. A complaint of overcharging was made and the matter was referred to a disciplinary tribunal. Before the tribunal, it was argued on Dr Lim's behalf that there was no objective limit on the fees which a professional could charge, and thus the charging of high fees could not in and of itself amount to professional misconduct. It was further submitted that where there was a fee agreement, professional misconduct could only arise where the *conclusion of the agreement* itself was tainted by unethical conduct, such as dishonesty, fraud, or an abuse of position. Otherwise, the parties should be bound by the terms of their agreement.

This argument was unanimously rejected by the tribunal.[41] In a section entitled "[t]here is an ethical limit to what a doctor can charge a patient", it wrote:[42]

Ordinarily, every person who sells her services to the public has a right to fix the price for those services by reference to what the market can bear…But it is one of the essential hallmarks of a profession that a member of a profession who sells her professional services to the public accepts an ethical obligation to limit what she can charge for those service to what is a fair and reasonable fee for those services … This is true in the legal profession … [and this] is all the more true in the medical profession where a patient reposes trust and confidence in a practitioner to cure, protect against or palliate illness.…

The tribunal found that the fees charged breached this ethical limit. It also found, on the facts, that no fee agreement had been concluded but held that even if there were one, the obligation to charge a fair and reasonable fee nonetheless applied, regardless of the existence of any contractual agreement on fees.[43] In the circumstances, the tribunal ordered that Dr Lim be suspended for 3 years and pay the then applicable maximum penalty of $10,000.

When the matter went on appeal to the Court of Three Judges, the decision of the tribunal was affirmed. In arriving at its conclusion, the Court drew once again on the commonalities between the professions. It pointed out that in both professions, there was an asymmetry in knowledge between professionals (who possess special expertise and learning) and their clients (who often seek their help at times of particular vulnerability), and who repose their confidence and trust in the professional concerned. Viewed in this light, the court explained that to overcharge was to take advantage of this vulnerability, and this constituted an abuse of the client's trust and confidence.[44] Noting that it had long been established that gross overcharging by a lawyer constitutes professional misconduct notwithstanding the presence of any fee arrangement, the Court concluded that the position should be no different for the medical profession.[45]

It is thus evident from this brief survey that there are both procedural and substantive similarities in the disciplinary regimes of both professions. In these circumstances, one would naturally expect that there would also be a convergence in disciplinary outcomes. However, this is not always the case in practice.

The Sanction of Striking Off – A Comparison

Let me illustrate this difference by reference to the sanction of striking off.

Of the 126 disciplinary cases against doctors which were reported between 2008 and 2017, only three have resulted in the removal of a doctor from the register.[46] In the same period, an identical number of lawyers faced disciplinary proceedings, but 28 were struck off the rolls of advocates and solicitors.[47] That is *more than nine times* the numbers of doctors removed from the register in the same period. This striking disparity is even more remarkable when you consider that there are about twice as many registered doctors as there are lawyers,[48] and the SMC handles roughly twice the number of complaints the Law Society does.[49]

Of course the purpose of the exercise is not to determine which profession is more adept at striking its members off its rolls. However, the wide disparity in outcomes suggests that this is an issue that is worth further consideration.

The Removal of Doctors from the Register: Three Past Cases

I begin by examining the three decisions of the SMC disciplinary tribunals where the doctor was removed from the register. The first two cases involved the sale of hypnotics in egregious circumstances evidencing a clear lack of remorse. In the first case, the disciplinary tribunal noted that the doctor was a repeat offender who had previously been caught for the same offence in 1993. On that occasion, his name had also been removed from the register but it was restored two

years later.[50] Despite being given a chance, he reoffended. In the second case, the disciplinary tribunal noted that the doctor had transacted in large volumes of the hypnotics (about 1907 litres over five months) for substantial profit and, perhaps most shockingly, had persisted in this even after his clinic had been raided.[51]

The third striking-off case involved criminal behaviour and sexual misconduct. The doctor in that case had pleaded guilty in the State Courts to several charges of having sex with a minor, who was only 14 at the time. There were also shades of dishonesty in his case, as the tribunal found that the doctor had lied to the victim about his age and profession in order to encourage her to engage in unprotected intercourse. Furthermore, after a police report had been made and investigations were underway, the doctor made a false declaration to the SMC that he was not the subject of any criminal investigations in order to obtain a practising certificate. The disciplinary tribunal held that the totality of his actions was sufficiently serious to warrant his removal from the register.[52]

