IN THE REPUBLIC OF SINGAPORE

SINGAPORE MEDICAL COUNCIL DISCIPLINARY TRIBUNAL

[2026] SMCDT 4

Between

Singapore Medical Council

And

Dr Hong Ga Sze

... Respondent

GROUNDS OF DECISION

Administrative Law – Disciplinary Tribunals

Medical Profession and Practice – Professional Conduct – Acquitted of Charges

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Singapore Medical Council
v
Dr Hong Ga Sze

[2026] SMCDT 4

Disciplinary Tribunal – DT Inquiry No. 4 of 2026
Prof Leslie Chew SC (Chairman), Dr Swah Teck Sin, A/Prof Daniel Fung, Dr Liauw Chi Yau Phyllis
13 January 2025 and 30 May 2025

Administrative Law – Disciplinary Tribunals

Medical Profession and Practice – Professional Conduct – Acquitted of Charges

25 March 2026

GROUNDS OF DECISION

(Note: Certain information may be redacted or anonymised to protect the identity of the parties.)

Introduction

1. The case arises from a complaint against Dr Hong Ga Sze ("**Dr Hong**") for what is essentially overcharging fees in respect of his services when he was engaged as an expert witness by the Singapore Medical Council ("**SMC**") in connection with the disciplinary inquiry for Dr Lim Mey Lee Susan ("**Dr Lim**"). The case against Dr Lim was, ironically, for professional misconduct in relation to the fees she charged for various services rendered to the late patient ("**the Patient**"). The case comprising 94 charges against Dr Lim was that Dr Lim had charged the Patient medical fees far in excess and disproportionate to the services she rendered and in respect of some to the charges,

allegations that Dr Lim made false representations in relation to some of the invoices she had raised.

2. The extent of the Respondent's services to the SMC as an expert witness are briefly but conveniently set out at paragraphs 4 to 7 of the Respondent's Opening Statement, and in greater detail in the Respondent's Statement of 7 October 2024. We will return to these later.

3. In this inquiry, the Respondent faces (2) two charges for professional misconduct under section 53(1)(*d*) of the Medical Registration Act 1997 ("**MRA**") (collectively, "**the Charges**"). The Charges are set out at **Annex A-1**.

The Disciplinary Tribunal's decision

4. The Disciplinary Tribunal ("**DT**") held two hearings, the first on 13 January 2025 and the second on 30 May 2025. At the end of the second tranche hearing on 30 May 2025, the DT reserved its decision. Having reserved its decision and having duly considered the matter, the DT now gives its decision and the reasons for the decision.

Hearing on 13 January 2025

5. At the hearing, the SMC was represented by Mr Siraj Omar SC (lead counsel), Mr See Chern Yang, and Ms Tan Ei Leen, whilst the Respondent was represented by Mr Lek Siang Pheng (lead counsel), Mr Toh Cher Han, and Mr Isaac Hoe.

6. Apart from Dr Hong, the Respondent, also in attendance were the following witnesses: the SMC's expert witness, Dr PE; the Respondent's expert witness, Dr DE; and Dr DW, whose statement of 7 October 2024 is found in LTJ 1 – 41 ("**Dr DW's Statement**"). Dr DW gave evidence on behalf of the Respondent as a factual witness, explaining how the billing of fees by The Respondent came about and providing evidence of his previous earnings with respect to the potential earnings the Respondent would have lost having spent the day in Dr Lim's DC inquiry as an expert witness, as Dr DW is in charge of billings in the Respondent's clinic.

The SMC's case

7. At the start of the inquiry, Mr Siraj SC on behalf of SMC, read the charges. A plea by the Respondent, the Respondent was taken. The Respondent pleaded not guilty.

8. After the plea was taken, Mr Siraj SC addressed the inquiry by first highlighting to the DT that parties have an Agreed Statement of Facts ("**ASOF**"). Mr Siraj SC then opened his case with reference to the Opening Statement for the SMC ("**SMC's Opening Statement**").

9. Mr Siraj SC informed the DT that he had one expert witness to give evidence on behalf of the SMC. This will be Dr PE who will be providing expert evidence on whether the Respondent overcharged SMC for his engagement as an expert witness.[1] Mr Siraj SC also candidly informed the inquiry that he did not really have positive evidence to provide the inquiry in support of the charges. At the end of it all, Mr Siraj SC submitted that the SMC:

> "… do not have any evidential basis to ask this [DT] to make any orders set out in section 53(2) of the Medical Registration Act ('**MRA**')[2]".[3]

10. Mr Siraj SC then helpfully explained why this DT is being held. In summary, Mr Siraj SC explained that the Complaints Committee ("**CC**") investigating the complaint against the Respondent had twice decided that the complaint was not justified. However, the complainant appealed to the Minister of Health. The Minister then directed a disciplinary inquiry to be held. That being the case, and because the SMC was advised that there was no residual discretion for the SMC to disregard the ministerial direction to hold an inquiry, the present DT was convened. Further, despite its position that it had no positive evidence to sustain the charges, the SMC "did not want to foreclose on the possibility that the tribunal may … come to a different conclusion from that of the Complaints Committee and the expert witnesses".[4]

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[1] Paragraph [31] of SMC's Opening Statement
[2] References to the MRA herein refers to the Medical Registration Act 2020 (revised edition) in effect as at 8 April 2014. Please see paragraph [35] below.
[3] Transcript of Inquiry 13 January 2025 at page 13, lines 21 to 23
[4] Transcript of Inquiry 13 January 2025 at page 14, lines 1 to 23

11. With respect to the evidence, Mr Siraj SC informed the DT that the Respondent's Counsel has indicated that he will not be cross-examining Dr PE.

The Respondent's case

12. Mr Lek opened his case on behalf of the Respondent, making submissions with reference to the Respondent's Opening Statement dated 31 December 2024 ("**Respondent's Opening Statement**"). Mr Lek confirmed he will not be cross-examining Dr PE. Mr Lek also informed the DT that he had two factual witnesses, namely the Respondent, the Respondent himself and Dr DW, whose evidence relates to the information on the earnings of the clinic. The Respondent also has an expert witness, Dr DE. Mr Lek then pointed out that like him, Mr Siraj SC has informed him that Mr Siraj SC does not intend to cross-examine the Respondent and his witnesses.[5]

13. During his opening, Mr Lek argued that based on the evidence available, and the SMC's candid admission that it did not have positive evidence against the Respondent, the DT may summarily dismiss the charges pursuant to regulation 34(5) of the Medical Regulations, 2010 (in effect as at 8 April 2014). According to Mr Lek, regulation 34(5) empowers the DT to discontinue further proceedings if it found that there was insufficient evidence or no evidence to substantiate any charge. Mr Siraj SC agreed with Mr Lek's reliance on regulation 34(5).[6]

14. Mr Lek also raised the issue that the alternative charge should be dismissed for being defective because it lacked clarity and/or particulars. This was raised in the Respondent's Opening Statement at Part IV.[7] Mr Siraj SC argued against the Respondent's application for dismissal of the alternative charge.[8]

15. During the hearing on 13 January 2025, Counsel for both parties in effect took the position that: –

[5] Transcript of Inquiry 13 January 2025 at page 16, lines 9 to 25 and page 17, lines 1 to 7
[6] Transcript of Inquiry 13 January 2025 at page 20, lines 5 to 18
[7] Transcript of Inquiry 13 January 2025 at page 21, lines 11 to 18
[8] Transcript of Inquiry 13 January 2025 at pages 21 to 29

a) Based on the evidence available and put before the tribunal, the charges against the Respondent could be dismissed summarily.

b) Alternatively, and since the evidence of both parties are not being challenged by cross-examination, the inquiry could be dealt without a hearing in the usual way with witnesses taking the stand. The DT could deal with the matter based on the documents and material put in as evidence. In effect, just like a 'documents only' arbitration.

16. In the result, the DT stood down the matter to consider Counsel's suggestion as above.

17. After standing down the matter, and after reconvening, the DT noted and declared as follows:

> "Based on today's hearing, we have accepted all the evidence in, with the agreement of both counsel, on the basis that the evidence is in the record without cross-examination of the witnesses on both sides. Based on that evidence, the tribunal will decide and make its decision. In that [aspect], we will reserve our decision and will revert to parties in due course. Upon the decision being made, we should then, of course, deal with the consequential matters that follow the outcome of the case".[9]

Hearing on 30 May 2025

18. As earlier referred to, in view of the unusual position taken by Counsel, the DT had on 13 January 2025 adjourned the hearing to consider the matter.

19. Having adjourned the first tranche hearing and having declared that the DT would deal with the matter based on the documents as counsel had submitted, the DT proceeded to review the matter. In the process, however, the DT re-considered Counsels' submission to have the matter decided on 'documents only'. Having duly considered the matter again, the DT declined to have the matter proceeded on what would be a sort of 'documents only' hearing commonly practiced in specific types of arbitration cases.

20. The DT declined to adopt the 'documents only' approach for two important reasons. First, after due consideration of the relevant legislation namely the Medical Registration

[9] Transcript of Inquiry 13 January 2025 at page 36, lines 11 to 20

Act, 2020 (revised edition in force as at 8 April 2020) and the relevant subsidiary legislation, the DT finds that it is at least unclear whether the proceeding could be conducted in the manner suggested by counsel. Secondly, the DT was convened to inquire into the alleged misconduct of a medical practitioner. The DT should, in our view, deal with the matter transparently and have the matter 'heard' fully in open proceedings. As the well-known quote by Lord Hewart in the case of *R v Sussex Justices* [1924] 1 KB 256, it states that:

> "It is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done."

This has principle has been echoed by the courts in Singapore. As recently as in 2025, the Chief Justice referred to this principle in the case of *Re Pulara Devminie Somachandra* [2025] SGHC 155 at paragraph 4 when the Chief Justice observed as follows:

> "The principle of open justice rests on the important consideration of public policy, that justice must not only be done but "should manifestly and undoubtedly be seen to be done" (R v Sussex Justices, Ex p McCarthy [1924] 1 KB 256 at 259, per Lord Hewart CJ). This is so deeply entrenched in the common law tradition that it has even been described in an oft-cited decision of the House of Lords as a "sound and very sacred part of the constitution of the country and the administration of justice" (Scott v Scott [1913] AC 417 at 473)."

21. In the circumstances, a second tranche hearing was fixed and was duly held on 30 May 2025. At this second tranche hearing, the DT directed that the Respondent, and the two expert witnesses take the stand to formally affirm and give their evidence based on their witness statements. This was duly done. The Respondent and the two expert witnesses were duly offered for cross-examination. However, as previously intimated, both Counsel did not cross-examine any of the witnesses.

22. Further, by agreement of parties and with the consent of the DT, attendance of Dr DW who has made a Statement dated 7 October 2024 was dispensed with but with the direction that her evidence would be admitted without challenge or cross-examination. Dr DW's evidence consisted of how the relevant billings were done at the Respondent's clinic as well evidence on what past billings of the clinic were and what the Respondent had earned on specified days of his medical practice in connection with the Respondent's justification of his fees rendered to the SMC in this case – see paragraphs 67 to 69 below.

23. For the purposes of these proceedings, the DT was referred to and considered the following documents, which were marked accordingly:

a) SMC's Opening Statement dated 31 December 2024 ("**SMC's Opening Statement**");

b) Respondent's Opening Statement dated 31 December 2024 ("**Respondent's Opening Statement**");

c) Agreed Statement of Facts marked as ASOF 1 – 13 ("**ASOF**");

d) Agreed Bundle of Documents marked as:

i) Volume 1 marked as ABOD (1) 1 – 583

ii) Volume 2 marked as ABOD (2) 1 – 608

iii) Volume 3 marked as ABOD (3) 1 – 516

iv) Volume 4 marked as ABOD (4) 1- 690

(Collectively referred to as "**ABOD**")

e) Statement of Respondent, Dr Hong, marked as HGS 1 – 158 ("**Dr Hong's Statement**");

f) Dr DW's Statement marked as LTJ 1 – 41;

g) Bundle of Expert Reports tabs 1 – 5 ("**BER**");

h) SMC's Bundle of Authorities marked as SBOA 1 – 148;

i) Respondent's Bundle of Authorities marked as RBOA 1 – 274;

j) Respondent's Bundle of Documents marked as RBOD 1 – 6;

k) SMC's Closing Submissions dated 21 July 2025 ("**SMC's Closing Submissions**");

l) Applicant's (SMC's) Bundle of Authorities for Closing Submissions dated 21 July 2025;

m) Applicant's (SMC's) Supplementary Bundle of Authorities for Reply Submissions dated 6 August 2025;

n) Respondent's Closing Submissions dated 21 July 2025 ("**Respondent's Closing Submissions**");

o) Respondent's Supplementary Bundle of Authorities dated 21 July 2025;

p) Respondent's Reply Submissions dated 6 August 2025; and

q) Respondent's 2nd Supplementary Bundle of Authorities dated 6 August 2025.

The Background Facts

The Agreed Facts

24. Both the SMC and the Respondent had agreed to the facts that formed the context of the charges against the Respondent. These facts are contained in the ASOF.

