SINGAPORE MEDICAL COUNCIL DISCIPLINARY TRIBUNAL INQUIRY FOR DR GOH YONG CHIANG KELVIN HELD ON 22 FEBRUARY 2018

Disciplinary Tribunal:
Prof Leslie Chew SC – Chairman
Prof Lee Eng Hin
A/Prof Tan Tong Khee
Adj Prof Wong Kim Eng

Counsel for the Singapore Medical Council:
Mr Kevin Ho
Ms Angelia Thng
(M/s Braddell Brothers LLP)

Counsel for the Respondent:
Mr Lek Siang Pheng
Mr Mark Lewis Shan
(M/s Dentons Rodyk & Davidson LLP)

GROUNDS OF DECISION OF THE DISCIPLINARY TRIBUNAL

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

Introduction

1. On 22 February 2018, Dr Kelvin Goh Yong Chiang ("**the Respondent**") pleaded guilty to a single Amended Charge of improper conduct. The Amended Charge was preferred by agreement of the Singapore Medical Council ("**SMC**") and the Respondent. The particulars of the Amended Charge which the Respondent pleaded guilty to were as follows:

> *That you, **DR GOH YONG CHIANG KELVIN**, are charged that you had, in or around March 2014, whilst practising as a registered medical practitioner at Orchard M.D. Clinic and Surgery at 391B Orchard Road #08-03 Ngee Ann City Tower B, Singapore 238874 (the "**Clinic**"), inappropriately associated yourself with and/or supported the services provided by a person not qualified to provide medical or medical support services, in breach of Guideline 4.1.6 of*

the Singapore Medical Council's Ethical Code and Ethical Guidelines (2002), to wit :-

Particulars

*You had, in your professional capacity as a medical practitioner registered under the Medical Registration Act (Cap. 174), associated yourself with and/or supported the services of one RW, a person not qualified to provide medical care or generally accepted support services (the "**Unqualified Person**"), by operating the Clinic at the same premises as the Unqualified Person's business, i.e.* [SkintechMD]*, even though SkintechMD does not provide legitimate medical or medical support services and selling (with the Unqualified Person's assistance) SkintechMD's non-medical products to patients at the Clinic; and that in relation to the alleged facts you have been guilty of such improper conduct which, in the opinion of the Disciplinary Tribunal, brings disrepute to your profession, under Section 53(1)(c) of the Medical Registration Act (Cap. 174).*

2. The Respondent pleaded guilty to the Amended Charge based on the Agreed Statement of Facts ("**ASOF**"), without qualification. We therefore convicted the Respondent on the single Amended Charge. On conviction, we sentenced the Respondent as follows:
   (a) A penalty of S$10,000;
   (b) The Respondent shall provide an undertaking that he will not engage in the conduct complained of or any other similar offence;
   (c) The Respondent be censured; and
   (d) The Respondent pay the costs and expenses incidental to the proceedings, including the costs of counsel to the SMC.

3. On 22 February 2018, we also indicated that we would provide the Disciplinary Tribunal ("**DT**")'s Grounds of Decision in due course, with the direction that it shall be published. We now provide the Grounds of Decision.

Background as set out in the agreed statement of facts

4. At all material times, in or around 2014, the Respondent practised at 391B Orchard Road #08-03 Ngee Ann City Tower B, Singapore 238874 ("**the** "**Clinic**").

5. As a medical practitioner registered under the Medical Registration Act (Cap. 174) ("**MRA**"), the Respondent was bound by the 2002 edition of the SMC's Ethical Code and Ethical Guidelines ("**2002 ECEG**"). The Respondent knew and/or understood or ought to have known/understood that he was obliged and/or required under Guideline 4.1.6 of the 2002 ECEG, among other things:-
   (a) not to associate himself with anyone who is not qualified to provide medical care, or generally accepted support services; and
   (b) not, in his professional capacity, support the services provided by persons or organisations that do not provide legitimate medical or medical support services.