What unites these three cases is that the doctors in question had flagrantly abused the privileges granted to them as doctors and therefore shown themselves to be unworthy to practice medicine. In the first two cases, the doctors had repeatedly facilitated the abuse of addictive controlled substances which could have catastrophic effects on the health of abusers. In so doing, they demonstrated a callous disregard for their professional duties. In the third case, the doctor was an obstetrician and gynaecologist who was well aware of the dangers of unprotected intercourse, but nevertheless chose to place his desire for gratification over the health and well-being of the minor.

From these three cases alone, it may be thought that the general rule is that a doctor who has been found guilty of having abused his or her position will invariably be struck off the register of medical practitioners. However, the practice does not bear this out. In a 2014 case, a doctor, Dr Looi, performed a procedure on his patient without obtaining his informed consent, and subsequently instructed his nurse to alter the patient's consent form to cover up this fact. This is plainly a matter which cut to the heart of his identity as a doctor and the disciplinary tribunal acknowledged as much, holding that in acting as he did, Dr Looi had "flagrantly violated the standards of probity and moral integrity which are expected of doctors who are permitted to practice medicine".[53] However, despite the fact that his actions were described by the tribunal as "objectionable and repugnant", Dr Looi was only suspended from practice for 12 months and fined $10,000.[54]

The Dishonesty Rule for Lawyers

By contrast, the rule which applies to lawyers is somewhat clearer. A lawyer will be struck off the rolls if it is shown that he has acted dishonestly.[55] This is known as the "dishonesty rule", and it has been consistently applied by the Singapore courts.[56] In this regard, the Court of Three Judges has categorically rejected the suggestion that there is a spectrum of dishonesty, such that certain types of dishonest conduct might be considered to be of a "technical" nature due to certain extenuating circumstances and may then be met with lighter punishment. Indeed, any form of dishonesty —even dishonesty of a "technical" nature—would almost invariably lead to an order for striking off.[57] The position is the same in England, where the dishonesty rule has been endorsed and affirmed many times over.[58] There might be very exceptional mitigating circumstances which would call for a departure from the rule, but this would be an extremely rare case.[59]

If a solicitor is not shown to have acted dishonesty, but has been shown to have "fallen below the required standards of integrity, probity and trustworthiness… such as to indicate that he lacks the qualities of character and trustworthiness, which are the necessary attributes of a person entrusted with the responsibilities of a legal practitioner", he or she will also be struck off the rolls. We applied this principle in a recent decision involving a senior lawyer of some 20 years' standing who had asked a junior colleague to accompany him to a hotel on the pretext of carrying out work on a case before outraging her modesty. When the matter came before the Court of Three Judges, the solicitor continued to protest his innocence, notwithstanding that he had sent her a letter of apology and offered a sum in composition after a police report had been made. Viewing the matter in the round, we held that the solicitor had acted so "disgracefully and reprehensibly" that he had brought "grave dishonour" to the profession and should be struck off the rolls.[60]

Indeed, a striking off will be ordered even if the offending act was not related to the lawyer's work.[61] This can be seen in a recent case involving a lawyer, Mr Ong, who pleaded guilty to two counts of wilful tax evasion and thereafter faced disciplinary action.[62] When the matter came before the Court of Three Judges, the Court determined that Mr Ong's offences demonstrated dishonesty, given that tax evasion is a form of fraud. Mr Ong was hence struck off the rolls even though he had not committed the offence in the course of his practice as a lawyer.

Mr Ong's case is interesting because counsel in that case referred in the course of arguments to a decision of the SMC disciplinary tribunal as well as the decisions of disciplinary tribunals for other professions in aid of his submission that not all instances of dishonesty should warrant the sanction of striking off. In particular, counsel

referred to the 2013 case of Dr Chiang, who was convicted of the same charge of wilful tax evasion that Mr Ong was facing, as well as an even more serious charge of fraudulent tax evasion, but was only suspended from practice for four months.[63] In so ordering, the disciplinary tribunal had relied on submissions made by counsel for SMC, who had argued for a suspension of three to six months in the light of past precedents. It should be noted that this is not an isolated case, for there are many examples of cases where doctors have received terms of suspension for acts of dishonesty which, if committed by lawyers, would almost certainly have warranted the sanction of a striking off. I mention two such comparisons.