25. The salient facts which are relevant to the DT's consideration in these proceedings may be summarized as follows:

a) The Respondent was engaged by the SMC to be their expert witness in a Disciplinary Committee Inquiry concerning Dr Lim ("**Lim's DC inquiry**") for

overcharging fees for services rendered to a patient in Brunei (who has since passed on).[10]

b) The Respondent provided the Lim's DC inquiry with an expert report dated 20 July 2009.[11]

c) The Respondent testified at the Lim's DC inquiry on 8 April 2010. His testimony lasted about five hours.[12]

d) In respect of his services as an expert witness for the SMC in the Lim's DC inquiry, the Respondent billed the SMC the following sums[13]:

Remarks	**Amount ($)**	**Sub-total ($)**
Expert evidence on 8 April 2010	14,000	
Standby for Trial 4 February 2010	6,000	
Trial Preparation 18 March 2009 to 3 February 2010/pre-trial discussions with lawyers – WongPartnership	14,000	
Preparation of Trial Report	6,000	
Sub-total		40,000
Add GST @ 7%		2,800
Grand Total		**42,800**

The SMC's Case

26. The essence of the SMC's case as contained in the two charges are that:

a) The Respondent had intentionally and deliberately departed from standards observed or approved by members of the profession of good repute and competency by rendering fees to the SMC for his work as their expert witness, that

[10] ASOF, page 2, paragraphs 2 to 3
[11] ASOF, page 3, paragraph 3
[12] ASOF, page 6, paragraph 18
[13] ASOF, page 7, from paragraph 21

amounted to gross overcharging and/or were far in excess of and disproportionate to what he was entitled to charge ("**First Charge**"); and

b) The Respondent had intentionally and deliberately departed from standards observed or approved by members of the profession of good repute and competency, by rendering fees to the SMC for his work as their expert witness, that were excessive ("**Alternative Charge**").

27. Consequently, because of the above allegations, the Respondent is said to be guilty of professional misconduct within the meaning of section 53(1)(*d*) of the Medical Registration Act, (2020 revised edition in force as at 8 April 2014).

The Respondent's case

28. Although the SMC prosecuting the charges against the Respondent must prove the case against him, in this unusual case, it is perhaps more useful for the DT to begin with a review of the Respondent's position in defence and the evidence he relies upon. This is because to prove the charges against the Respondent, the SMC will have to advance their case based on what the Respondent had done. This would therefore be based on what the Respondent maintains in his defence.

29. Mr Lek, appearing for the Respondent, opened the Respondent's case, essentially rejecting entirely the charges preferred against the Respondent in these proceedings. Apart from denying liability on the merits of the charges, Mr Lek had also submitted that the Alternative Charge put forward by the SMC was defective and should be dismissed on the ground that it is lacking in clarity and/or particulars as to the case that the Respondent is required to meet.[14] The DT deals with this application below.

I. The Relevant Statutory Law

30. Over the years, there have been very many revisions to the law applicable to the disciplinary processes of the medical profession. In the result, the present case straddles

[14] Respondent's Opening Statement, paragraph 12

several amendments of the Medical Registration Act. It is therefore necessary to set out clearly what legislative provisions are applicable to the disciplinary charges against the Respondent in the current proceedings. Soon after the end of the first tranche hearing, the DT being troubled by what exactly were the relevant legislative provisions and frameworks applicable to these proceedings, did direct the parties to address this matter at the second tranche hearing. Counsel for the SMC helpfully produced a diagram of the legislative timelines which in turn helped the DT to appreciate which were the relevant legislative provisions.

31. Having heard Counsel for the SMC on the relevant law, and after reviewing the relevant legislative provisions themselves, for clarity, the DT sets out below its understanding of the application of the relevant legislative provisions. The DT observes and notes as follows:

a) The complaint against the Respondent was made on 8 April 2014.

b) The Ministry of Health directed the SMC to appoint a Disciplinary Tribunal to hear and investigate the complaint on 16 October 2020.

c) The DT was appointed on 8 August 2023 and convened its 1st pre-inquiry conference on 6 November 2023.

32. Based on the above, the DT notes and finds as follows:

a) The complaint against the Respondent having been made on 8 April 2014 meant the Medical Registration Act (Chapter 174) that was in effect between 15 September 2012 to 1 June 2014 ("**the Act**"), the applicable Act[15] retrieved on 27 October 2025. The Act was, however, amended in 2010, which amendment came into effect on 1 December 2010. By section 41(3) of the amended Act, Part VII of the Act dealing with the disciplinary process was preserved. Hence, the Respondent was charged under section 53(1)(*d*) of the Act. For the purposes of these proceedings the relevant section 53(1)(*d*) of the Act reads as follows:

[15] Please see https://sso.agc.gov.sg/Act/MRA1997/Historical/20120915

> "53.—(1) Where a registered medical practitioner is found by a Disciplinary Tribunal — (d) to have been guilty of professional misconduct; or … the Disciplinary Tribunal may exercise one or more of the powers referred to in subsection (2)."

b) Likewise, the Medical Registration Regulations relating to the procedural aspects of the disciplinary process and applicable to these proceedings are the 2010 Regulations, specifically the 1 March 2013 version because the complaint against the Respondent was on 8 April 2014. The Medical Registration Regulations too have been amended several times. Specifically, the Medical Registration Regulations were amended on 1 July 2022. However, regulation 26 of the Medical Registration (Amendment) Regulation, 2022 preserved the previous regulations, in force immediately before 1 July 2022 so that those regulations as at 1 March 2013 applied to the present proceedings

33. Accordingly, in considering the complaint in these proceedings, the DT will rely on and refer to the abovementioned relevant legislation and the applicable provisions, where necessary.

The application to dismiss the charges pursuant to regulation 34(5) of the Medical Registration Regulations, 2010 on the grounds that there is no evidence to support the charges

34. At the outset, we address the invitation, somewhat unusually, by both Counsels to consider dismissing the charges pursuant to regulation 34(5) of the Medical Registration Regulations, 2010 (the 1 March 2013 version), on the basis that there is insufficient evidence to substantiate the charges.

35. Counsel for the SMC candidly stated in his SMC's Opening Statement that the SMC did not have "evidential basis to ask this DT to make any of the orders set out in section 53(2) of the Medical Registration Act, 2020 revised edition" (the version in force on 8 April 2014)[16].

[16] Transcript of Inquiry 13 January 2025 at page 13, lines 20 to 23

36. However, Counsel went on to address the question as to why then is the matter before the DT. Counsel for the SMC went on to elaborate on the reasons for this. First, Counsel for the SMC pointed out that there was a ministerial direction for the SMC to hold the disciplinary inquiry and in Counsel's view, there was no discretion on the part of the SMC to dispense with such inquiry. Second, and perhaps more importantly for this DT, Counsel pointed out that there is a complaint that is extant. While the CC did not find sufficient basis for the complaint against the Respondent to be put before a DT, this duly convened DT may have a different view. Hence, the SMC's decision to proceed with the disciplinary inquiry.

37. In this regard, bolstered by the SMC's position as stated above, that is, on the face of it, there is no evidence to support the charges, the Respondent's Counsel pointed the DT to regulation 34(5) of the Medical Registration Regulations, 2010 (1 March 2013 version) and submitted that the DT had the power to dismiss the charges on the basis that there was insufficient evidence to substantiate the charges against the Respondent.

38. The DT duly considered the submission by both counsel on the DT's power to rely on regulation 34(5) of the Medical Registration Regulations, 2010 (1 March 2013 version) to dismiss the charges on the basis that Counsel for the Respondent had argued.

39. Having duly considered the oral arguments, the Opening Statements of the SMC and the Respondent respectively, and having reviewed the evidence put before the DT, we found that we could not say peremptorily that the charges were not made out without more. There being the evidence of the two experts put before us for consideration. Despite the unusual position of Counsel for the SMC, the DT was of the view that the DT should, nevertheless, examine and review the evidence to properly decide if the charges against the Respondent were made out or not. In taking this approach and declining to peremptorily dismiss the charges, the DT was guided in the principle that the DT had the responsibility to consider all the evidence put before it. Having been duly convened by law, the DT owed a duty to properly assess if the evidence before it went one way or the other.

40. We should point out that our decision to consider the case in its entirety is based on both the applications made by the Respondent and the merits of the case. Although Counsel

for the Respondent had asked the DT to dismiss the charges for insufficient evidence under regulation 34(5) of the Medical Registration Regulations 2010 (1 March 2013 version), Counsel for the Respondent, nevertheless, left it the DT to consider the matter 'in totality'.[17]

41. The DT now considers the application to dismiss the Alternative Charge, by the Respondent.

The DT's decision on the Respondent's submission that the Alternative Charge is defective and should be dismissed

42. It will be recalled that the Respondent both in Counsel's Opening and Closing Statements and in oral submissions, argued that the Alternative Charge is defective for want of clarity and particularity and should be dismissed.[18]

43. Arising from the DT's request for clarification as to the relevant statutory provisions which were applicable here and after discussion between both Counsel and the DT, Counsel for the SMC amended the charges to include a reference to the relevant legislation applicable. In the result the charges were duly amended as set out in **Annex A-2**.

44. Before examining the Alternative Charge and the argument for dismissal of the charge by the Respondent, for convenience, we reproduce the alternative:

> "That you, Dr Hong Ga Sze did charge the Singapore Medical Council for services rendered by you to SMC from 18 March 2009 to 8 April 2010, fees which amounted to gross overcharging and/or far in excess of and disproportionate to what you were entitled to charge for services you rendered, and the particulars are:
>
> (1) By way of tax invoice number 36212 issued by GS Hong Surgical Care Private Limited, dated 30 June 2010, you rendered fees amounting to $42,800 inclusive of GST, for your services as an expert witness in the inquiry against Dr. Susan Lim, a copy of which is attached in Schedule A;
>
> (2) The fees of $42,800 allegedly comprised $14,000 for giving expert evidence on 8 April 2010, $6,000 for being on standby for trial on 4 February 2010, $14,000

[17] Transcript of Inquiry 13 January 2025 at page 30, lines 13 to 14
[18] Respondent's Opening Statement, page 8, paragraph 12

> for trial preparation from 18 March 2009 to 3 February 2020, and $6000 for preparation of the trial report;
>
> (3) For services rendered by you, the fees of $42,800 were excessive,
>
> and that in relation to the facts alleged, you have been guilty of professional misconduct under section 53(1)(*d*) of the Medical Registration Act (2020 revised edition)(version in force as at 8 April 2014)."

45. As already noted, the Respondent argued that the Alternative Charge was lacking in clarity and/or particulars as to the case that the Respondent is required to meet. This submission is found both in the Respondent's Opening Statement[19] and Closing Statement[20] respectively. Counsel for the Respondent reiterated the same in his opening oral submission at the first hearing on 13 January 2025.

46. In making the argument that the Alternative Charge was lacking in clarity or/or particulars, Counsel for the Respondent relied on the principles laid down by the Court of Three Judges ("**C3J**") in the case of *Ang Pek San Lawrence v Singapore Medical Council* [2015] 1 SLR 436 ("***Lawrence Ang***"). In the case of *Lawrence Ang*, the C3J referred to their earlier decision in *Low Cze Hong* [2008] 3 SLR(R) 612 ("***Low Cze Hong***"). Relevant to the present inquiry is the explanation by the C3J in Lawrence Ang, supra at [37], where the court stated that:

> "In summary … professional misconduct can be made out in at least two situations: first, where there is an intentional and deliberate departure from standards observed or approved by members of the profession of good repute and competency; and second, where there has been such serious negligence that it objectively portrays an abuse of the privileges which accompany registration as a medical practitioner …".

47. Based on the explanation provided by the C3J in *Lawrence Ang*, supra, as laid down at paragraph 37 of the case, the Respondent's complaint as to the Alternative Charge is that it did not state which limb of the elements of professional misconduct the Respondent had to answer. The basis of the Respondent's argument that the Alternative Charge was lacking in clarity and/or particulars are clearly set out in both the Respondent's Opening and Closing Statements. The oral argument was put forth by Mr Toh on behalf of the Respondent.[21] Relying on the *Lawrence Ang* case, supra, Counsel for the Respondent, argued that as the prosecuting agency the SMC must (a) specify in the charge the precise

[19] Respondent's Opening Statement, page 8, paragraph 12
[20] Respondent's Closing Statement, page 12, paragraph 11
[21] Transcript of Inquiry 13 January 2025 at page 25, line 9 to page 29, line 5

allegation that is being made against the medical practitioner concerned; and (b) specifically setting out or indicating which limb of *Low Cze Hong*, supra, is being invoked – see *Lawrence Ang*, supra, at paragraph 40. Essentially, Counsel for the Respondent is saying that the Alternative Charge by merely stating that the Respondent "… have been guilty of professional misconduct …*",* the SMC has failed to specify the precise allegation by not indicating which limb of *Low Cze Hong* is being invoked. Consequently, the Alternative Charge is defective for lacking clarity and/or particulars and should be dismissed.

48. In oral argument at the first hearing on 13 January 2025,[22] in response to the Respondent's challenge that the Alternative Charge is defective, Counsel for the SMC essentially argued that:

a) The Respondent's argument assumes that by virtue of *Low Cze Hong*, supra, 'professional misconduct can only occur under one of two limbs in *Low Cze Hong*'.[23] That, Counsel for the SMC says is incorrect.

b) The case of *Wong Him Choon* [2016] SGHC 145 ("***Wong Him Choon***") at paragraph 17 clarifies that,

> "To give context on the way the case was advanced before the DT, we highlight at the outset that this court in *Low Cze Hong* accepted that 'professional misconduct, which the MRA sanctions against, can be made out in at least two situations."