The Complaint and The Prosecution Case

6. On or about 24 April 2014, the SMC received a complaint ("**the Complaint**") from one Dr C.

7. In the Complaint, Dr C stated, among other things, that *"I believe that…*[Dr Goh] *is in breach of Sections 4.1.6 and 4.5.1.2 of the* [2002 ECEG] *by associating the Practice and himself with his own non-medical company, products and services, and by endorsing on non-medical products, and by failing to clearly separate his non-medical company from the Practice."*

8. A Complaints Committee ("**CC**") of the SMC was subsequently appointed and the Complaint was laid before the CC.

9. On 25 February 2015, the Respondent sent his written letter of explanation ("**Written Explanation**") to the SMC's Investigation Unit.

10. After considering the Written Explanation and the relevant surrounding circumstances, the CC referred the Respondent to a DT for a formal inquiry.

The Amended Charge

11. On or about 3 August 2017, pursuant to Regulation 27 of the Medical Registration Regulations 2010 (Cap. 174, S 733/2010), the SMC preferred one charge against the Respondent (as set out in a Notice of Inquiry dated 3 August 2017 ("**NOI**")).

12. As previously stated, pursuant to an agreement between the SMC and the Respondent, the original charge (as set out in the NOI), was amended. The Amended Charge is as set out in paragraph 1 above.

Facts relating to the Amended Charge

13. Skintech MD Pte Ltd ("**Skintech MD**"), a company that sold non-medical products, was a business belonging to RW (i.e. the Unqualified Person). SkintechMD was incorporated on 28 May 2012.

14. From August 2013 to March 2014, the Respondent was a minority shareholder of SkintechMD.

15. At all material times, the Respondent knew and/or understood or ought to have known/understood that (a) RW was not a person qualified to provide medical care or generally accepted support services; and (b) that SkintechMD did not provide legitimate medical or medical support services.
    (a) In or around March 2014, in breach of Guideline 4.1.6 of the 2002 ECEG, the Respondent inappropriately associated himself with the Unqualified Person, and supported the services provided by the Unqualified Person through SkintechMD, by :- operating the Clinic at the same premises as SkintechMD; and
    (b) selling (with RW's assistance) SkintechMD's non-medical products to patients at the Clinic.

Summary of the charge

16. By virtue of the matters referred to above and, pursuant to Section 53(1)(*c*) of the MRA, the Respondent is guilty of such improper act or conduct which brought disrepute to his profession, and the Respondent was charged accordingly.

The Sentencing: Respondent's Submissions in Mitigation and Prosecution's Submissions on Sentence

17. On 22 February 2018, the Respondent having subscribed to the ASOF and pleaded guilty to the Amended Charge upon the facts in the ASOF, we heard the submissions of the Respondent and the Prosecution, in mitigation and sentencing respectively.

Mitigation

18. In mitigation, Respondent Counsel urged the DT to consider and take into account the following mitigating factors, in sentencing the Respondent based on the Amended Charge:
    (a) he was extremely remorseful for his actions;
    (b) his timely plea of guilt and cooperation with the Prosecution;
    (c) his misconduct was neither intentional nor deliberate;
    (d) his long and unblemished record;
    (e) the lack of evidence of any actual harm to his patients;
    (f) his low likelihood of re-offending; and
    (g) the lengthy investigation and disciplinary proceedings he has had to endure; and
    (h) his stressful 4-year legal battle with his former partner, Dr C.

Respondent's Submissions on Sentence

19. Based on the mitigating factors relied upon by the Respondent (set out in paragraph 19), the Respondent submitted that the appropriate sentence ought to be a fine of $5,000 only.

20. The thrust of the Respondent's submission on sentence was that while he accepted that the overarching principle behind sentencing was to ensure that an offender does not repeat the offence and the profession's reputation was safeguarded, the Respondent urged the DT to impose a fine of $5,000 only. This submission was premised on the fact that the likelihood of the offender repeating the offence was low and therefore the imposition of such a fine would be sufficient to safeguard the reputation of the profession.

21. In support of the Respondent's submissions on sentence, Respondent Counsel referred to a number of case precedents including *the Decision of the Disciplinary Committee for Dr ABB* and *Decision of the Disciplinary Tribunal for Dr Tan Yew Weng David.* T*he Decision of the Disciplinary Committee for Dr ABB* concerned a doctor breaching medical confidentiality in respect of his patient, as well as associating himself with persons not qualified to provide medical or medical support services in breach Guideline 4.1.6 of the 2002 ECEG. The other case was *the Decision of the Disciplinary Tribunal for Dr Tan Yew Weng David*. In this second case, the doctor was charged with breaching Guideline 4.5.1.2 of the 2002 ECEG (*i.e. "Associating with non-medical companies or non-medical products"*) by, among other things, associating himself in an official capacity as the medical director of a non-medical company which marketed a non-medical product named in an advertisement.