The first concerns Dr Quah, then a houseman, who was convicted for shoplifting from a department store. In mitigation, he submitted that he had committed the offence when he was experiencing severe stress for which he subsequently sought treatment with a psychiatrist.[64] The disciplinary tribunal acknowledged that the offence involved dishonesty; but in the end, Dr Quah was only censured and made to furnish the usual undertaking that he would not reoffend. This may be contrasted with the case of *Law Society of Singapore v Amdad Hussein Lawrence*,[65] which involved a solicitor who had been convicted for shoplifting in a supermarket. He too argued that he was suffering from stress and was under medication. However, the Court accorded this factor little weight and ordered that he be struck off the rolls.

The second case involved the case of Dr Wu, who was convicted on two counts of instigating his driver to make false declarations to the traffic police, which are offences under the Road Traffic Act.[66] He had done so in order to have his driver take the rap for him in respect of two speeding offences which he had committed. When given the opportunity to address the disciplinary tribunal in mitigation, Dr Wu made the somewhat surprising submission that "it was a common practice to furnish false information to the Traffic Police".[67] Notwithstanding the finding that Dr Wu was not only dishonest, but also unremorseful, he was only suspended for four months with the usual undertaking.[68] In contrast, *Law Society of Singapore v Dhanwant Singh*[69] involved a lawyer who had been convicted of three counts of abetting or instigating his clients to produce false medical certificates to excuse their absences from court and was struck off the rolls.

From the foregoing, it is evident that there is a marked disparity between the treatment of lawyers and doctors in relation to the issue of dishonesty. In Mr Ong's case, the Court of Three Judges noted this and expressed the view that the time may soon come to "adopt a more consistent and principled approach to dishonesty by professionals, and thus bring the approaches into harmony".[70] This was not the first time that such an observation was made. In the 2015 case of *Singapore Medical Council v Kwan Kah Yee*,[71] Dr Kwan had pleaded guilty to two charges of professional misconduct for falsely certifying the cause of death of two patients. Dr Kwan's conduct was quite egregious. Not only did he appear to have certified the cause of death for the two patients without a basis, he also lied to the Ministry of Health to cover up his conduct. The Court noted that if Dr Kwan were a lawyer, his acts of dishonesty alone—without the aggravating circumstances of the cover-up—would have resulted in his being struck off the rolls.[72] However, the court ultimately declined to make such an order as it had not received submissions as to whether the dishonesty rule should also apply to the medical profession, and flagged this as an issue to be taken up on another day.

Should There Be a "Dishonesty Rule" for Doctors?

In the light of the foregoing, we might ask: can the disparity in the regulatory standards adopted for the medical and legal professions in relation to the issue of dishonesty be justified? In this regard, at least three inter-related arguments have been advanced in favour of maintaining the distinction in how dishonesty is punished in the medical and legal professions:

(a) First, it has been argued that the principle of self-regulation means that each profession is entitled to determine the appropriate punishment for the members of that profession. Thus, the fact that the legal profession has chosen to punish dishonest behaviour in the harshest way possible is irrelevant to the medical profession, which should follow its own precedents and principles.[73]

(b) Secondly, it has been argued—most recently in Dr Wu's case—that the dishonesty rule applies specially (and perhaps exclusively) to lawyers because they are officers of the Court and are typically involved in handling their client's money. Doctors, on the other hand, are chiefly engaged in patient care, and a lack of honesty does not redound on their work as much (or even at all) in the same way it does on the work of lawyers.[74]

(c) Thirdly, it has also been suggested that the dishonesty rule should not be applied to doctors because of the public interest in maximising the utilisation of medical professionals and their skills.[75]

Proper evaluation of each of these arguments must of course await the consideration of the court in the right case and nothing I say here should foreclose my—if I were ever required to consider this issue in a judicial capacity—coming to a different view in different circumstances, when properly assisted by the submissions of the parties. But having made that clear, let me outline some possible perspectives.