Having set out the two limbs in *Low Cze Hong*, at paragraph 51 of the same case, the C3J noted that it had previously expressed the view in *Lim Mey Lee Susan v Singapore Medical Council* [2013] 3 SLR 900 ("***Lim Mey Lee Susan***") at paragraphs 39 to 40, that

> "professional misconduct would extend to the breach of other ethical obligations, such as a doctor's breach of the ethical obligation to charge a fair and reasonable fee for the services rendered to his or her patient. It is therefore axiomatic from our finding of professional misconduct in the form of overcharging in *Lim Mey Suan Susan* that the situations falling within the

[22] Transcript of Inquiry 13 January 2025 at page 21, line 13 to page 25, line 12
[23] Transcript of Inquiry 13 January 2025 at page 22, lines 12 to 13

> ambit of 'professional misconduct' within section 53(1)(*d*) of the MRA *are not limited* to the situations espoused in *Low Cze Hong*" *(emphasis added)*.

c) Referring to the case of *Singapore Medical Council v Lim Lian Arn* [2019] SGHC 172 ("***Lim Lian Arn**")* at paragraph 27, Counsel for the SMC pointed to the fact that the court noted that,

> "The two limbs of *Low Cze Hong* in broad terms cover intentional breaches and negligent breaches respectively. We accept that these may not necessarily be exhaustive of the situations that may amount to professional misconduct. Indeed, we have on previous occasions expressed the view that professional misconduct would extend to grave breaches of ethical obligations such as a breach of the obligation to charge a fair and reasonable fee for services rendered."

d) The alternative charge here is therefore deliberately worded widely to catch a situation where neither of the limbs of *Low Cze Hong* are satisfied but the DT may, nonetheless, come to the view that there is professional misconduct.

The DT's finding and decision on the Respondent's application to dismiss the Alternative Charge

49. The DT finds that the Alternative Charge is not so unclear in its particulars that it should be dismissed as applied for by the Respondent.

50. We agree with Counsel for SMC that the charge may be cast in broad terms to cover the situation where the Respondent is found to be in breach of other professional and ethical obligations which may not be deliberate or intentional as set out in the first charge. As Counsel for the SMC has rightly pointed out, the two limbs set out in *Low Cze Hong*, supra, are not meant to be exhaustive. Indeed, the C3J stated as much in *Low Cze Hong*, supra, where they explained that the two limbs laid down in that case are not necessarily exhaustive.[24]

51. The DT also finds that as noted by the C3J in *Lim Lian Arn* supra '*a breach of the obligation to charge a fair and reasonable fee for services rendered'* could amount to

[24] Reference to *Lim Lian Arn*, supra, at paragraph 27

professional misconduct.[25] The Alternative Charge relates to the Respondent charging the fees of $42,000 which is excessive and therefore a breach of the Respondent's ethical obligations to his patient and which amounts to professional misconduct within the meaning of section 52(1)(*d*) of the Act. The DT finds support in the clarification made by the C3J in *Lim Lian Arn*, supra. The charging of excessive fees may amount to a breach of the obligation to charge a fair and reasonable fee for services rendered and in turn may amount to professional misconduct. The Alternative Charge expressly states that the conduct complained of, is the charging of excessive fees. The DT finds that it is sufficiently particularized for the Respondent to be able to answer. Accordingly, the DT does not find, as the Respondent has complained, that the Alternative Charge is defective for lacking in clarity or particulars.

52. In the circumstances, the DT rejects and dismisses the Respondent's application to dismiss the Alternative Charge. The DT will accordingly proceed to consider the merits of the case based on the two alternative charges.

Having dealt with the Respondent's application to dismiss the Alternative Charge. The DT now proceeds to consider the case on its merits.

The Law in relation to the two charges

53. It will be recalled that the Respondent is charged with two charges in the alternative, both for charging excessive fees which act, the SMC alleges amounts to professional misconduct under section 52(1)(*d*) of the Medical Registration Act (in force as at 8 April 2010).

54. It is well established that the law that the burden of proof in respect of the charges against the Respondent is upon the SMC. It is trite law that the burden of proof lies with the party that asserts a claim. In criminal proceedings which a disciplinary inquiry is likened to, the prosecution and our case, the SMC must prove the charges against the Respondent. The Respondent does not have to prove his innocence. Perhaps, more crucially the SMC

[25] Reference to *Lim Lian Arn*, supra, at paragraph 27

must prove the charges beyond a reasonable doubt. That being the standard of proof the SMC must meet. This means that the SMC must:

a) Prove the charges beyond reasonable doubt. This has been stated in *Ang Peng Thiam* v Singapore Medical Council [2017] 5 SLR 356 ("***Ang Peng Thiam***") at paragraph 32 where the C3J observed that:

> "In order for the convictions against Dr Ang to be upheld, the SMC will have to prove, *beyond reasonable doubt,* that Dr Ang had committed the acts alleged in the charges …" (*emphasis added*)

b) Show that the Respondent's act of charging the fees in the Lim's DT inquiry, was either:

i) a deliberate departure from standards observed or approved by members of the profession of good repute and competency; or

ii) seriously negligent that it objectively portrays an abuse of the privileges which accompany registration as a medical practitioner; or

iii) in grave breach of some other ethical obligation such as the obligation to charge a fair and reasonable fee for his services.

See *Low Cze Hong, supra at [37] and Lim Mey Lee Susan supra at [43].*

The Evidence in relation to the two charges

55. As previously noted, there are two factual witness statements and two expert reports including those of the Respondent, Dr Hong. The DT notes for the record that Dr DW was not called to give oral evidence, but her evidence contained in her statement dated 7 October 2024 was by agreement of the parties and with the consent of the DT admitted as evidence. In respect of Dr DW's statement, the DT is satisfied that pursuant to regulation 34 (4) of the Medical Regulations, 2010 (1 March 2013 version), the DT may vary the way evidence is received and has done so in respect of Dr DW's evidence.

56. The DT notes that based on the way Counsel had approached the admission of the evidence, all the evidence provided by the witnesses in their witness statements are admitted as unchallenged. In other words, all the witness statements stand as evidence, subject to the DT's review.

57. Although the SMC must prove the charges beyond reasonable doubt, it is more appropriate for the DT to first examine the evidence of the Respondent. This is because it is the conduct of the Respondent raising the invoices to charge for his services to the SMC that forms the basis of the present disciplinary charges. Further, in the present inquiry, the evidence put forth through the expert witnesses for the SMC and the Respondent respectively is naturally based on the Respondent's fees billed to the SMC. These are the subject matter of the charges.

The Respondent, Dr Hong's defence – Statement of Dr Hong dated 7 October 2024

58. The Respondent's response to the charges is set out in his statement of 7 October 2024.

59. The Respondent denied the charges and pleaded 'not guilty'. In the case of both charges levelled against the Respondent, the quantum of fees that is said to amount to 'gross overcharging and/or far in excess of and disproportionate' as in the First Charge or excessive as in the alternative charge, is $42,800 comprising:

a) $14,000 for giving evidence as an expert;

b) $6,000 being on standby for trial;

c) $14,000 for trial preparation; and

d) $6,000 for preparation of the expert report.

60. The total amount charged by the Respondent was thus $40,000. With GST of 7% applied to $40,000 the amount invoiced by the Respondent came to $42,800, which is the basis of both charges.[26]

61. In paragraphs 59 to 79 of the Respondent's Statement, he sets out in detail why each component of his fees as mentioned in paragraph 59 above do not amount to 'gross overcharging and/or far in excess of and disproportionate (First Charge) or are 'excessive' (Alternative Charge).

62. In defending his fees, the Respondent relied on the Singapore Medical Association Guidelines on Fees (4th edition) 2006 ("**the SMAGOF**") and the National University Hospital Fees Schedule of 2014 ("**the NUH Schedule**"). The Respondent makes the case that the fees he charged were in the main comparable to those provided in the SMAGOF and the NUH Schedule. Those comparisons, according to the Respondent showed that his fees, the subject of the charges here, were not excessive or disproportionate and did not represent gross overcharging either. It must be noted, however, that the SMAGOF was apparently first introduced in 2006 by the Singapore Medical Association but withdrawn after the same was found to be anti-competitive by the Singapore Competition Commission. In the case of the NUH Schedule, the DT notes that it was effective in 2014 but there is no evidence to show whether it is still current. It was not current at the time of the Respondent billed the SMC which was in 2010.

63. The Respondent used the SMAGOF and the NUH Schedule as comparisons and his basis to justify his fees, which are now the subject of the inquiry, because there is no publicly available data on how doctors charged their fees. This, it will be seen, is the evidence of the SMC's expert witness, Dr PE as well. We will refer to Dr PE's evidence later.

64. From the Respondent's evidence, he spent at least 41 hours on the whole engagement as expert for the SMC in the Lim's DC inquiry. This is borne out by the following:

[26] Reference to tax invoice of G.S. Hong Surgical Care Pte Ltd (Dr Hong's clinic) dated 30 June 2010 and Annex A to Dr Hong's Statement (in 2010, the GST rate was 7%)

S/N	Work done	Time spent	Invoice Amount
1.	Preparing and drafting the Expert Report[27]	10 to 12 hours	$6,000
2.	Trial preparation between 18 March 2009 and 3 February 2010[28]	12.2 hours (including 7.2 hours of discussions with lawyers)	$14,000
3.	Standby time for trial[29]	4 hours	$6,000
4.	Testifying at inquiry on 8 April 2010[30]	10 hours set aside for hearing day (10 am - 6 pm + 2 hours meeting with lawyers)	$14,000

65. The Respondent's detailed defence in respect of each component of his fees which are the subject matter of the charges against him are as follows:

a) Preparation of Expert Report – $6,000 [31]

The Respondent explains that the amount of $6,000 is reasonable because:

i) The Lim's DC inquiry was complex;

ii) The Lim's DC inquiry spanned 110 days;

iii) He spent 10 to 12 hours preparing his expert report;

iv) As a senior consultant under the NUH Schedule he is entitled to charge $1,000 per hour for this work[32]; and

[27] Dr Hong's Statement, page 20, paragraph 60
[28] Dr Hong's Statement, pages 22 to 23, paragraphs 63 to 67
[29] Dr Hong's Statement, pages 24 to 25, paragraphs 68 to 69
[30] Dr Hong's Statement, pages 26 to 27, paragraph 74
[31] Dr Hong's Statement, pages 20 to 22, paragraphs 59 to 62
[32] Dr Hong's Statement, page 101, item 2 – specifically the table at 2.1 where it shows that 'Preparation/reading/ Preparation Time with Counsel/Refreshing/Recall Time, the rate for Senior Consultant is $1,000 per hour'

v) The fee of $6,000 is less than that suggested by the NUH Schedule.

b) Trial Preparation - $14,000 [33]

Similarly, the Respondent's case is that this amount too is reasonable because:

i) He spent 12.2 hours for trial preparation between 18 March 2009 and 3 February 2010 hours on 8 April 2010 with the lawyers – 7.2 hours in discussions/meetings with the lawyers[34] and another 5 hours reviewing the materials for the Lim's DC inquiry[35]; and

ii) Under the NUH Schedule, the Respondent's charge out rate would be $1,000 per hour. In this case $14,000 is translated to $1,147.54 per hour, which is higher than the NUH Schedule rate. The rate is only slightly higher, and the CC upon review did not find these fees unreasonable.[36]

c) Standby for Trial - $6,000 [37]

The Respondent's justified this component of his fees as follows:

i) Two days before he was to testify in the Lim's DC inquiry on 3 February 2010, he was told that he would be testifying on 4 February from 10 am to 1 pm instead.

ii) He accordingly set aside time from his clinic work and was on standby on 4 February from 10 am to 1 pm. He was not called to testify that day.

iii) He had set aside the entire morning to standby for the inquiry – the period from 9 am to 2 pm, a period of 5 hours.

[33] Dr Hong's Statement, pages 22 to 24, paragraphs 63 to 67
[34] Dr Hong's Statement, paragraph 64
[35] Dr Hong's Statement, paragraph 65
[36] Dr Hong's Statement, paragraph 67
[37] Dr Hong's Statement, pages 24 to 26, paragraphs 68 to 72

iv) The CC at the appeal stage did not find these fees unreasonable.[38]

v) He did not consider the fees for the change to the date when he was supposed to testify in the Lim's DC inquiry. He referred to Dr DE's Expert Report on this.

d) Giving Evidence - $14,000 [39]

For this component of his fees, the Respondent explained that it too was reasonable because:

i) He has set aside a full working day about 10 hours – 10 am to 6 pm for the hearing/inquiry testimony and 8 am to 10 am for preparation with the lawyers on the same day; and

ii) Based on an opportunity cost method, he would have lost potential earnings for that day. The Respondent provided evidence through Dr DW who did the computation of potential lost earnings in her Statement. The day the Respondent spent testifying in the Lim's DC inquiry was Thursday, 8 April 2010. On the opportunity cost approach, the Respondent computed his approximate potential loss of earnings on that day based on what he had earned the previous three Thursdays, namely, 18 March ($12,800), 25 March ($18,000) and 1 April 2010 ($16,000). This worked out to an average of $15,000 which is higher than what he charged the SMC, $14,000. This shows the fee the Respondent charged the SMC for this component is reasonable. (It is noted that for this component of his fees, Dr DW's evidence is based on actual figures – see paragraph 67 below).

66. In terms of earnings, which were potentially lost while engaged in giving evidence as a witness on 8 April 2010 in the Lim inquiry, as set out in paragraph 65(d)(ii) above, the Respondent relied on the evidence provided by Dr DW in her witness statement. Dr DW

[38] Dr Hong's Statement, paragraph 70; and paragraph 22 of the CC's decision at Tab 3, page 127 of Dr Hong's Statement
[39] Dr Hong's Statement, pages 26 to 28, paragraphs 73 to 79

is the person in charge of the billings in the Respondent's clinic. Her evidence which was admitted without challenge and without cross-examination, in the main is as follows.