22. Respondent pointed out that in both cases cited above, the respective Disciplinary Committee imposed a fine of $5,000.

Prosecution's Submissions on the Sentence

23. In like manner as the Respondent, Prosecution also submitted that the sentence should primarily ensure that the offender would not re-offend and that the reputation of the medical profession should be safe-guarded. However, Prosecution, focused their attention on the broader principle of deterrence. In this, Prosecution cited *Singapore Medical Council v Kwan Kah Yee* [2015] 5 SLR 201.

24. We noted that Prosecution was in agreement with the Respondent that for his offence, a fine would be the appropriate sentence. Indeed, Prosecution referred to the same cases of *Dr ABB* and *Dr Tan Weng Yew David*. However, Prosecution took the view that the fine could not be as low as suggested by the Respondent, namely $5,000. Prosecution took the position that in the present case the appropriate sentence should be a fine of $10,000.

25. Prosecution's submission for a fine of $10,000 was based on the following:
    (1) The sentence should have a deterrent effect; and
    (2) The main aggravating factors, in this case were that the Respondent (a) blatantly permitted SkinTechMD to operate in his clinic's premises and (b) actively sold or promoted SkinTechMD products.

26. Prosecution also pointed out that while they had referred to previous cases (see above), these precedents were cases decided under the old regime of the MRA, the provisions of which provided for a lower tariff for fines. Thus, the current offence would have carried the maximum fine of $10,000 under the previous MRA. In comparison, under the present regime, which is relatively new, the maximum fine that could be imposed is now at $100,000. Accordingly, Prosecution urged the DT to take that into consideration when sentencing the Respondent.

27. A further matter which Prosecution urged us to consider was the fact that the Courts have recently considered similar issues now confronting the DT. In particular, Prosecution urged us to take into account the observations of the Courts on the treatment of mitigating factors during sentencing. In this respect, Prosecution referred us to two cases in particular. The two cases were *Yong Thiam Look Peter v. Singapore Medical Council* [2017] 4 SLR 66 and *Ang Peng Tiam v. Singapore Medical Council* [2017] 5 SLR 356.

The DT's Decision

28. At the outset, it was to be noted that so far as the principles behind the sentencing of offenders in connection with breaches of the MRA was concerned, these have been helpfully laid down by the Court of 3 Judges in the case of *Singapore Medical Council v. Kwan Kah Yee* [2015] 5 SLR201.

29. In *Kwan Kah Yee's* case, the Court of 3 Judges at [50] observed that the two critical functions of sentencing in medical disciplinary proceedings were "*first, to ensure that the offender does not repeat the offence; and second, to uphold the standing of the medical profession*".

30. In *Kwan Kah Yee's* case, the Court of 3 Judges at [55] expressed the overarching principle in the sentencing of doctors who have breached disciplinary rules, in terms of the principle of deterrence as follows:

"[Deterrence] is premised upon the upholding of certain statutory or public policy concerns or alternatively, upon judicial concern or disquiet about the prevalence of particular offences and the attendant need to prevent such offences from becoming contagious. Deterrence, as a general sentencing principle, is also intended to create an awareness in the public and more particularly among potential offenders that punishment will be certain and unrelenting for certain offences and offenders."

31. With the above principles in mind, we duly considered the Respondent's and the Prosecution's submissions.

The Mitigating factors

(a) Respondent's stressful 4-year legal battle with his former partner Dr C

32. Of all the mitigating factors relied upon by the Respondent, we found that this had no mitigating value whatsoever. While there was no doubt that any sort of litigation was stressful, the stress which the Respondent suffered as a result of his dispute with his previous business partner could have no bearing on his professional conduct as a doctor. A doctor must uphold his professional standing at all times regardless of extraneous factors. That was the essence of being a professional. Accordingly, we placed no weight on this factor.

(b) Respondent is extremely remorseful for his actions
(c) Respondent pleaded guilty early and cooperated with the Prosecution

33. Although stated separately, these two mitigating factors relied upon by the Respondent might be taken together. The Respondent pleading guilty at an early stage of the disciplinary process and his cooperation with the Prosecution was at least suggestive of the result of his remorse and was reflective of it.