First, I think it is important to remember that self-regulation is not an end in itself, but merely the means to an end. As Her Excellency Madam Halimah Yacob observed in her former capacity as a Member of Parliament, "self-regulation cannot exist as an ideal in isolation of the basic purpose for which it was allowed in the first place, which is, to protect and promote [the] public interest. In other words, we cannot preserve self-regulation at all cost for the sake of self-regulation alone".[76]

These words were spoken in the context of the proposed amendment to strengthen the regulatory regime provided in the MRA, and they remain true today. The principle undergirding the dishonesty rule is that honesty and integrity are so fundamental to a profession that a member who departs from it demonstrates conduct which is contrary to his suitability to continue to practise as a member of that profession. This is a principle which is common to both our professions. In Dr Wu's case, the tribunal wrote:[77]

…We cannot overemphasise that every medical practitioner is expected to carry the hallmarks of integrity and honesty whether in his professional or personal capacity. Any act of dishonesty from a medical practitioner tarnishes and brings disrepute to the medical profession as a whole…

That seems to be correct. And it brings me to the second point, which is on the place of integrity in the medical profession. The suggestion that integrity is somehow less important in the medical than it is in the legal profession does not strike me as a particularly edifying one, and I do not in any event think it is a view that is held by doctors. I need only refer to the Introduction of the SMC's Ethical Code and Ethical Guidelines, which contains the following exhortation:

As a member of the medical profession, you are held in the highest esteem by the public and society, who depend on a reliable and trustworthy healthcare system and look to you for the relief of their suffering and ailments. Much trust is therefore vested in you to do your best by both. This trust is contingent on the profession maintaining the highest standards of professional practice and conduct. You must therefore strive to continually strengthen the trust that has been bestowed.

In the same vein, the first paragraph of the Ethical Code reads as follows:

Patients and the public must be able to trust you implicitly with their lives and well-being. To justify this trust, you have to maintain a good standard of care, conduct and behaviour. The SMC prescribes the Ethical Code which you are required to uphold. These principles are applicable to a wide variety of circumstances and situations. Adherence to the Ethical Code will enable society to have trust and confidence in the profession.

Unless we say these are just nice-sounding but ultimately empty words, the argument that dishonesty within the medical professional can be tolerated because honesty is not essential to the discharge of a doctor's duties and functions does not in this light seem to be a particularly persuasive one. In fact, because patients entrust their very *lives* in the hands of medical professionals, honesty might be said to be *at least* of equal importance in the medical profession as it is in the legal profession.[78]

Finally, the argument that dishonest doctors should be spared because they are useful to society seems to be quite plainly wrong on several levels. First, society only has an interest in retaining the services of a doctor who is fit to practice. If a doctor has been adjudged to be dishonest, the proper inference might well be that he or she poses a *risk* to the public and the profession, and should no longer be permitted to practise. This also seems a weighty consideration given the many ways in which dishonesty can affect the performance of medical services. Second, this argument does not address the other fundamental reason to remove the doctor from the register, which is to restore public confidence in the integrity of the profession. Finally, this argument is a dangerous one, for it would seem to suggest that any transgression may be forgiven so long as the offender is useful to society. That suggestion is so clearly wrong that it need only be stated to be rejected. Indeed, the argument ought properly to run in the opposite direction, for the more experienced (and presumably more useful) a doctor is, the more seriously any act of dishonesty must be viewed.[79]

In the light of all of the foregoing observations, it would seem that there is a case for saying that dishonest medical professionals should be punished in the same way that dishonest legal professionals are. This is the position which is taken in the UK. In the case of *Gupta v General Medical Council*,[80] the Privy Council affirmed the decision of the General Medical Council to strike the appellant off the register of medical professionals for knowingly allowing her husband—who had previously lost his licence to practise medicine—to practise at her surgery. In his decision, Lord Rodger of Earlsferry, in referring to the dishonesty rule for lawyers, held that the same approach ought to apply to doctors.[81] In the later case of *Patel v General Medical Council*,[82] Lord Steyn affirmed the approach of Lord Rodger in the Gupta case and unequivocally declared that "[f]or all professional persons including doctors[,] a finding of dishonesty lies at the top end in the spectrum of gravity of misconduct".[83]

Principles of Disciplinary Sentencing

The example of dishonesty reveals that there are certain foundational values, integrity being one of them,

which are common to both our professions. So what might this convergence entail in practical terms? I would suggest that for one thing, SMC disciplinary tribunals might draw on the substantial sentencing jurisprudence of the Court of Three Judges, which has largely developed in the context of legal disciplinary proceedings. I turn to discuss five of the more important sentencing principles which have been articulated by the Court.