67. Based on the date the Respondent spent giving testimony on 8 April 2010, which turns out to be a Thursday, Dr DW produced evidence of the Respondent's earnings on the three previous Thursdays at his clinic, on 18 March 2010, 25 March 2010 and 1 April 2010. The earnings on these three preceding Thursdays were as follows:

S/N	Date	Earnings	Evidence
1.	18 March 2010	$12,782	Dr DW's Statement, pages 4 to 5, paragraphs 9 to 11
2.	25 March 2010	$21,155.90	As above
3.	1 April 2010	$19,415.80	As above

68. Based on the above breakdown of earnings on the previous three Thursdays prior to the day the Respondent testified at the Lim's DC inquiry on 8 April 2010, he would have potentially be able to earn and would, therefore, have lost an average of ($12,782 + $21,155.90 + $19415.80) / 3 = $17,784 for Thursday 8 April 2010.

69. Dr DW's evidence also showed that the Respondent had earned fees for surgeries done on the three previous Thursdays as well.[40] The evidence here shows that the Respondent earned surgical fees on those days totalling $29,275.20. Similarly, if we take an average of the three days, (18 March, 25 March and 1 April) it would be $29,275.20 / 3 = $9,758.40, meaning the Respondent potentially would have earned or lost earnings of $9,758.40 in respect of the day he testified at the Lim's DC inquiry.

70. At the end of it all, the Respondent stated at paragraph 55 of his statement of 7 October 2024, that:

> "In my view, the professional fees that I had charged in the invoice were reasonable, taking into account the nature of the professional engagement (as an expert witness for a contested DC inquiry), my area of expertise, my seniority, my time spent and/or set aside for the engagement and also my opportunity costs for taking on the engagement."

[40] Dr DW's Statement, Tab 5, page 6, paragraph 12(c)

71. In support of his defence, the Respondent also highlighted the fact that:

a) In the taxation of SMC's costs in the Lim's DC inquiry, the SMC themselves had taken the position that the Respondent's fees charged as an expert witness were reasonable.[41] Here it must be noted, however, that on a taxation of the Respondent's fees, the Court taxed the bill down to $5,000;

b) On 31 July 2015, in reviewing the complaint against the Respondent, the CC found his fees reasonable;[42] and

c) On 21 December 2018, on a reinvestigation of the complainant's complaint on his appeal to the Minister for Health, the CC also determined that there was no prima facie evidence that the Respondent had grossly overcharged in excess of the ethical limit on doctor's fees under section 49(1)(*i)* of the Act and accordingly no formal inquiry by a Disciplinary Tribunal was necessary.[43]

72. Apart from his own response to the charges, the Respondent engaged an expert to provide evidence in support of his case. The expert witness, Dr DE provided his evidence in his statement of 29 April 2024 ("**Dr DE's Expert Report**").[44] We will consider the evidence of Dr DE after we have reviewed the SMC's expert evidence against the Respondent.

The DT's Findings on The Respondent's evidence

73. Although in this inquiry, it is for the SMC to prove the charges that are levelled against the Respondent, at this point, the DT makes the following observations and findings of the Respondent's evidence:

a) We note that and accept that there does not appear to be any standardized rates for the fees of doctors particularly in private practice. More crucially, perhaps, this

[41] Dr Hong's Statement, paragraph 55, refencing BC 111/204
[42] Dr Hong's Statement, tab 2
[43] Dr Hong's Statement, tab 3
[44] BER, tab 3

case revolves around fees to be charged for work as an expert witness not for practicing medicine. It is therefore not surprising that there are no publicly available fee rates.

b) The Respondent and as we shall see later, the two expert witnesses as well, all refer to the SMAGOF and the NUH Schedule as reference for comparison in determining the reasonableness of the Respondent's fees. These two references are not necessarily current or prevailing but appear to be the best approximation available. Whilst not ideal, DT accepts these as the only available evidence.

c) At this stage, we would note that based on the Respondent's evidence as above and his explanations he provides in answer to the charges, the DT finds that the Respondent's defence to the charges not unreasonable.

d) Overall, the DT finds that save for the component of his fees relating to his Standby for the Inquiry referred to paragraph 65 c) above, the other components appear to be within the range or not excessive with reference to the SMAGOF and the NUH Schedule.

e) For the component for Standby – see paragraph 65 c) above, if we were to adopt the opportunity cost approach as the Respondent did for the day he gave testimony on 8 April 2010, it would appear that the $6,000 he billed SMC is not unreasonable or comparable to what he is entitled to claim as potential loss of earnings. Based on his opportunity cost approach on the evidence of Dr DW – see paragraph 67 above – the average potential loss for this Standby period would be half of the average computed by Dr DW i.e., $17,784 / 2 = $8,892 on the basis that the standby period would amount to half a day. Seen in this way, the $6,000 billed by the Respondent for this component would not be excessive.

74. The above observations and findings are preliminary subject to what we find with respect to the SMC's evidence provided by their expert, Dr PE, which we examine below.

The relevance of the Expert Evidence of Dr PE and Dr DE

75. Before reviewing and analysing the evidence of the two experts in this case, we must first examine what the law is with respect to the admissibility of expert evidence. In Singapore, expert evidence which amounts to opinion evidence may be admitted as evidence as an exception to factual evidence, if it meets the requirements of section 47 of the Evidence Act.

76. Section 47 of the Evidence Act provides as follows:

> "Opinions of experts
>
> 47.— (1) Subject to subsection (4), when the court is likely to derive assistance from an opinion upon a point of scientific, technical or other specialised knowledge, the opinions of experts upon that point are relevant facts.
> (2) An expert is a person with such scientific, technical or other specialised knowledge based on training, study or experience.
> (3) The opinion of an expert is not irrelevant merely because the opinion or part of the opinion relates to a matter of common knowledge.
> (4) An opinion which is otherwise relevant under subsection (1) is not relevant if the court is of the view that it would not be in the interests of justice to treat it as relevant."

77. As to the qualifications of both Dr PE and Dr DE, the DT finds that they both qualify as experts within the meaning of section 47(2) in that they have 'specialised knowledge based on training, study and experience". Both Dr PE and Dr DE are medical practitioners who have been trained and studied as doctors and through their experience as such medical practitioners and related activities have the knowledge and experience of how medical practitioners charge their fees. They are also, in a sense, peers of the Respondent to the extent that they are all three medical practitioners of similar seniority.

78. Crucially, neither the SMC nor the Respondent challenged the credentials of Dr PE and Dr DE respectively. The real issue confronting the DT in this inquiry with respect to the 'expert evidence' is whether as a tribunal we are 'likely to derive assistance from an opinion upon a point of scientific, technical or other specialized knowledge' within the meaning of section 47(1) of the Evidence Act. The DT finds that indeed it can and will derive assistance on the point of how medical practitioners charge or are entitled to charge fees for their work based on the opinions of Dr PE and Dr DE because both have 'specialized knowledge on such matters based on their experience', within the meaning of section 47(2).

79. Having found and accepted that both Dr PE and Dr DE meet the requirements of section 47 of the Evidence Act, we also find that their opinions relevant. However, the DT must also review and examine whether the opinions of both or either of the doctors called as experts in this inquiry, meet the legal tests of rationality and logic. It is trite law that their opinions must be based on fact. This is referred to as the basis rule.

80. The basis rule has been clearly explained by our courts. In particular, the High Court has helpfully analysed the basis rule in *Anita Damu v PP* [2019] SGHC 233; [2020] 3 SLR 825 ("***Anita Damu***"). At paragraph 29 of *Anita Damu,* the Chief Justice explained the basis rule as follows:

> "The "basis rule", where expert evidence is concerned, stipulates that the factual basis for the expert's opinion must itself be established on admissible evidence and not on hearsay (Ramsay v Watson (1961) 108 CLR 642). As Heydon J explained in Dasreef Pty Ltd v Hawchar [2011] HCA 21 at [90]:
>
> Opinion evidence is a bridge between data in the form of primary evidence and a conclusion which cannot be reached without the application of expertise. The bridge cannot stand if the primary evidence end of it does not exist. The expert opinion is then only a misleading jumble, uselessly cluttering up the evidentiary scene."

81. In the present case, the DT finds that the basis rule is met in that the experts here are testifying to the appropriateness of the Respondent's fees based on what his direct and primary evidence is. The opinions of the two experts here are based entirely on the factual evidence presented by the Respondent. That said, there is another aspect to the factual matrix presented here that must also be examined in the context of the basis rule. This speaks to the bases of the opinions offered by the two experts, Dr PE and Dr DE.

82. It will be seen that both experts explained that they found that due to the dearth of publicly available data on how doctors charge their fees, the Respondent's reliance and reference to the SMAGOF 2006 and the NUH Fees Schedule 2014 are acceptable benchmarks. In both their expert opinions, Dr PE and Dr DE gave their views on the appropriateness of the Respondent's fees based on these two references in addition to some other related references. In Dr PE's case, see paragraph 43 of Tab 1 at page 9 of the BER and in the case of Dr DE see paragraph 7 of Tab 3 generally in the BER.

83. To the extent that the only available and relevant published data for reference here is based on the work of the Singapore Medical Association in the case of SMAGOF and the work of the hospital in the case of the NUH Schedule, the relevance and admissibility of those material would come under the general hearsay rule which permits experts to rely on what available published data there is even though strictly, these are hearsay evidence. This exception is provided by the law for practical reasons. This has been explained by the Court. In the same case of *Anita Damu*, supra, the Chief Justice clarified at paragraph 31 as follows:

> "31 It is true that the basis rule has often been relaxed in the interests of logistical practicality, such as to enable experts to rely on evidence from authoritative publications or other extrinsic material customarily employed in their line of work (Jeffrey Pinsler, Evidence and the Litigation Process (LexisNexis, 6th Ed, 2017) ("Pinsler") at para 8.044; Ian Freckelton & Hugh Selby, Expert Evidence: Law, Practice, Procedure and Advocacy (Thomson Reuters, 5th Ed, 2013) ("Freckelton & Selby") at para 2.20.80). However, the relaxation of the basis rule most commonly occurs in cases where the expert's opinion is based on "general hearsay", such as prior research, as opposed to "specific hearsay" pertaining to a particular inquiry, fact, examination or experiment (Halsbury's Laws ([26] supra) at para 120.225). This, to me, is a principled distinction. Where an expert gives evidence that relies in part on the work of other members of the profession which are generally accepted as authoritative and uncontroversial, it would be impractical to require in every instance that those other professionals also give evidence of their work, even though this might technically constitute general hearsay evidence. The relaxation of the basis rule in such circumstances would simply be in the interests of practicality and would not cast any doubt on the soundness of the expert's evidence."

84. In our view, the SMAGOF and NUH Schedule amounts to what *Anita Damu* supra at [31] refers to as '*other extrinsic material customarily employed in their line of work (Jeffrey Pinsler, Evidence and the Litigation Process (LexisNexis, 6th Ed, 2017) ("Pinsler") at para 8.044'.*

85. In the circumstances, to the extent that both the SMC's expert and the Respondent's expert have testified that both the SMAGOF and the NUH Schedule may be used as measures because there does not exist any other publicly available measure the DT finds that the opinions offered by the two experts, Dr PE and Dr DE are relevant and admissible within the meaning of section 47 of the Evidence Act.

86. However, the crucial issue the DT faces is what the law refers to as the ultimate issue rule. It is for DT to examine and decide if the opinions of the two doctors, Dr PE and Dr

DE support their side's respective positions as to the charges preferred against the Respondent.

Expert Evidence of Dr PE for the SMC

87. We now address Dr PE's opinion.

88. The SMC called Dr PE to give expert evidence in this inquiry with respect to the charges against the Respondent. In Dr PE's Expert Report, he describes himself as [*information redacted*]. Though the DT has set out and noted Dr PE's credentials, we add that no challenge has been made to Dr PE's standing as an expert witness.

89. In this inquiry, Dr PE provided his expert report dated 19 May 2023 ("**Dr PE's Expert Report**") and an addendum to it dated 18 January 2024 ("**the Addendum**") which are found in the BER Tabs 1 and 2. In Dr PE's Expert Report, Dr PE recounts that in the context of the charges against the Respondent, he was asked by the SMC, to address as an expert, "*The question [of] whether Dr Hong has overcharged for his engagement as an expert witness by the SMC', in the Lim's DT inquiry*".[45]

90. At paragraph 8 of Dr PE's Expert Report he stated that:

> "In Summary, my opinion is that Dr Hong's fees charged for acting as SMC's expert witness in disciplinary proceedings concerning Dr Lim do not amount to overcharging."

91. In the remainder of Dr PE's Expert Report, he explains his bases for reaching the aforesaid conclusion.

92. At this juncture, the DT notes that the opinion expressed by Dr PE at paragraph 8 of his expert report would, if the DT accepts it, dispose of the charges against the Respondent in his favour. If in the opinion of the SMC's expert in this inquiry, the Respondent's fees to the SMC for the Lim's DC inquiry 'do not amount to overcharging' then the basis for the two charges which are premised upon the Respondent's fees amounting to "gross overcharging and/or far in excess of and disproportionate to what [he was] entitled to

[45] BER, Tab 1, page 1, paragraph 5

charge" – see the charges set out in paragraph 3 – are not made out. It would also follow that neither of the two charges are made out.

93. This would appear strange in that it is tantamount to the SMC's expert giving evidence that in his expert opinion the Respondent's fees, which are the substance of the charges, do not amount to 'gross overcharging or are far in excess of and disproportionate to what the Respondent was entitled to charge'. To put it bluntly, Dr PE's evidence on behalf of the SMC does not appear to prove the charges instead they show that the charges are unfounded.