34. It was trite that pleading guilty at an early stage was a mitigating factor. As has been noted by the High Court in *Angliss Singapore Pte Ltd v P. P* [2006] 4 SLR 653 at [77], "*A plea of guilt can be taken into consideration in mitigation when it is motivated by genuine remorse, contriteness or regret and/or a desire to facilitate the administration of justice*." In the present case, the timeous plea of guilt and his cooperation with the Prosecution were, in our view, indicators of the Respondent's remorse and contriteness. The timeous plea of guilt by the Respondent also saved time and expense in the administration of justice. This was noted in *Sinniah Pillay v PP* [1992] 1 SLR 225 at [27]. While both *Angliss* and *Sinniah* were cases dealing with criminal sentencing, the Court of 3 Judges in *Ang Peng Tiam v Singapore Medical Council* [2017] SGHC 143 at [110] pointed out that "*principles enunciated [in criminal sentencing]…are, [in their judgment], also applicable to quasi-criminal proceedings …*".

35. In terms of the Respondent pleading guilty at an early stage, before us Prosecution did not dispute these factors or challenged these in any way.

36. However, Respondent's plea of guilt and the ultimate weight to be placed upon it in sentencing, had to be weighed against the aggravating factors and the rationale behind the offence Respondent committed.

(d) <u>Respondent's misconduct was neither intentional nor deliberate</u>

37. We found the offer of this plea as a mitigating factor to be somewhat disingenuous. While it may even be a fact that the Respondent did not 'knowingly breach the professional rule', it was trite that ignorance of the law was no excuse. In relying on the lack of intent or deliberateness in offending, the Respondent was no doubt, at least suggesting that he did not knowingly offend. In *Kishan Chand v PP* [1995] 2 SLR 291 at [7], the High Court observed that *"[I]gnorance of the law can hardly ever be a mitigating factor*". More significantly, a professional man must be expected to ensure that he was not, *in fact,* breaching his own professional rules which he was bound to adhere to.

38. The fact that the offence committed involved directly benefitting the Respondent and his wife, the shareholders of SkinTechMD greatly militated against any weight to be placed upon this plea. It was not unreasonable to expect that a

professional man of the Respondent's experience would at least check whether what he intended to do, i.e. associating himself with a non-medical entity, was permissible by his own professional conduct rules. In the result, we did not find this to be a mitigating factor.

(e) Respondent's long and unblemished record

39. This plea might be disposed of shortly. We noted that the Court of 3 Judges in *Ang Peng Tiam v. Singapore Medical Council* [2017] 5 SLR 356 observed at [102]-[104], that an offender's alleged long and unblemished record would be of *"modest"* weight and would be readily displaced if there were other sentencing principles which apply, such as deterrence. We found that clearly, the deterrence necessary to ensure public good and the preservation of the professional standing of doctors greatly outweighed any need to take into consideration the "long and unblemished record" of the Respondent.

(f) Lack of evidence of any actual harm to Respondent's patients

40. Again, this was a factor which the DT did not consider as helping the cause of the Respondent. In *Yong Thiam Look Peter v. Singapore Medical Council* [2017] 4 SLR 66, the Court of 3 Judges at [12], observed that where actual harm was not an element of a charge, the absence of such harm would generally be a neutral consideration and cannot be taken as a mitigating factor. In the present case, this was self-evident. The charge did not concern events that caused harm to the Respondent's patients, only a breach of professional standards resulting in the lowering of the reputation of doctors in general. Hence, we found this factor 'neutral' in its mitigating value.

(g) Low likelihood of Respondent re-offending

41. This was another factor which, even taken at its highest, we found must be outweighed by the deterrence value which the sentence must reflect in view of the public policy aspects of the effects of the offence. Accordingly, we placed little weight on this factor as mitigation.

The Aggravating Factors

42. Though not specifically identified as such, we noted that Prosecution's listing of the following appeared to be a reference to the Aggravating factors in this case:

(a) The Respondent's inappropriate association with the Unqualified Person was neither passive nor did he seek to dissociate himself from SkintechMD's business. Indeed, the following should be noted:-

a) The Respondent openly allowed SkintechMD to operate at the same premises at the Clinic – the place where he provided medical services to patients.

b) The Respondent proactively sold SkintechMD's products (with the Unqualified Person's assistance), despite knowing that SkintechMD did not provide legitimate medical or medical support services; and

c) The Respondent's inappropriate association with the Unqualified Person was not an isolated incident. It was carried out for an extended period of time.