First, disciplinary sentencing should be guided by four principal considerations:[84]

(a) the protection of the public;

(b) the upholding of public confidence in the integrity of the profession;

(c) deterring similar defaults by the same professional and by other professionals in the future; and

(d) the punishment of the professional who is guilty of misconduct.

Second, all of these factors must be taken into account in deciding on an appropriate sentence. Where these considerations pull in different directions, the public interest is paramount and must prevail.[85] At times, this might mean hardship for the particular individual, but this is the price that has to be paid for maintaining the reputation of the profession and the protection of the public.[86]

Third, where there are multiple instances of misconduct, the tribunal must view the misconduct in totality and determine its overall gravity before selecting an appropriate sentence.[87] While aggravating factors would be given the same weight in disciplinary proceedings as in criminal proceedings, mitigating factors would carry less weight in disciplinary proceedings due to the prevailing need to protect public confidence in profession.[88]

Fourth, the full range of sanctions should be considered in order that a condign punishment may be imposed.[89] The sanction of striking off should be reserved for the most egregious forms of misconduct incompatible with the core values of the profession. Suspensions are intended to bridge the gap between disbarment on the one hand and fines on the other, while fines are suitable for cases which are not serious enough to attract a term of suspension, but too serious to be dealt with only by a censure.[90]

Finally, tribunals must be sensitive to changing societal norms. While respect for past precedent is important for the sake of equality and consistency, they can and should depart from old precedents where the circumstances call for it.[91] As the Court of Three Judges stressed in a 2014 decision, "fidelity to precedent ought not to lead to ossification of the law".[92]

Conclusion

It has certainly not escaped my attention that our discussion today follows what has been labelled as a "rough" period for the healthcare industry in general.[93]

Developments that have contributed to this include pending tighter regulation of the healthcare industry being introduced in the form of a new Healthcare Services Bill,[94] and announcements by the SMC that sentencing guidelines for the Disciplinary Tribunals are being drawn up.[95]

But in my view, these developments should not be a cause for concern. These developments are motivated by a common goal, which is to secure the public interest by maintaining high standards of professional conduct. There is no doubt that taking disciplinary action is a difficult task, and is in fact one that is only made more difficult when what is contemplated is the removal of a fellow member of the profession from the register. But it would be wrong to avoid a task merely because it is difficult or unpleasant, for it is the public to whom we ultimately owe a duty of undivided loyalty.

Thank you all for your time and attention.