94. However, as we have previously noted, since the SMC puts into evidence Dr PE's Report, we find it necessary to review and examine the same. We note and find that it is important that we undertake this exercise of reviewing Dr PE's Expert Report not least because it has been put in without challenge by cross-examination. It will also be recalled that Counsel for the SMC, in his opening, explained that while the SMC does not have positive evidence to seek the orders of the DT to sustain the charges here, the SMC does not exclude the possibility of the DT finding otherwise.

Analysis of Dr PE's expert evidence at BER Tabs 1 & 2 on behalf of the SMC

95. As a preface, Dr PE noted and concluded that the work the Respondent had to undertake as an expert witness for the Lim's DC inquiry involved voluminous evidence and was complex in nature. The Lim's DC inquiry spanned 110 days.

96. Dr PE's opinion on what the Respondent's peers would have charged under similar circumstances, is that there are two possible approaches. One is the Opportunity Cost Approach ("**OCA**") and the other is the Peer Benchmarking Approach ("**PBA**").[46]

97. For each category of fees charged by the Respondent, Dr PE's opinion is as follows:

Opportunity Cost Approach

[46] Dr PE's Expert Report, paragraphs 30 and 42

a) Giving of Expert Evidence[47] – For this category of work, the Respondent charged the SMC fees of $14,000.

i) With respect to the Respondent's attendance as an expert witness in the Lim's DC inquiry on 8 April 2010, Dr PE is of the opinion that the fees amounting to $14,000 are reasonable.

ii) We have seen that in his defence, to justify his fees which are now the subject of this inquiry, the Respondent in his statement, supported by the evidence of Dr DW, also adopted the OCA. In doing so, the Respondent with the support of Dr DW provided evidence based on a computation of the potential loss The Respondent would have suffered. To compute the potential loss, based on the OCA, the Respondent provided evidence of what his earnings were on three Thursdays preceding 8 April 2010, the Thursday the Respondent actually gave evidence at the Lim's DC inquiry. At paragraph 65(d) herein, we have already referred to the Respondent's evidence on what his loss of opportunity in terms of potential monetary loss would be. Based on the three Thursdays preceding 8 April 2010, the day of the Respondent's testimony at the Lim's DC inquiry, on average, the Respondent potentially would have suffered a loss of income amounting to $17,784 in respect of the 'lost' day on 8 April 2010. On that basis the fees the Respondent charged the SMC which was $14,000, would be reasonable.

iii) At paragraph 39 of Dr PE's Opinion, Dr PE tacitly accepts the Respondent's evidence for this component of his fees, stating that the fees 'appear to be reasonable'. Being reasonable, the thrust of Dr PE's Opinion, appears to be that the fees charged by the Respondent for this component, could not be said to amount to *'gross overcharging or far in excess or disproportionate*' to what the Respondent was entitled to charge as alleged in the charges preferred by the SMC in this inquiry.

[47] Dr PE's Expert Report, pages 7 to 9, paragraphs 31 to 41, of BER tab 1

b) The other components – Standby for Trial ($6,000), Trial Preparation ($14,000) and Preparation of Trial [Expert] Report ($6,000)[48]

i) Applying the OCA to the other components of the Respondent's fees, at paragraphs 40 to 41 of Dr PE's Opinion, Dr PE without giving any detailed explanation says that the fees billed by the Respondent "*for the standby for trial, trial preparation and preparation of trial [expert] report*" "*appear to be not unreasonable*".

ii) Similarly, if Dr PE's Opinion is that all the fees charged by the Respondent for these components were not unreasonable, it follows that these fees could not be said to amount to *'gross overcharging or far in excess or disproportionate*'.

Peer Benchmarking Approach

c) With respect to the PBA methodology, Dr PE first notes at paragraph 42 of Dr PE's Expert Report at page 9 of BER Tab 1 as follows:

> "Another approach is to benchmark [Dr Hong's] against what his peers would have charged or were charging. Unfortunately, such information is not publicly available …".

d) At paragraphs 42 to 46 of Dr PE's Opinion at pages 9 to 10 BER tab 1, however, Dr PE appears to accept that the PBA can be based on what the Respondent himself have relied upon in his defence, namely by reference to SMAGOF and the NUH Schedule.

Giving of Expert Evidence

e) Using the PBA methodology with reference to SMAGOF[49], Dr PE is of the view that the Respondent's fees do not appear to be unreasonable. Here, it should be noted that Dr PE does not provide detailed computations beyond referring to the

[48] Dr PE's Expert Report, page 9, paragraphs 40 to 41, of BER tab 1
[49] Dr PE's expert report, page 9, paragraph 44, of BER tab 1

'upper limit of $2,500 per two hours of court attendance by an expert witness'[50] to support his assertion that the Respondent's fees under this category are not unreasonable.

f) We note that under SMAGOF[51], a senior doctor like the Respondent, may charge between $1,500 to $2,500 for each two-hour block of attendance as an expert. Based on the Respondent's seniority, Dr PE assumes that he could charge the upper limit of $2,500 for a two-hour block, for his attendance as a witness from 10 am to 3 pm[52] excluding lunch (four hours). Based on this reference, the Respondent would have been able to charge $2,500 x 2 for two-hour blocks totalling four hours that is, $5,000. If the same approach were to be applied on the assumption the Respondent spent the earlier part of the morning from 8 am to 10 am just before he gave evidence 'waiting', then on the two-hour block rate of $2,500, the total the Respondent may charge another $2,500 for the waiting time. On this basis the Respondent could charge $7,500 for giving evidence. In comparison, the Respondent charged $14,000. The Respondent's fees are about twice the $7,500 under SMAGOF.

g) There is also to be found in Dr DE's Expert Report, a reference at page 72 of BER tab 3 the NUH Schedule which provides for what looks like a fixed fee of $1,800 attendance fee as a professional witness. The DT notes though the schedule appears to be designed for commercial or civil proceedings. On the NUH Schedule, the Respondent's fees would be much higher.

h) However, as already noted, Dr PE does not find the fees charged by the Respondent for expert testimony in the Lim's DC inquiry to be unreasonable.

i) In his Addendum to his Expert Report at BER Tab 1[53], Dr PE reiterates at paragraph 15 of page 3, that based on the OCA, Dr, Hong's fees for giving evidence as an expert on the basis that he should be allowed to charge on a full day basis, is

[50] SMAGOF, section 5, paragraph 5.2 (Court Attendance & Preparation Fees & Best Practices Guidelines), at page 29 of BER tab 3
[51] Dr DE's Expert Report, page 29, of BER tab 3
[52] Dr Hong's Statement, pages 26 to 27, paragraph 74
[53] Found at BER tab 2

reasonable. Dr PE justifies this by reference to the Respondent's evidence[54] which stated that the Respondent's average earnings for the three Thursdays preceding the Thursday the Respondent testified on 8 April 2010 is $15,600. We have noted previously that in Dr DW's evidence – see paragraphs 66 to 69 herein – is that the average earnings of the Respondent for those Thursdays (which would represent the potential loss on the OCA basis) is $17,784.

j) For the PBA method of assessing the Respondent's fees, we do not find Dr PE's Expert Report supported by the references used by the Respondent. Indeed, by reference to the SMAGOF and the NUH Schedule, it appears that the Respondent's fees are way above what he is entitled to charge. It will also be recalled that for this component of fees the Respondent chose to justify his fees based on the Opportunity Cost Approach – see paragraph 65(d) above. Whether this component of fees are 'grossly excessive or disproportionate' to what he is entitled to charge is a different matter. That is for the SMC to prove.

Trial Preparation[55]

k) For this component, the Respondent charged $14,000.

l) Dr PE is of the view that the fee of $14,000 is on the high side. In paragraph 45 of his Expert Report, Dr PE's computation of what is chargeable for this component based on the SMAGOF and NUH Fees Schedule is as follows:

    i) With reference to SMAGOF, the Respondent as a senior consultant would be able to charge at the upper limit of $600. The Respondent's evidence is that he spent 12.2 hours in preparation. That would translate to $600 x 12.2 hours = $7,320.

[54] Dr Hong's Statement, page 27, paragraph 75
[55] Dr PE's Expert Report, page 10, paragraphs 45 to 46, of BER tab 1

ii) On the other hand, using the NUH Schedule, the Respondent would be able to charge $1,000 per hour. That would in turn translate to $1,000 x 12.2 = $12,200.

m) Based on either of the above measures, Dr PE concluded at paragraph 46 of his Expert Report, that for this component of the Respondent's fees, they are on the high side.

Standby for Trial[56]

n) The Respondent charged a fee of $6,000 for this category of work.

o) The Respondent was on standby from 10 am to 1 pm to give evidence on the morning of 4 February 2010. He accordingly blocked off half a day to standby.[57] These are also agreed facts as set out in the ASOF at paragraph 15.

p) Dr PE's evidence that it is reasonable appears to be based on what he says at paragraph 47 of his Expert Report.[58] It appears that Dr PE is arguing that since the Respondent could reasonably charge $14,000 for a full day based on an OCA basis, charging $6,000 for half day on standby is reasonable. The Respondent also appears to be using this approach of justifying his fees for this component.

q) We note, however, that if we were to use the SMAGOF which is used as a reference by both Dr PE and the Respondent then based on the rates set out at Dr DE's Expert Report, the half day that the Respondent was on standby may be said to be a duration of four hours which in turn translate to a 2 two-hour block under the SMAGOF which then computes to $2,500 x 2 = $5,000 for a half day standby on the assumption the Respondent may charge the upper limit of that rate. This is so because the rates also cover waiting time.

[56] Dr PE's Expert Report, page 10, paragraph 47, at BER tab 1
[57] Dr Hong's Statement, paragraph 69
[58] Dr PE's Expert Report. Page 10, paragraph 47, at BER tab 1

r) On the other hand, if we use the rate for cancellation of the attendance based on a two hour notice of less than 24 hours which it would have been in the case of the Respondent here, the Respondent would have been entitled to charge a full day's attendance fees, which on SMAGOF's two hour block rates would translate to 4 two-hour blocks totalling $[2,500 x 4 two-hour blocks =$10,000].

s) There is also the NUH Schedule which is found at Dr DE's Expert Report which fixes attendance by an expert at $1,800 on the assumption the Lim's DC inquiry is treated as a civil proceeding as the approximate equivalent. Again, on a cancellation basis of less than 24 hours, under the NUH Fee Schedule the Respondent is entitled to charge a full day's fees, which here would appear to be $1,800.

t) For this component of the Respondent's fees on the PBA basis, there appears to be a variance between the SMAGOF and the NUH Schedules. What the DT observes here is that the $6,000 billed by the Respondent appears to be at least supportable on SMAGOF in that by comparison the rate is slightly lower at $5,000. It appears excessive in comparison but not perhaps 'grossly excessive' or entirely 'disproportionate' as laid down in the charges. We will return to this later.

Preparation of Trial Reports (Expert Report)[59]

u) For this component of fees, the Respondent charged $6,000.

v) Dr PE first says that there are no recommendations in SMAGOF for this category of work. However, Dr PE offers the opinion that we could adopt the hourly rate in SMAGOF for preparation at $600 per hour for a senior consultant like the Respondent. Similarly, under the NUH Schedule the rate of $1,000 per hour could be adopted for preparation.

w) Applying the above rates of $600 per hour and $1,000 per hour respectively, we can compute the permissible fees on the basis that the Respondent spent 10 to 12

[59] Dr PE's Expert Report, page 10, paragraph 47, at BER tab 1

hours of preparation work. In either case the $6,000 on the face of it is less than what would result using the SMAGOF and NUH Schedule referred to above based on either 10 hours or 12 hours of work:

i) SMAGOF at $600 per hour based on 10 hours = $6,000

ii) NUH Fee Schedule at $1,000 per hour based on 12 hours = $12,000

iii) SMAGOF at $600 per hour based on 12 hours = $7,200

iv) NUH Fee Schedule at $1000 based on 12 hours = $12,000

x) Based on the above computations, the Respondent's fees for writing the expert report at $6,000 would be comparable or less. Hence, Dr PE's Expert Report that the $6,000 charged by the Respondent appears to be reasonable.

Addendum to Dr PE's Expert Report

98. It is noted that Dr PE's Addendum to his Expert Report which can be found at BER Tab 2, states in paragraph 4 that having reviewed further documents provided to him, Dr PE's Expert Report remains that the Respondent's charges are not unreasonable.

DT's Findings on Dr PE's Expert Report

99. Having reviewed Dr PE's Expert Report, we make the following findings:

a) While overall, Dr PE's Expert Report concludes that the Respondent's fees are reasonable or not unreasonable, his basis for saying so is somewhat inconsistent.

b) In the case of the component, Giving Expert Evidence, Dr PE's Expert Report on the OCA approach is logical and supportable by the evidence. On the other hand, he does not explain how it applies to the three components of the fees other than the Giving of Evidence. On the PBA method, in some cases, Dr PE offers no

detailed explanation in presumably because as the DT has set out above, this method would have shown the Respondent fees to be excessive.

c) With respect to the component of fees on Standy, Dr PE's Expert Report simply assumes the OCA method. Although there is no detailed explanation of using this method, we find that the basis appears to be supported by the evidence.

d) Crucially, however, Dr PE's Expert Report does not seem to seek to show and does not show in any way that the fees charged by the Respondent "amounted to gross overcharging and/or far in excess of and disproportionate to what [the Respondent] were entitled to charge". Indeed, the upshot of Dr PE's Expert Report, patchy, though it may seem, is that the Respondent's fees were not unreasonable.

Expert Evidence of Dr DE at BER Tab 3 in support of The Respondent's defence

100. We now turn to the expert evidence of Dr DE who was called on behalf of the Respondent. Similarly, Dr DE was not cross-examined, and his evidence remains unchallenged by the SMC.