(b) In addition at the time when the Respondent committed the offence, he had already been in practice for more than 25 years. It was trite that the Respondent, as a doctor of considerable experience and seniority, should be held to a higher standard of professional/ethical conduct.

43. We agreed with Prosecution that the factors set out in paragraph 42 were indeed aggravating factors that we should take into consideration in sentencing the Respondent. In that regard, we considered the following:

(a) The Respondent's overt breach of professional conduct in associating with an Unqualified Person was active rather than passive. Unlike in the case of *Dr ABB* (8 December 2009) where the Disciplinary Committee noted that the respondent there did try to disassociate his medical practice from that of the spa, the Respondent here clearly proactively involved himself in the business of SkintechMD. Indeed, the Respondent was a shareholder in the company from August 2013 to March 2014 – see paragraphs 11 to 13 of the ASOF.

(b) It was also clear that the Respondent actively sold SkintechMD products – see paragraph 13 of the ASOF.

(c) The Respondent's association with the Unqualified Person was also not an isolated incident but was one based on a business relationship with the Unqualified Person – see paragraphs 10 to 12 of the ASOF.

(d) The Respondent being a doctor of considerable experience and seniority, having obtained his medical degree in 1990, should be held to a higher standard than perhaps a young doctor – see Dr ABV (9 March 2011) – there is a higher expectation on more senior doctors that they would conform to the professional standards.

Sentence to be imposed on the Respondent

44. Based on the Aggravating factors balanced by the Mitigating factors that we had considered and discussed above, and apart from the other usual orders that would be made, we were of the view that the appropriate sentence in these circumstances should be a fine of $10,000.

45. On the quantum of the fine, the DT arrived at this figure on the basis that the sentence imposed here should send a clear signal to the medical profession both in terms of a specific deterrence as well as a general deterrence. While the Respondent's timeous pleas of guilt and his cooperation with the Prosecution during the investigation phase were mitigating factors, these were outweighed by the clear necessity to impose a deterrent sentence. As previously noted, the two critical functions of sentencing in medical disciplinary proceedings were "*first,* to ensure that the offender does not repeat the offence; and second, to uphold the standing of the medical profession" – see paragraph 30 above. Based on these principles, we thought that $10,000 was the appropriate fine.

46. We also did not think that a fine of $5,000 as proposed by the Respondent was appropriate. In our view, $5,000 would be too low a sentence to fulfil the two stated critical functions of sentencing in medical disciplinary cases, as laid down by the Court in *Kwan Kah Yee* – see paragraphs 29 and 30 above.

47. Additionally, we also considered that having regard to the new disciplinary regime now applicable to doctors, a fine of $5,000 would not reflect the seriousness of the deterrence called for. The maximum fine under the new regime is now $100,000 as opposed to the previous maximum of $10,000. We considered that a fine of $10,000 would be more commensurate with the scale established under the new regime.

48. The other significant aggravating factor which the DT also considered and found that made a fine higher than the $5,000 to be appropriate, was the fact that the Respondent's specific conduct in associating with an Unqualified Person. The Unqualified Person was the Respondent's wife. Though not specifically stated in the ASOF, it was an undeniable fact. Indeed, the Unqualified Person was identified as the Respondent's wife in paragraph 10 of the Respondent Counsel's written submission ("**RM**"). Taking this fact together with the fact that the Respondent was, at least between August 2013 and March 2014, a shareholder of SkintechMD, it was abundantly clear that the Respondent proactively brought himself into a situation where the likelihood of him breaching his professional obligations under the 2002 ECEG was extremely high. The fact that the Unqualified Person, carried out her activities within the Respondent's clinic and the Respondent's active promotion of the Unqualified Person's business, immediately placed the Respondent in a position of serious conflict with his professional obligations.

49. Based on the foregoing, we were quite clear that an appropriate fine to be imposed on the Respondent would be a fine of $10,000. However, before that fine was finally crystallised as the sentence to be imposed, we had to consider the important question of whether a discount should be applied to that quantum based on the Respondent's allegation that the disciplinary process which the Respondent had to endure was unreasonably lengthy leading to an 'inordinate delay' which prejudiced him.