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3. Menon CJ, 23rd Gordon Arthur Ransome Oration, pp 3–7.
4. See the observations of the Court of Three Judges in Low Cze Hong v Singapore Medical Council [2008] 3 SLR(R) 612 ("Low Cze Hong") at [87].
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11. Law Society of Singapore v Ravindra Samuel [1999] 1 SLR(R) 266 ("Ravindra Samuel") at [11]–[12], Law Society of Singapore v Udeh Kumar s/o Sethuraju and another matter [2017] 4 SLR 1369 ("SK Kumar") at [86] and Law Society of Singapore v Tham Yu Xian Rick [1999] 3 SLR(R) 68 ("Rick Tham") at [18] in the context of lawyers; Singapore Medical Council v Kwan Kah Yee [2015] 5 SLR 20 ("Kwan Kah Yee") at [50], citing Cheatle v General Medical Council [2009] EWHC 645 (Admin) at [33] and Council for the Regulation of Health Care Professionals v General Medical Council and Ruscillo [2005] 1 WLR 717 at [60] in the context of doctors.
12. Rick Tham at [22], citing the decision of the English Court of Appeal in Bolton v Law Society [1994] 2 All ER 486 at 492 ("Bolton"); Law Society of Singapore v Ravi s/o Madasamy [2016] 5 SLR 1141 at [73] ("M Ravi").
13. M Ravi at [73].
14. John M Law, "Regulation and the Legal Profession" (2008) 45 Alta L Rev 255 at p 255. For a historical take on the regulation of the legal profession, see Jonathan Rose, "The Legal Profession in Medieval England: A History of Regulation" (1998) 48 Syracuse L Rev 1. Also, see, generally, the Introduction of the Singapore Medical Council Ethical Code and Ethical Guidelines 2016 Edition ("ECEG") at para 2.
15. Roger Collier, "Professionalism: The privilege and burden of self-regulation" (2012) 184(14) Canadian Medical Association Journal 1559 at p 1559.
16. Richard F Devlin and Porter Heffernan, "The End(s) of Self-Regulation" (2008) 45 Alta L Rev 169 at pp 186–189 and Anthony Ogus, "Rethinking Self-Regulation" (1995) 15 Oxford J Legal Stud 97 at pp 97–98.
17. Cap 174, 2014 Rev Ed.
18. MRA, s 55(11); Chia Foong Lin v Singapore Medical Council [2017] 5 SLR 334 ("Chia Foong Lin") at [34]–[36].
19. Singapore Medical Council v Wong Him Choon [2016] 4 SLR 1086 ("Wong Him Choon") at [40], citing Gobinathan Devathasan v Singapore Medical Council [2010] 2 SLR 926 at [29].
20. Chia Foong Lin at [36], citing Low Cze Hong at [42].
21. Tracy L Adams, "Professional Self-Regulation and the Public Interest in Canada" (2016) 6(3) Professions & Professionalism 1; see also, H W Arthurs, "The Dead Parrot: Does Professional Self-Regulation Exhibit Vital Signs" (1995) 33 Alta L Rev 800, Fred C Zacharias, "The Myth of Self-Regulation" (2009) 93 Minn L Rev 1147 and John Pearson, "Canada's Legal Profession: Self-Regulating in the Public Interest?" (2013) 92 Can B Rev 555.
22. Second Reading of the Medical Registration (Amendment) Bill, Singapore Parliamentary Debates, Official Report (11 January 2010) vol 86 at col 1906 (Minister for Health Mr Khaw Boon Wan).
23. In a recent case, a disciplinary tribunal took the opportunity to articulate a legal framework to guide future tribunals faced with the task of deciding whether a suspension is an appropriate sanction: see SMC DT Inquiry for Dr Sim Kwang Soon Grounds of Decision dated 18 August 2017.
24. Schultze at pp 51–52.
25. The SMC is set up under the auspices of the MRA while the Law Society is set up under the Legal Profession Act (Cap 161, 2009 Rev Ed) ("LPA").