101. Like Dr PE, SMC's expert in this inquiry, Dr DE is a [*information redacted*]. He says he has given evidence as an expert though he says he cannot remember how many occasions. He also states that he has been an expert witness for both the SMC and defendant doctors. Dr DE has also been a member of the SMC Disciplinary Committee and later the SMC Disciplinary Tribunal since 2015.[60]

102. Dr DE testifying on behalf of the Respondent appears to have approached the assessment of the Respondent's fees in a similar way as Dr PE. Both experts referred to and relied on SMAGOF and the NUH Schedule as the basis for their opinion. This is, of course, both unremarkable and logical since the Respondent, the respondent's justification of his fees charged to the SMC, which is the crux of the disciplinary charges here, is based on the SMAGOF and the NUH Schedule. However, Dr DE's opinion differs from that of Dr PE in that Dr DE has adjusted the fee rates reflected in both the SMAGOF and the NUH

[60] Dr DE's Expert Report, page 1, paragraph 2 of BER tab 3

Schedule to take into account future value in the case of SMAGOF which is a 2006 document and present value in the case of the NUH Schedule, which is a 2014 document.

103. Both experts also justified their adoption of the SMAGOF and the NUH Schedule as their bases by explaining that there are no actual guidelines currently existing with respect to fees that are chargeable by doctors. Both clarified that the SMAGOF 2006 was removed soon after its introduction by SMA because the association was advised that such universal rates could be anti-competitive under Singapore law. In the case of the NUH Schedule, these are only applicable to NUH.

104. For each category of fees charged by the Respondent, Dr DE's opinion[61] is as follows:

a) The Respondent charged $6,000 for preparing and writing his expert report.

b) Adopting first the SMAGOF rates, Dr DE noted that on the SMAGOF rates, the Respondent would have been justified in charging $400 to $600 per hour. These are 2006 rates. Then Dr DE says that we could use the average of these two rates, which would mean that the Respondent could have charged $500 per hour. Using the average of $500 as the base rate, Dr DE then used the Future Value methodology to adjust the $500 rate to 2010 with a risk-free interest rate of 3%, which Dr DE says he has assumed as a slightly lower rate below the average CPF interest rate of 4%:

$FV = PV \times (1+r)^n$
Where, PV = present value of $500
r=assumed interest rate of 3% or 0.03
n = power of 4 being the number of years (2006 to 2010 = 4 years)
Future Value in 2010 is Present Value x $(1+0.03\%)^4$

c) Thus, in the present case, the adjusted value of $500 in 2006 for 2010 is:

$FV = \$[500 \times (1.03)^4 = \$[500x1.03x1.03x1.03x1.03] = \$562.75$

[61] Dr DE's Expert Report, pages 5 to 6, paragraph 7.2, of BER tab 3

d) On the other hand, adopting the NUH Schedule, the fee rate for a senior consultant like the Respondent would be $1,000 per hour at the upper limit. Using a similar adjustment methodology used in the case of the SMAGOF rates, the NUH Schedule rate of $1,000 would have to be adjusted based on Present Value as at 2010. The computation based on Present Value would be:

$$PV = \frac{FV}{(1+r)^n}$$

Where, FV = future value of 2014 being $1,000

r = assumed interest rate of 3% or 0.03

n = number of years (2010 to 2014 = 4 years)

Thus, in the present case, the adjusted value based on the NUH Schedule will be

$$PV = \frac{1000}{(1+.03)^4} = \frac{1000}{(1.03 \text{ x } 1.03 \text{ x} 1.03 \text{x} 1.03)} = \frac{1000}{1.1255} = \$888.49$$

e) Refining his approach further, Dr DE then takes the average of the SMAGOF and the NUH Schedule adjusted rates, obtaining the average of $[562.75 + 888.49] = $725.62.[62]

f) Applying the average of $725.62, then based on the Respondent's evidence that he spent 10 to 12 hours on the Expert Report, the fees the Respondent would be justified in charging the SMC would be:

i) Based on 10 hours, $[10x725.62] = $7,256.20

ii) Based on 12 hours, $[12x725.62] = $8,707.44

g) In either case, the fees charged by the Respondent for the Expert Report of $6,000 would be reasonable in comparison to the above two possible rates based on the SMAGOF and the NUH guidelines.

h) At paragraph 7.1.4 of Dr DE's Expert Report, Dr DE goes further to say that he thought in preparing his expert report for the Lim's DC inquiry, the Respondent

[62] BER tab 3, page 6, paragraph 7.13

would have worked after hours, outside his clinic hours. On that basis, Dr DE opined that using the NTUC insurance and AIA insurance fees schedule, the Respondent would have been entitled to apply a surcharge of an average of 1.675 times. Using this surcharge rate, for the 12 hours he spent on the expert report the Respondent would have been able to charge $725.62 x1.675 (surcharge) x 12 hours] = $14,584. On this basis, Dr DE concluded that the $6,000 charged by the Respondent for the preparation and production of the expert report 'are very reasonable'.[63]

i) Thus, on two different bases, Dr DE's opinion is that the fees charged by the Respondent for the preparation and production of the expert report 'are very reasonable'.[64]

Trial Preparation[65]

j) For trial preparation, the Respondent had charged the SMC the sum of $14,000 based on 12.2 hours of preparation.[66]

k) Using the average rate obtained based on the SMAGOF and the NUH Schedule which, as set above at paragraph 104(e), is $725.62 and applying it to the time spent by the Respondent for trial preparation which is 12 hours, then the fees the Respondent would have been entitled to charge according to Dr DE is $8,707.44.[67] This is obviously lower than what the Respondent charged which was $14,000. However, in Dr DE's opinion the 12.2 hours could be broken up into two components:

i) 7.2 hours for the time spent by the Respondent in meetings and phone calls with the lawyers for the SMC[68]; and

[63] Dr DE's Expert Report, paragraph 7.1.4
[64] Dr DE's Expert Report, paragraph 7.1.5, at BER, tab 3, page 6
[65] Dr DE's Expert Report, paragraph 7.2, at BER, tab 3, page 6
[66] Dr Hong's Statement, paragraph 63
[67] Dr DE's Expert Report, paragraph 7.1.3, at BER tab 3, page 6
[68] Dr Hong's Statement, paragraph 64

ii) 5 hours of reviewing materials after hours.[69]

l) At paragraphs 7.2.1 to 7.2.5 of Dr DE's Expert Report, the Respondent would have been entitled to charge his fees as follows.

m) Using the above average rate of $725.62 the 7.2 hours office time would amount to $[725.62 x 7.2 hours] = $5,224.46 and for the 5 hours spent afterhours, the fees chargeable should be $[725.62x1.675 surcharge for afterhours] x 5 hours = $6,077.07, giving a total of $11,301.53 as the fees the Respondent could have charged as opposed to what he charged which is $14,000. The Respondent's fees are about 24% higher. However, Dr DE says at paragraph 7.2.4 of BER Tab 3 at page 6 that the fees charged by the Respondent for Trial Preparation "is still reasonable given the complexity of Dr Lim's case".

n) Dr DE goes further in his Expert Report on at BER Tab 3. Dr DE states at paragraph 7.2.5 that if we added the amounts he computed at paragraph 7.1.4 (being the fees chargeable based on an added surcharge for after-hours work done by the Respondent on preparation of the expert report) at $14,584.92 and $11,301.53 for trial preparation, the total amount would come to $25,886.45. On the other hand, the Respondent charged a total of $6,000 for his expert report and $14,000 for trial preparation, giving a total of $20,000. By this comparison, Dr DE says that the fees charged by the Respondent for these two components are less than the amount Dr DE opines the Respondent could have charged. Dr DE implies therefore that the fees charged for these two components in total by the Respondent are reasonable.

Stand by for trial – The Respondent's fees were $6,000[70]

o) This component of the Respondent's fees arose out of the fact that the time when the Respondent was to give evidence was postponed to another day. Naturally, the Respondent billed the SMC for the time he was on standby but was not called to

[69] Dr Hong's Statement, paragraph 65
[70] Dr DE's Expert Report, paragraph 7.3

give evidence. For this component of the fees, the following are agreed facts which are detailed in the ASOF[71]:

i) The Respondent was originally scheduled to testify at the inquiry on 3 February at 10 am. However, he was informed on 1 February 2010 that he will be testifying on 4 February instead.

ii) On 4 February 2010 the date the Respondent was to testify, he was on standby to be a witness from 10 am to 1 pm but was not called as a witness on that day. The Respondent was thus on standby to be a witness on 4 February for 3 hours.

iii) The Respondent subsequently billed the SMC $6,000 for this standby period.[72] In his evidence at paragraph 70 of the Respondent's Statement, the Respondent states that:

> "[he] had blocked off half a working day of my time on 4 February 2010."

p) At paragraph 7.3.3 of Dr DE's Expert Report[73], Dr DE referred to the practice of private doctors like the Respondent in respect of their daily clinic practice. He observed that:

> "In private practice, most clinics operate from 9 am to 1pm and again from 2 pm to 6 pm. This is similar to specialist clinics in restructured public hospitals i.e. two 4-hour blocks of time."

q) To assess the fees the Respondent charged for this standby period, Dr DE assumed that the above 2 four-hour block applies to the Respondent's practice. Based on this assumption, Dr DE then referred to the SMAGOF and NUH Schedule on fees chargeable for attendance in court (in the present case in an inquiry) which, in connection with charges when attendances in court or its equivalent are cancelled, respectively provides as follows:

[71] ASOF, page 5, paragraphs 13 to 15
[72] ASPF, page 7, paragraph 21
[73] Page 7 of BER tab 3

i) SMAGOF 2006 – each two hours or part thereof for experts - $1,500 – $2,500
   - Cancellation 24 hours' notice or less - 100% 1 day's attendance

ii) NUH Schedule`- half day or 4-hour block - $3,000 for a senior consultant
   - Cancellation 24 hours' notice or less – 100% of one day court attendance

r) Based on the above, Dr DE then assessed the fees charged by the Respondent using the same methodology of Present and Future Values with a risk-free interest rate of 3% - see above.

s) Using the said methodology, at paragraph 7.3.5 of Dr DE's Opinion, Dr DE opined that under SMAGOF, the Respondent would have been entitled to charge a fee of $5,627.54. This is based on roughly a half day of a 4-hour block which the Respondent would have been able to charge $[2,500 x2] = $5,000 adjusted to the 2010 value at $5,627.54 ($5000x1.03^4).[74]

t) On the other hand, on the NUH Schedule, for the half day block the Respondent would be entitled to charge $3,000. Adjusted to 2010, the sum would be $[3,000 / 1.03^4] = $2,665.46.[75]

u) Dr DE goes further to explain[76] that if the average of the sums obtained by reference to SMAGOF and the NUH Schedule, as above, is adopted, the Respondent would have been able to charge $[5627.54 + 2665.46] ÷ 2 = $4,146.50.

v) The upshot of Dr DE's opinion on this component of the fees which the Respondent billed the SMC is as follows:

i) Based on SMAGOF, the Respondent's fees at $6,000 is slightly higher than the $5627.54 adjusted.

[74] Dr DE's Expert Report, paragraph 7.3.5, in BER tab 3, page 7
[75] Dr DE's Expert Report, paragraph 7.3.6, in BER tab 3, page 7
[76] Dr DE's Expert Report, paragraph 7.3.7, in BER tab 3, page 7

ii) Based on the NUH Schedule 2014, the Respondent's fees at $6,000 are ***more than twice that of the adjusted value of $2,665.46.***

iii) Based on averaging the SMAGOF and NUH Fees Schedule rates computed above, the $6,000 charged by the Respondent is also higher than the resultant figure of $4,146.50. ***This is about 45% higher***.[77]

w) Notwithstanding the above, Dr DE goes on to say at paragraph 7.3.8 of his expert report, that the above computations *"... do not reflect the true opportunity cost to Dr Hong*". Dr DE's explanation for the above is that depending on how much notice was given to Dr DE for 'cancellation' since he did not have to testify on 4 February 2010. Based on cancellation, Dr DE is of the view that the Respondent could have charged an additional sum of 50% or 75% of $4,146.50. If the resultants 50% or 75% values are added to the average of $4,146.50 then the resultant figure would be higher than the $6,000 charged by the Respondent.

x) Based on all the above bases, Dr DE states that[78]:

> "I am of the opinion that Dr Hong's billing of $6,000 is reasonable."