The lengthy investigation and disciplinary proceedings Respondent had to endure

50. This was perhaps the most significant mitigating factor which exercised the minds of the members on the DT.

51. It could be recalled that the Respondent argued that the length of time he had to endure the disciplinary process was a relevant factor in that, if it was true, the DT should factor in a discount into any sentence it might impose. In support, the Respondent Counsel referred us to the recent cases by the Court of 3 Judges. In those cases, it was highlighted that in cases where there have been inordinate delays in the process, the Court might apply a discount to the sentence imposed. In this connection, the Respondent Counsel referred us to *Ang Peng Tiam v Singapore Medical Council and another matter* [2017] SGHC 143 and two other cases which reiterated the above principle.

52. The Respondent Counsel highlighted to the DT that in the present case, some 2½ years had elapsed from the time the Respondent was notified of the Complaint to the time he was served with the NOI.

53. The Respondent Counsel pointed out that the investigation/disciplinary process "[was] *rather long given that this* [was] *not a patient treatment/management-related prosecution, and no expert report appeared to have been needed/obtained by the SMC*" – see paragraph 33 of the RM.

54. On this issue of 'inordinate delay', Prosecution Counsel agreed that it was true that the Complaint did not involve complicated medical treatment or needed expert evidence to be dealt with. However, Prosecution Counsel pointed out that the Written Explanation provided by the Respondent in answer to the Complaint was itself sufficiently comprehensive to require a reasonable amount of time to investigate. In short, Prosecution Counsel submitted that the Complaint was not as straightforward as the Respondent suggested.

55. In connection with the allegation of delay in the proceedings, we found that the real issue here was whether there was inordinate delay in the proceedings to warrant the DT applying a discount to any sentence it was imposing on the Respondent.

56. Both Counsels appeared to suggest that the cases referred to on this issue did not really elaborate how the discount in sentencing should be assessed or applied.

57. For our part, we thought that on this issue, we could do no better than to refer to the case of *Ang Peng Tiam* which was the case where the Court of 3 Judges first raised the principle.

58. In *Ang Peng Tiam*, the investigative and disciplinary process took some 4½ years to complete before the doctor was dealt with. Against that background, the Court of 3 Judges had to deal with the question of whether there was a long delay in the proceedings against the doctor.

59. In *Ang Peng Tiam,* the Court considered this factor by first referring to the criminal case in which the High Court first looked at the question of delay as a mitigating factor. Citing *Tan Kiang Kwang v PP* [1995] 3 SLR (R) 746, the Court observed as follows:

> *"There, Yong Pung How CJ held that although delay in prosecution might not, in itself, be a mitigating factor, the Court could exercise its discretion to discount the sentence if the following cumulative conditions were met:*
> *(a) There has been a significant delay in prosecution;*
> *(b) The delay has not been contributed to in any way by the offender; and*
> *(c) The delay has resulted in real injustice or prejudice to the offender."*

60. The Court then went on to refer to *Chan Kum Hong Randy v P P* [2008]2 SLR(R) 1019 and noted as follows:

> *"… in Chan Kum Hong Randy v PP … V K Rajah JA held that while there is no general proposition that any or all delays in prosecution would merit a discount in sentencing (at[31]), the Court may discount the sentence if the delay was inordinate, and the offender was in no way responsible for the delay (at [32] –[33])."*

61. The Court in *Ang Peng Tiam* also explained the rationale behind this approach to delay as a mitigating factor. Essentially, it was based on fairness. The rationale being that a long delay in proceedings would no doubt cause 'undue suffering on

the offender stemming from the anxiety, suspense and uncertainty' and therefore, the sentence should reflect this fact – *see Ang Peng Tiam* at [111].

Delay

62. The delay which might warrant a discount in the sentence, must be an 'inordinate delay'. What was inordinate delay must be assessed based on the circumstances of the particular case. Similarly, whether or not there has been inordinate delay was not simply measured in terms of the length of time - see *Ang Peng Tiam* at [112] to [113].