26. For doctors, the procedure is as follows. In the SMC, a complaint against a doctor will first be reviewed by a Complaints Committee to determine if a formal inquiry should take place. The Complaints Committee may direct that investigations be carried out (see s 42(4)(c) of the MRA). The Complaints Committee dismisses the complaint if it finds it to be frivolous, vexatious, or without substance (s 42(4)(a) of the MRA). It may also find that the complaint does not warrant formal inquiry, but that some less punitive orders should nevertheless be made against the doctor. Such orders include issuing letters of advice or warning, or ordering the doctor to undergo further education or training (see s 49(1) of the MRA). For lawyers, the procedure is similar. Generally, a Review Committee will first assess the complaint to ascertain if it is frivolous, vexatious, misconceived or lacking in substance (see ss 85(6)–85(8) of the LPA). If the complaint has some substance, an Inquiry Committee will be constituted to look into it (s 85(10) of the LPA). The Inquiry Committee makes recommendations to the Council of the Law Society (s 86 of the LPA), which considers the Inquiry Committee's report and recommendations. If the Inquiry Committee determines that a formal inquiry is necessary, the Council must determine accordingly; if the Inquiry Committee does not think that one is necessary, the Law Society may – if it disagrees with the recommendation – request that the Chief Justice appoint a Disciplinary Tribunal (see s 87(2) of the LPA). If the Council decides that a lesser sanction such as a warning, reprimand or financial penalty is sufficient, it has the power to impose such a lesser penalty (see s 88(1) of the LPA).
27. For doctors, an appeal against the Complaint Committee's decision lies to the Minister for Health (see ss 49(10)–49(13) of the MRA). For lawyers, the complainant may apply to a Judge for a review of the Council's decision not to appoint a DT (s 96 of the LPA); and the affected professional may challenge any sanction imposed on him/her by the Council (see s 95 of the LPA).
28. MRA, s 53(2).
29. LPA, s 83(1).
30. MRA, s 55(1).
31. Re Lopez Joseph Francis [1974-1976] SLR(R) 588 at [6] in the context of the MRA; Ahmad Khalis at [6], citing Re Ong Tiang Choon [1977-1978] SLR(R) 291 at [21] in the context of the LPA.
32. Law Society of Singapore v Chiong Chin May Selena [2013] SGHC 5 at [28] and Ahmad Khalis at [6].
33. MRA, ss 53(1)(a) and 53(1)(b); LPA, s 83(2)(a).
34. MRA, ss 53(1)(d) and 53(1)(c); LPA, s 83(2)(b).
35. MRA, s 53(1)(c) and LPA, s 83(2)(h).
36. The grounds for disciplinary proceedings under the LPA include touting and offering of referral fees (LPA, ss 83(2)(d)–(f)). While these are not expressly set out in the MRA, a similar prohibition is likewise included in the ECEG (ie, ECEG, para H3(5)), breach of which may lead to disciplinary action. The LPA further includes grounds which are not expressly set out in the MRA, such as carrying on certain acts while a bankrupt (s 83(2)(c)), carrying on a trade or employment which detracts from or is incompatible with the profession of law (s 83(2)(i)), breaching the LPA in a manner which warrants sanction (s 83(2)(j)), and being sanctioned in a capacity as a legal practitioner in another jurisdiction (s 83(2)(k)).
37. MRA, s 53(2); LPA, s 83(1).
38. See Lam Kwok Tai Leslie v Singapore Medical Council [2017] 5 SLR 1168 ("Leslie Lam") at [85]–[89].
39. MRA, s 53(2)(b).
40. LPA, s 83(1)(b).
41. SMC DT Inquiry for Dr Lim Mey Lee Susan Grounds of Decision dated 17 July 2012 ("Susan Lim (DT)") at para 4.1.1(c).
42. Ibid at para 4.5.2.
43. Ibid at para 4.6.2.
44. Lim Mey Lee Susan v Singapore Medical Council [2013] 3 SLR 900 ("Susan Lim (C3J)") at at [44].
45. Susan Lim (C3J) at [52].