Giving of evidence on 8 April 2010 – the Respondent charged $14,000

y) For this component of his expert assignment with the SMC, the Respondent charged SMC the sum of $14,000. Dr DE's opinion on this component of the Respondent's fees are as follows:

i) Dr DE noted for the purposes of testifying at the Lim's DC inquiry on 8 April 2010, that the Respondent had blocked off the whole day, i.e. 10 am to 6 pm.[79]

[77] Dr DE's Expert Report, paragraph 7.3.7, in BER tab 3, page 7
[78] Dr DE's Expert Report, paragraph 7.3, at BER tab 3, page 8
[79] Dr DE's Expert Report, paragraph 7.4.1, at BER tab 3, page 8

ii) According to Dr DE, the Respondent would have been entitled to charge for eight hours' court attendance.[80]

iii) The Respondent had also computed his time cost for 8 April 2010 on an opportunity cost basis. At paragraph 68 herein the Respondent's average opportunity cost based on the three preceding Thursdays being used as proxies for the day he testified at the Lim's DC inquiry on 8 April 2010, is $17,784.

iv) At paragraph 7.4.5 of Dr DE's Opinion, Dr DE also considered an alternative method to assess the reasonableness or the Respondent's fees. He opined that if he used the same values as set out at paragraphs 7.3.5 – 7.3.7 of his expert report, then based on the four hour block that the Respondent is entitled to charge based on the average of the SMAGOF rates and NUH Schedule and applying the Present Value and Future Value adjustments - $[4146.50 x 2] = $8,293 for his attendance at the Inquiry. Adding the two hours spent in a preparation meeting with the lawyers[81], adjusted value of $1,451.24, the Respondent would have been entitled to charge $9,744.24 for his time spent on 8 April 2010 for the Lim's DC inquiry.

v) At paragraphs 7.4.8 to 7.4.13 of Dr DE's expert report, Dr DE attempts to calculate the Respondent's opportunity cost for 8 April 2010 on the assumption that he could have performed various types of surgeries on that day within an right hour period. He opined that based on his assumptions and adjusted values using the SMAGOF and MOH Fee benchmarks as reference points, the Respondent would have lost earnings of $13,095.79. If you then add the two hours spent by the Respondent with the lawyers in preparation, then the total sum the Respondent would have lost based on an opportunity cost basis and on the assumption that he would have had surgeries on 8 April 2010, would be $[13,095.79 + 1451. 24 (two hours of preparation with the lawyers[82]) = $14,547.03. Dr DE's opinion based on the assumption that the

[80] Dr DE's Expert Report, paragraph 7.4.3, at BER tab 3, page 8
[81] Dr DE's Expert Report, paragraph 7.4.2, at BER tab 3, page 8
[82] Dr DE's Expert Report, paragraph 7.4.13, at BER tab 3, page 10

Respondent could have had surgical work done on 8 April 2010, then his fees of $14,000 he invoiced the SMC would be reasonable.

105. Based on his views set out, Dr DE's opinion[83] is that

> "the fees charged by Dr Hong to the SMC for services rendered by him to the SMC as their appointed expert in the Disciplinary Committee inquiry against Dr Lim from 18 March 2009 to 8 April 2010, in total and with respect to each of the respective components, were all reasonable".

DT's Findings on Dr DE's Opinion

106. Having reviewed the evidence of Dr DE, the DT makes the following findings:

107. Based on what we have set out in paragraph 104 herein, in respect of Dr DE's Opinion, we find as follows:

a) Of the four categories that make up the fees that the Respondent ultimately charged the SMC, Dr DE's computations showed that in three components the Respondent charged more than what Dr DE himself computed.

b) To justify his conclusion that overall the Respondent's fees were reasonable even though three of the components that made up the fees were more than the computations by Dr DE, Dr DE appears to have based his opinion on certain assumptions and justifications. We note these below:

i) The Expert Report of the Respondent – paragraph 104(a) – 104(i) above

According to his calculations on either of the following,

- Based on 10 hours, $[10x725.62] = $7,256.20
- Based on 12 hours, $[12x725.62] = $8,707.44

[83] Dr DE's Expert Report, paragraph 8, at BER tab 3, page 11

The Respondent's fees at $6,000 were *reasonable* **(***emphasis added*). However, the above computations make the following assumptions:

a. That the fair or reasonable manner of approaching the computation of what the Respondent could charge for the Expert Report is to apply the average of the applicable rates found in the SMAGOF and the NUH Schedule ("**the averaging method"**); and

b. An alternative way of computing a fair and reasonable charge was to assume that the Respondent would have had to work after hours ("**after hours assumption**") – see paragraph 104(h) above.

c. While on the face of it, Dr DE's methodology for this component appears logical, we are not given any objective reasons to support either of the above methodologies. We are not told the basis for the averaging method as being something acceptable or adopted by the Respondent's peers. In the case of the after-hours assumption, it is just that an assumption without any factual basis.

ii) Trial Preparation[84] *– see Dr DE's Opinion – paragraph 104(j) - 104(n) above*

a. Dr DE's opinion for this component is that using the average rate of $725.62 the 7.2 hours office time would amount to $[725.62 x 7.2 hours] = $5,224.46 and for the five hours spent afterhours, the fees chargeable should be $[725.62x1.675 surcharge for afterhours] x 5 hours = $6,077.07, giving a total of $11,301.53 as the fees the Respondent could have charged as opposed to what he charged which is $14,000. *The Respondent's fees are about 24% higher* (*emphasis added*)**.** However, Dr DE goes on to explain that based on the total fees the Respondent charged the SMC for the Expert report and trial preparation together came to $20,000 ($6,000 + $14,000). On the other

[84] Dr DE's Expert Report,

hand, based on Dr DE's calculations in paragraph 71(2), he could have charged $25,886.45. It followed that the Respondent's total fees charged for these two components are reasonable.

b. We find this part of Dr DE's opinion somewhat strained. It appears that while Dr DE could not justify the Respondent's fees in its individual components, he opined that taken another way (by totalling the fees of two components), he could justify the Respondent's fees. We find this to be somewhat of an afterthought. This part of Dr DE's evidence is weak. We would therefore assign little weight to this part of his opinion.

iii) Stand by for trial – the Respondent's fees were $6,000 – paragraph 104(o) – 104(x)

a) It will be recalled that in paragraph 102 above, for this component, Dr DE found as follows:

i) Under SMAGOF, the Respondent's fees at $6,000 is *slightly higher* than the $5,627.54 adjusted.

ii) On the NUH Schedule, the Respondent's fees at $6,000 are more than twice that of the adjusted value of $2,665.46.

iii) Based on averaging the SMAGOF and NUH Fees Schedule rates computed above, the $6,000 charged by the Respondent is also higher than the resultant figure of $4,146.50. *This is about 45% higher*.[85]

b) Notwithstanding what Dr DE found as above, Dr DE, nevertheless, came to his opinion that the $6,000 fees charged by the Respondent are reasonable. We find this not to be internally consistent with what Dr

[85] Dr DE's Expert Report, paragraph 7.3.7, of BER tab 3, page 7

DE computed using the SMAGOF and NUH Fees Schedule. The computations as above clearly show that the $6,000 charged by the Respondent is higher than what Dr DE computed as being permissible. In short, we find that Dr DE's opinion does not logically follow his own assessment and computation. Following Dr DE's logic, it appears that Dr DE is saying that even though the fees the Respondent charged for this component are significantly higher than what Dr DE's computations would suggest, the fees charged by the Respondent are still reasonable. However, Dr DE has not given his reasons for stating this. While it is true that Dr DE attempts an explanation at paragraph 7.3.8 of his Expert Report, it is based on assumptions not based on factual evidence.

c) Again, we find this part of Dr DE's opinion to be of doubtful evidential value.

iv) Giving Evidence – the Respondent's fees were $14,000 – see paragraph 104(y)

a) For this component of the Respondent's fees, it would appear from what we have set out in paragraph 104(y) above, that Dr DE:

i) Accepts that on an opportunity cost basis as the Respondent's evidence shows at paragraphs 65(d) - 68 herein, the Respondent would have been entitled to charge $17,784 whereas the Respondent charged $14,000.

ii) Is of the opinion that based on an alternative method, using the rates in the SMAGOF and NUH Schedule on an adjusted basis the Respondent would have been entitled to charge $9,744.24.

iii) Is of the opinion that as noted at paragraphs 7.4.8 to 7.4.13 of his Expert Report, there is yet another method of calculating the Respondent's opportunity cost on the day he testified at the Lim's

DC inquiry. This method is based on assuming that the Respondent's opportunity cost is higher than usual.[86] On this basis, and on various possible surgical procedures which the Respondent could have performed, Dr DE estimated that the Respondent could have potentially suffered a loss of $14,547.03 on an opportunity cost basis. Therefore, Dr DE concluded in paragraph 7.4.13 of his expert report that in comparison, the fee the Respondent charged, which was $14,000, is reasonable.

b) For this component of the fees charged by the Respondent, while Dr DE offers a number of possibilities to justify the Respondent's fees, Dr DE does not seem to offer any particular methodology as his basis to support the Respondent's fees as being reasonable or more to the point as not grossly excessive or disproportionate to what the Respondent is entitled to charge.

108. At the end of it all, Dr DE's evidence, though based on the Respondent's approach of referencing the SMAGOF and the NUH Schedule, appears diffused and lacks focus on what the DT should accept as supportive of the Respondent's defence. Just like several of the other components of the Respondent's fees, we find that Dr DE's expert opinion to be of doubtful weight if only because the evidence he offers consists of alternative possibilities based on assumptions not supported by factual evidence. We accept the difficulty of the exercise in view of the absence of publicly available data on doctor's fees.

This Disciplinary Tribunal's Decision

109. Although we have found the evidence offered by both Dr PE and Dr DE of limited probative value, the real crux of the matter in this inquiry remains that it is for the SMC to prove the charges against the Respondent. If, as we have found that Dr PE's evidence on behalf of the SMC is of limited probative value, and is to be disregarded altogether, then it means the SMC has no evidence whatsoever to even begin to prove the charges

[86] Dr DE's Expert Report, paragraph 7.4.9

against the Respondent. However, we do not go so far. It will be recalled that parts of Dr PE's evidence are acceptable. Ultimately, however, even the acceptable parts of Dr PE's evidence must be able to prove the charges based on the legal standard of proof on the SMC.

110. Having reviewed and considered the evidence, the DT finds that the evidence put forward by the SMC fails to prove that the Respondent's fees to the SMC are grossly excessive or that he charged fees that are disproportionate to what he could have charged. Indeed, the SMC's evidence cannot by any measure, be said to have proven the charges beyond reasonable doubt, the standard to which the SMC are bound to.

111. Indeed, Dr PE's evidence does not, in any way, show that the Respondent's fees either amounted to gross overcharging and/or far in excess of and disproportionate to what you were entitled to charge for his services.

112. The evidence shows that even the SMC found the Respondent's fees reasonable. Being reasonable, it implies that the fees the Respondent charged were neither excessive nor disproportionate to what his peers would have charged. In fact, based on his evidence, the Respondent has provided a defence that is both logical and supported by the evidence he puts forth.

113. However, and we repeat, it remains the burden of the SMC to prove the case against the Respondent beyond reasonable doubt. This is well-established law. It bears repeating that as pointed out by the C3J in *Ang Peng Thiam* at paragraph 32:

> *"In order for the convictions against [Dr Hong] to be upheld, the SMC will have to prove, beyond reasonable doubt, that [Dr Hong] had committed the acts alleged in the charges …"*

114. On the contrary the evidence of both the experts for the SMC and the Respondent concluded that the Respondent's fees are reasonable. Being reasonable, the implication is *that it cannot be said that the Respondent had*, as alleged in the alternative charges:

a) Charged fees which amounted to gross overcharging and/or far in excess of and disproportionate to what he was entitled to charge for services he rendered and he

had intentionally and deliberately departed from standards observed or approved by members of the profession of good repute and competency, and he was therefore guilty of professional misconduct under section 53(1)(*d*) of the Medical Registration Act (2020 revised edition (in effect as at 8 April 2014); or

b) Charged fees which amounted to gross overcharging and/or far in excess of and disproportionate to what he is entitled to charge for services he rendered and the fees were excessive, and he was therefore guilty of professional misconduct under section 53(1)(*d*) of the Medical Registration Act (2020 revised edition (in effect as at 8 April 2014).

115. As the DT has found that the SMC has not been able to show that the Respondent's fees are excessive or disproportionate much less prove that to be the case beyond reasonable doubt, as the law requires, the charges of professional misconduct against the Respondent are not proven and must be dismissed. In short, it follows that the SMC has not proven beyond a reasonable doubt that the Respondent is guilty of professional misconduct.

116. Accordingly, the DT dismisses the charges against the Respondent, and the DT acquits the Respondent.

The issue of costs

117. In the closing submission dated 21 July 2025 for the Respondent, Counsel for the Respondent argues that in the event the Respondent is acquitted, the SMC should be ordered to pay the Respondent's costs and expenses on the ground that the SMC's decision to bring the charges against the Respondent was not reasonable and the Respondent has thereby suffered prejudice. In support of the Respondent's submission on the issue of costs, Counsel for the Respondent relies on the case of *Lawrence Ang*. In that case the C3J ordered costs against SMC. In so doing, the court laid down the factors to be considered in the decision to award costs. These factors are found in *Lawrence Ang*, supra at [55].

118. In response, Counsel for the SMC in its Closing Submission of 21 July 2025, argued that no costs order should be made against the SMC if the Respondent is acquitted. The

principal reason for the SMC's submission is that while the general rule is that costs should follow the event, that is, the successful party should be awarded the costs, it does not apply here because the SMC is performing a public function. The SMC should not be penalised in costs for performing a public function.[87] The SMC also relies on the case of *Lawrence Ang*, supra.

119. The case of *Lawrence Ang* is apt. That case too involves a situation where the Complaints Committee did not find cause to direct an inquiry against the doctor. However, the complainant appealed to the Minister who then directed that a Disciplinary Inquiry be convened.

120. The facts of the *Lawrence Ang* case, as we have adverted to, briefly are as follows:

a) The Disciplinary Committee in the case convicted Dr Ang of professional misconduct under section 45 of the Medical Registration Act (Cap 174. 2004 Rev Ed) ('**the 2004 MRA'**). In so doing the Disciplinary Committee there also made an adverse costs order against Dr Ang.

b) Dr Ang appealed to the High Court. The High Court of Three Judges allowed the appeal and set aside the conviction and all the orders made by the Disciplinary Committee.

c) In setting aside the conviction and all the orders made by the Disciplinary Committee against Dr Ang, the court also awarded Dr Ang the 'costs of the appeal as well as of the proceedings before the Disciplinary Committee' – see *Lawrence Ang*, supra, at [2].

d) Subsequently, the SMC, the respondent in *Lawrence Ang*, wrote to the court stating that the SMC should not be subjected to an adverse costs order. The SMC argued that an adverse costs order cannot, in law be made against the SMC. Further, the SMC argued that an adverse costs order should not be made against it because the

[87] SMC's Closing Submission, paragraphs 35 to 45

inquiry against Dr Ang was 'necessitated by its fulfilment or carrying out of its public regulatory function' – see *Lawrence Ang*, supra, at [3].