63. In the present case, we found that although the case against the Respondent was not complex in medical terms, requiring medical expert evidence, nevertheless, the SMC had to deal with the Respondent's comprehensive Written Explanation to the Complaint. In the first place, the Respondent did not admit but disputed the Complaint. Secondly, the Respondent's Written Explanation to the Complaint was detailed and comprehensive. The Written Explanation ran some 14 pages in small font accompanied by another 198 pages of exhibits and documents. While the length of the Written Explanation did not automatically make the case complicated, it did mean that in order to be fair in the proceedings, the CC had to spend time to investigate the response together with the documentary evidence which the Respondent had offered in his Written Explanation.

64. As already noted, the Respondent's Written Explanation was not one where he 'fully admitted to his complicity' which could have made the present proceedings unduly lengthy, and therefore a cause of inordinate delay. If that were the case then, as the Court in *Ang Peng Tiam* at [113] noted, that would have been different. Indeed, and quite to the contrary, the Respondent's opening in paragraph 3 of his Written Explanation at pages 172 to 186, thereof reads "*The Complaint made against me is frivolous and vexatious*…". Those were the 'fighting words' that immediately placed upon the investigating and disciplinary agency the burden of having to fully investigate and prosecute the offence with all that entailed in terms of time and resources.

65. The time taken here in the proceedings against the Respondent, and which the Respondent said amounted to inordinate delay was 2½ years from the date of the Complaint to the issuance of the NOI. While inordinate delay was not to be measured against time in absolute terms, it was nevertheless, important to address the length of time from the perspective of quasi-criminal proceedings. As noted in *Ang Peng Tiam* at [112], "*Time is needed for criminal and quasi-criminal processes to run their course*". Seen from that perspective, we did not find that the lapse of 2½ years in the present case amounted to delay, much less inordinate delay.

66. Based on what we found as set out above, there was no real need for us to look at the remaining two conditions laid down by *Tan Kiang Kwang* (see paragraph 60 above) in the consideration of whether the delay merited a discount in the sentence since we do not find that there was inordinate delay. However, for completeness, we examined the allegation of delay in terms of the two other conditions as well.

The delay has not been contributed to in any way by the offender

67. As to this condition, laid down by *Tan Kiang Kwang*, quite clearly, the Respondent could not be said to have in any way contributed to the delay, assuming there was a delay though we found none.

The delay has resulted in real injustice or prejudice to the Respondent

68. If we had found inordinate delay, we would have nevertheless, found that public interest considerations would have outweighed the need to give a discount in the sentencing of the Respondent. While it was recognised that the anxiety and mental anguish hanging over the Respondent during the period of delay could be taken into account as a mitigating factor in sentencing, it was equally recognised that the underlying rationale of *'fairness to the offender may be outweighed by the public interest which demands the imposition of a heavier sentence*' – see *Ang Peng Tiam* at [118]. Here the twin demands of deterrence and the upholding of the reputation of the medical profession would have prevented the application of a discount to any sentence imposed. The importance of the standing and trustworthiness of the medical profession could not be taken lightly having regard to the profession's role in society.

69. More significantly, we noted that the Respondent did not show that he suffered 'real injustice or prejudice' beyond the anxiety and mental anguish he might have suffered while going through the disciplinary process. The Respondent did not provide any evidence to show that his professional practice suffered as a result. Nor was there any evidence put before us that pointed to 'real injustice or prejudice'. It would have been otherwise if the Respondent provided evidence to show that as a result of the proceedings he was not able to work as doctor, for example. There was no such evidence.

The Sentence

70. Taking into consideration the submissions of the Respondent on the issue of delay in proceedings, we found that first, there was no delay, much less an inordinate delay in the proceedings. Second, even if there was delay that was to be viewed as inordinate, we would have found that the public interest here would have demanded a higher sentence than proposed by the Respondent.

71. Accordingly and for the reasons we have referred to, we did not find that any discount should be applied to the sentence of a fine of $10,000.

CONCLUSION

72. Taking all matters into account, including the submissions on behalf of the Respondent and for all the reasons we have outlined, we sentenced the Respondent as follows:
    (a) A penalty of S$10,000;
    (b) The Respondent shall provide an undertaking that he will not engage in the conduct complained of or any other similar conduct;
    (c) The Respondent be censured; and
    (d) The Respondent pay the costs and expenses incidental to the proceedings, including the costs of counsel to the SMC.

Dated this 16th day of April 2018.