46. SMC DT Inquiry for Dr Ong Theng Kiat Grounds of Decision dated 29 April 2015 (“Ong Theng Kiat”); SMC DT Inquiry for Dr Ho Thong Chew Grounds of Decision dated 18 December 2014 (“Ho Thong Chew”); SMC DT Inquiry for Dr AAN Grounds of Decision dated 13 March 2009 (“AAN”).
47. Based on the figures in the Law Society’s Annual Reports of the Disciplinary Tribunal Secretariat from 2007 to 2017.
48. Based on the figures in SMC’s and the Law Society’s 2016 Annual Reports.
49. Based on the figures in SMC’s 2016 Annual Report and the Law Society’s Annual Reports from 2013 to 2016 (using the number of Review Committees appointed as a proxy for the number of complaints received).
50. See AAN at [38].
51. See Ho Thong Chew at [11], and [15]–[17].
52. Ong Theng Kiat.
53. Looi Kok Poh at [17].
54. Ibid at [16] and [30].
55. Bolton at 518–519.
56. Ravindra Samuel at [15]; SK Kumar at [101].
57. SK Kumar at [102]–[104].
58. See Solicitors Regulation Authority v Dennison [2012] EWCA Civ 421 and Law Society v Salsbury [2009] 1 WLR 1286. In medical disciplinary proceedings in England and Wales, the so-called “Fitness and Practice” panels are charged not only with establishing that there has been a breach of professional rules amounting to misconduct, but also with whether this misconduct has impaired the doctor’s fitness to practise. In theory, a finding of dishonesty might not automatically result in a finding of impairment because the English courts have made it clear that the issue of whether misconduct has been established and whether the doctor’s fitness to practise is impaired must be considered separately: see Zygmunt v General Medical Council [2008] EWHC 2643 (Admin) and Cohen v General Medical Council [2008] EWHC 581 (Admin). Research by a British scholar, Professor Paula Case, indicates that, in practice, there remains a gap between doctors and lawyers in relation to how the dishonesty rule has been applied. According to Professor Case, while 95% of the cases of proven dishonesty against lawyers resulted in the lawyer being struck off the rolls, only 40% of the cases of proven dishonesty brought against doctors resulted in an order of erasure: see Paula Case, “Doctoring Confidence and Soliciting Trust: Models of Professional Discipline in Law and Medicine” (2013) 29(2) Journal of Professional Negligence 87 (“Paula Case”) at 92.
59. See SK Kumar at [109].
60. Law Society of Singapore v Ismail Bin Atan [2017] 5 SLR 746 (“Ismail Bin Atan”) at [18]
61. See Ahmad Khalis at [79], citing Law Society of Singapore v Ng Chee Sing [2000] 1 SLR(R) 466 at [40], in the context of finding that “conduct unbefitting an advocate and solicitor” under s 83(2)(h) of the LPA is not confined to misconduct in the solicitor’s professional capacity but also extends to misconduct in the solicitor’s personal capacity.
62. Law Society of Singapore v Ong Cheong Wei [2017] SGHC 293 (“Ong Cheong Wei”).
63. SMC DT Inquiry for Dr Currie Chiang Grounds of Decision dated 21 November 2013.
64. SMC DC Inquiry for Dr Quah Weiren Charles Abraham Grounds of Decision dated 27 May 2011.
65. [2000] 3 SLR(R) 23.
66. SMC DT Inquiry for Dr Wu Tze-Liang Woffles Grounds of Decision dated 21 February 2014 (“Woffles Wu”).
67. Ibid at [11].
68. Ibid at [7(c)].
69. [1996] 1 SLR 1.
70. Ong Cheong Wei at [10]–[11].
71. [2015] 5 SLR 201 (“Kwan Kah Yee”).
72. Ibid at [62].
73. See generally, Otto Kahn-Freund, “On Uses and Misuses of Comparative Law” (1974) 37(1) The Modern Law Review 1 for a commentary on the limits of comparative legal research.
74. See Woffles Wu at [7(d)].
75. See Bijl v General Medical Council [2001] UKPC 42 at [13], where Lord Hoffmann cautioned that the career of an otherwise competent and useful doctor who presents no danger to the public should not be sacrificed in order to satisfy a demand for blame and punishment.See also Paula Case at pp 101–102, where the author suggests that the public interest in removing a dishonest doctor from the profession has to be balanced against the public interest in retaining a skilled doctor.
76. Second Reading of the Medical Registration (Amendment) Bill, Singapore Parliamentary Debates, Official Report (11 January 2010) vol 86 at col 1918–1919 (Mdm Halimah Yacob).
77. Woffles Wu at [7(d)].
78. For a similar argument, see Susan Lim (C3J) at [41].
79. See, in the context of legal professionals, Ismail Bin Atan at [18] and SK Kumar at [88], both citing Law Society of Singapore v Nathan Edmund [1998] 2 SLR(R) 905 at [33].
80. [2002] 1 WLR 1691 (“Gupta”).
81. Ibid at [21]. See also Sharief v General Medical Council [2009] EWHC 373 and Mvenge v General Medical Council [2010] EWHC 3529 (Admin) at [16].
82. [2003] UKPC 16.
83. Ibid at [10].
84. M Ravi at [31]; SK Kumar at [86].
85. M Ravi at [32], citing Law Society of Singapore v Chiong Chin May Selena [2005] 4 SLR(R) 320 at [26].
86. Re Knight Glenn Jeyasingam [1994] 3 SLR(R) 366 at [18].
87. SK Kumar at [87], citing Law Society of Singapore v Yap Bock Heng Christopher [2014] 4 SLR 877 at [27].
88. Rick Tham at [22]; M Ravi at [33]–[34].
89. See, generally, Poh Boon Kiat v Public Prosecutor [2014] 4 SLR 892 at [61]. Although this was a case on criminal sentencing, the remarks made therein apply with equal force here.
90. Leslie Lam at [85]–[89]; Law Society of Singapore v Andre Ravindran Saravanapavan Arul [2011] 4 SLR 1184 at [36].
91. Lee Kim Kwong v Singapore Medical Council [2014] 4 SLR 113 (“Lee Kim Kwong”) at [46].
92. Wong Him Choon at [112], citing Lee Kim Kwong at [45].
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