121. The issue of costs here has arisen in a slightly different way. Obviously, as a result of *Lawrence Ang*, Counsel for the SMC in this inquiry cannot make the submission that this DT may not, by law, make adverse costs order against the SMC and Counsel did not do so. *Lawrence Ang* supra has clearly established that in principle, adverse cost orders can be made against the SMC arising from a disciplinary inquiry. As noted by the High Court in *Lawrence Ang*, supra, at [30]:

> "… we are satisfied that the power of a Disciplinary Committee to order costs against both parties, and not just the medical practitioner alone, is one that well-founded and serves a useful purpose."

122. The present case before us is very similar to *Lawrence Ang*, supra. In both the case before us and *Lawrence Ang*, supra, the Complaints Committee had dismissed the complaint against the medical practitioner. In both cases too, the respective complainant had, under the relevant legislation appealed to the Minister. While the MRA has been amended many times, we note that the different versions of the MRA that applied to *Lawrence Ang* and our case, have similar provisions. In *Lawrence Ang*, supra, under MRA of the 23 September 2009 version, the complainant being dissatisfied with the Disciplinary Committee's decision not to direct a disciplinary inquiry, could under section 41(7) of the 2009 version of the MRA appeal to the Minister as was done there. We find a similar provision in the version of the MRA that is applicable to the Respondent's case which, as previously noted, is the MRA which was in effect on 8 April 2014. The similar provision is section 49 (11) which provides that:

> "If the person who has made a complaint … is dissatisfied with any order of a Complaints Committee … may, within 30 days after being notified of the determination of the Complaints Committee, appeal to the Minister whose decision shall be final."

123. Similarly, as in *Lawrence Ang*, supra, the applicable version of the MRA here, is silent on the power of the Disciplinary Committee to order costs against the SMC. For the reasons clearly analysed and stated by the High Court in *Lawrence Ang*, despite the applicable MRA being silent on this particular issue, nevertheless, the Disciplinary

Committee 'does have an implied ancillary power … to order costs against [the SMC] if it dismisses the charges brought by [the SMC]" – see *Lawrence Ang*, supra, at [30].

124. In the present case, we find that there is no doubt that we may, if we find it justified, make an adverse cost order against the SMC. As we have found the Respondent not guilty of the charges brought against him and have dismissed the charges, acquitting him of the charges, the issue of whether we should make an adverse cost order against the SMC becomes relevant.

Should the DT make an adverse cost order against the SMC?

125. The Respondent's Counsel argues that we should make an adverse cost order against the SMC for the reasons outlined below, because the facts surrounding the Respondent's case is even more egregious than the case of *Lawrence Ang*, supra. Respondent Counsel in his Closing submissions of 21 July 2025 at paragraphs 68 to 77 argued that:

a) In earlier taxation proceedings touching upon the Respondent's fees, the SMC had taken the position that his fees are reasonable – an agreed fact in these proceedings.

b) The CC had already twice dismissed the complainant's complaint against the Respondent. By comparison, in *Lawrence Ang*, supra, the CC had only dismissed the complaint once before the complainant appealed to the Minister.

c) When the Minister directed that this inquiry be convened in response to the complainant's appeal, no reasons or explanation was provided. The only reason provided was that Minister had "carefully considered the facts, circumstances and documents relating to the appeal, including the letters by the CC and the parties' solicitors from April 2019 to February 2020".[88]

d) The SMC had obtained the expert opinion of Dr PE who also found the Respondent's fees to be reasonable. The SMC thus had no evidential basis to lay the charges against the Respondent.

[88] Respondent's Closing Submissions, paragraph 68(c)

126. Further, Respondent also argued that there is an inordinate delay between:

a) The Notice of Complaint against the Respondent on or around 24 September 2014 and the Notice of Inquiry ("**NOI**") which was served on the Respondent on 15 August 2024, 8 years and 9 months had elapsed.[89]

b) Even based on the time between Minister directing the SMC to appoint a Disciplinary Tribunal to deal with the matter which was on 16 October 2020 and the NOI to the Respondent on 15 August 2023, the period of delay is 2 year and 10 months. The Respondent relies on *SMC v BXR* [2019] 5 SLR 904 at paragraphs 52 to 54 where the court considered similar factors in finding in that case that there was inordinate delay.

127. Counsel for the SMC, however, argued that no adverse cost order should be made against the SMC on the main ground that the SMC is performing a regulatory function. This is an important consideration and possibly even an overriding reason why an adverse cost order should not be made against the SMC. In the present case, Counsel for SMC submits that:

a) As the Minister had directed the convening of the inquiry, the SMC had no discretion but to comply with the Ministerial direction.

b) The SMC was simply performing its statutorily mandated function.

c) In its conduct of the prosecution, the SMC took reasonable steps to place relevant evidence before the tribunal.

d) The SMC worked with the Respondent's Counsel to arrive at the ASOF, did not call any factual witnesses, and even dispensed with the cross-examination of the Respondent or his other witnesses including his expert witness, thus not wasting unnecessary time and expense.

[89] Respondent's Closing Submissions, paragraph 73(a)

e) In the conduct of the case, the SMC took a pragmatic approach and was candid about the evidence put before the DT. See paragraphs 39 – 44 of the SMC's Closing Submissions.

f) The SMC had no choice but to convene the inquiry because the complainant was dissatisfied with the outcome of the Complaints Committee. Indeed, the SMC had considered the Respondent's fees reasonable.

The DT's decision on the issue of costs

128. Having duly considered the submissions of both parties on the issue of costs, we make the following findings:

a) The law has been clearly laid down by the High Court that under the present circumstances, like those in *Lawrence Ang*, supra, we have the power to make an adverse cost order against the SMC.

b) In the present case, as in *Lawrence Ang*, supra, this inquiry was convened by reason of ministerial direction which the SMC says it had no discretion to disregard. Like *Lawrence Ang*, supra, too no substantive reasons were given as to why this inquiry was to be convened.

c) The length of time taken for the complaint against the Respondent to be dealt with by this inquiry is inordinate for the reasons given by the Respondent's Counsel which we have referred to.

129. Based on our findings as we have set out, we find that it is only just that the Respondent, based on his acquittal, should have the costs of these proceedings. We find support in the Lawrence *Ang* case, supra, where it will be recalled the court there held that,

> "To put it starkly, the Inquiry in this case was not proceeded with on the basis that experienced, and highly qualified members of the Complaints Committee thought it was called for. They did not. Rather it was proceeded with because the Minister

acceded to the complainant's appeal for reasons that have not been explained" – see *Lawrence Ang*, supra, at [29].

130. In the Respondent's case, the Complaints Committee twice cleared him of any professional wrongdoing.

131. As mentioned in the same paragraph cited above in *Lawrence Ang*, here too eventually, the Respondent having suffered embarrassment and financial prejudice, as a result of what, from the very beginning is an unmeritorious complaint, should not suffer the financial consequences without recompense.

132. For the reasons we have stated here, we are of the view that the Respondent should have the costs of the proceedings.

Application by the Respondent as to publication of our decision

133. There is one final matter that we are required to deal with. This is the application made by the Respondent's Counsel that in the event the Respondent is acquitted of the charges, the DT should order the publication of the outcome of this inquiry. The Respondent's Counsel cites regulation 42 of the Medical Registration Regulations 2010 which states, among other things, that "The Disciplinary Tribunal may, in its discretion, publish an account of the inquiry and its findings …".

134. We find that it is a matter for the SMC in its role as a regulator of the medical standards, to decide whether to publish the outcome of this inquiry and any account of it. Accordingly, we do not make any order or direction on this.

Conclusion

135. Accordingly, this DT orders that:

a) The charges against the Respondent be and are hereby **dismissed**; and

b) The SMC pay the costs and expenses of and incidental to these proceedings, including the costs of the solicitors to the Respondent, to be taxed if not agreed.

Prof Leslie Chew SC
Chairman

Dr Swah Teck Sin

A/Prof Daniel Fung

Dr Liauw Chi Yao Phyllis

Mr Siraj Omar SC (Instructed Counsel)
(M/s Siraj Omar LLC)
Mr See Chern Yang, Ms Charmaine Chan and Ms Ei Leen Tan
(M/s Drew & Napier LLC)
for Singapore Medical Council; and

Mr Lek Siang Pheng, Mr Toh Cher Han and Mr Isaac Hoe
(M/s Dentons Rodyk & Davidson LLP)
for Dr Hong Ga Sze

ANNEX A-1 – CHARGES

CHARGE

That you, The Respondent Ga Sze, did charge the Singapore Medical Council ("**SMC**") for services rendered by you to SMC from 18 March 2009 to 8 April 2010, fees which amounted to gross overcharging and/or far in excess of and disproportionate to what you were entitled to charge for services you rendered.

PARTICULARS

(1) By way of tax invoice number 36212 issued by GS Hong Surgical Care Private Limited, dated 30 June 2010, you rendered fees amounting to $42,800 inclusive of GST, for your services as an expert witness in the inquiry against Dr. Susan Lim, a copy of which is attached in Schedule A.

(2) The fees of $42,800 allegedly comprised 14,000 for giving expert evidence on 8 April 2010, $6,000 for being on standby for trial on 4 February 2010, $14,000 for trial preparation from 18 March 2009 to 3 February 2020, and $6000 for preparation of the trial report.

(3) For services rendered by you, the fees of $42,800 were excessive.

and that in relation to the facts alleged, you have been guilty of professional misconduct under section 53(1)(*d*) of the Medical Registration Act (2020 Rev Ed) (version in force as at 30 June 2022) in that you have intentionally and deliberately departed from standards observed or approved by members of the professional of good repute and competency.

ALTERNATIVE CHARGE

That you, The Respondent Ga Sze, did charge the Singapore Medical Council ("**SMC**") for services rendered by you to SMC from 18 March 2009 to 8 April 2010, fees which amounted to gross overcharging and/or were far in excess of and disproportionate to what you were entitled to charge for the services you rendered.

PARTICULARS

(1) By way of tax invoice no. 36212 issued under G S Hong Surgical Care Pte Ltd dated 30 June 2010, you rendered fees amounting to $42,800 (inclusive of GST) for your services as an expert witness in the inquiry against Dr Susan Lim, a copy of which is attached in Schedule A.

(2) The fees of $42,800 allegedly comprised of $14,000 for giving expert evidence on 8 April 2010, $6,000 for being on standby for trial on 4 February 2010, $14,000 for trial preparation from 18 March 2009 to 3 February 2010, and $6,000 for preparation of the trial report.

(3) For services rendered by you, the fees of $42,800 were excessive.

and that in relation to the facts alleged, you have been guilty of professional misconduct under section 53(1)(*d*) of the Medical Registration Act (2020 Rev Ed) (version in force as at 30 June 2022).

ANNEX A-2 – AMENDED CHARGES

CHARGE

That you, The Respondent Ga Sze, did charge the Singapore Medical Council ("**SMC**") for services rendered by you to SMC from 18 March 2009 to 8 April 2010, fees which amounted to gross overcharging and/or far in excess of and disproportionate to what you were entitled to charge for services you rendered.

PARTICULARS

(1) By way of tax invoice number 36212 issued by GS Hong Surgical Care Private Limited, dated 30 June 2010, you rendered fees amounting to $42,800 inclusive of GST, for your services as an expert witness in the inquiry against Dr. Susan Lim, a copy of which is attached in Schedule A

(2) The fees of $42,800 allegedly comprised 14,000 for giving expert evidence on 8 April 2010, 6,000 for being on standby for trial on 4 February 2010, 14,000 for trial preparation from 18 March 2009 to 3 February 2020, and 6000 for preparation of the trial report

(3) For services rendered by you, the fees of $42,800 is excessive

and that in relation to the facts alleged you have been guilty of professional misconduct under section 53(1)(*d*) of the Medical Registration Act (2020 revised edition) (*version in force as at 8 April 2014*[90]), in that you have intentionally and deliberately departed from standards observed or approved by members of the profession of good repute and competency.

ALTERNATIVE CHARGE

That you, The Respondent Ga Sze, did charge the Singapore Medical Council ("**SMC**") for services rendered by you to SMC from 18 March 2009 to 8 April 2010, fees which amounted

[90] The words in italics were added after the second hearing

to gross overcharging and/or were far in excess of and disproportionate to what you were entitled to charge for the services you rendered.

PARTICULARS

(1) By way of tax invoice number 36212 issued by GS Hong Surgical Care Private Limited, dated 30 June 2010, you rendered fees amounting to $42,800 inclusive of GST, for your services as an expert witness in the inquiry against Dr. Susan Lim, a copy of which is attached in Schedule A

(2) The fees of $42,800 allegedly comprised $14,000 for giving expert evidence on 8 April 2010, $6,000 for being on standby for trial on 4 February 2010, $14,000 for trial preparation from 18 March 2009 to 3 February 2020, and $6000 for preparation of the trial report

(3) For services rendered by you, the fees of $42,800 were excessive

and that in relation to the facts alleged, you have been guilty of professional misconduct under section 53(1)(*d*) of the Medical Registration Act (2020 revised edition) (*version in force as at 8 April 2014*[91]).

[91] The words in italics were added after the second hearing