

**SINGAPORE MEDICAL COUNCIL DISCIPLINARY INQUIRY AGAINST
DR ABH HELD ON 6, 7, 8 OCTOBER 2009, 9, 10, 11 NOVEMBER 2009, 23
DECEMBER 2009 AND 12 APRIL 2010**

Disciplinary Committee:

Prof R Nambiar (Chairman)
Dr Lim Cheok Peng
Dr Wu Dar Ching
Ms Wong Mui Peng (Lay Member)

Legal Assessor:

Mr Andy Chiok (M/s Michael Khoo & Partners)

Prosecution Counsel (M/s Wong Partnership LLP):

Mr Sean La'Brooy
Ms Reina Chua

Defence Counsel (M/s Rodyk & Davidson):

Mr Christopher Chong

DECISION OF THE DISCIPLINARY COMMITTEE

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

1. These proceedings arose out of a letter of complaint made against the Respondent, Dr. ABH on 5 July 2006 by Dr C, for the Director of Medical Services, Ministry of Health to the Singapore Medical Council (the "SMC").
2. Following the complaint, a written response dated 12 September 2006 by Dr. ABH was submitted to the Complaints Committee, which then referred the matter to this Committee.

The Charges

3. In the Notice of Inquiry dated 4 September 2009 (PB1-56), the SMC framed 32 charges ("the Charges") against Dr. ABH, it is alleged that by reason of the conduct as set out in these Charges, Dr. ABH failed to exercise due care in

the management of the patients referred to in the Charges, in particular (and as the case may be in respect of the relevant charge), that

- (i) he failed to formulate and/or adhere to any management plan for the treatment of the patient's medical condition; and/or
- (ii) he engaged in inappropriate prescribing practice by regularly prescribing Subutex to his patients without exercising an acceptable standard of diligence and care; and/or
- (iii) he failed to properly record or document in the patients' Patient Medical Records, sufficient details of the patients' diagnosis, symptoms, condition and/or any management plan to enable a proper assessment of the patient's medical condition during the period of treatment; and/or
- (iv) he breached the Ministry of Health's Guidelines dated 26 October 2005 for the treatment of Opiate Dependence, specifically paragraph 6 therein; and/or that
- (v) he inappropriately prescribed other medication i.e. Diazepam, Tramadol and/or Phensydyl, with Subutex on various occasions.

4. Charges No. 4, 18 and 29 were amended with Dr. ABH's consent on the first day of hearing. Dr. ABH elected to contest all Charges.

The Proceedings

5. The hearing was conducted over 6 days in two tranches. The SMC relied on the expert evidence and testimony of Dr. PE as part of its case against Dr. ABH. An expert witness Dr. DE testified in Dr. ABH's Defence. Parties tendered written submissions and also submitted orally.

Amendment of charges

6. On two occasions during the proceedings, the SMC sought to amend the Charges. Without it being necessary to make any finding on the power of this Committee to allow such applications to amend the Charges, we disallowed the applications to avoid any possible prejudice that may be suffered by Dr. ABH by the amendment of charges at this stage of the proceedings.
7. We would also add that it is also the concern of this Committee that amendment of charges at a late stage may delay the matter and escalate the cost of disciplinary proceedings. In this regard, we would state that for the saving of costs and time, it is incumbent on counsel for the SMC to properly frame the charges on the outset, taking into account the documentary evidence as well as the views of any expert witness that may be engaged by the SMC. This would narrow the issues at the hearing, and save time and costs for all parties.
8. We now turn to the specific elements of the Charges against Dr. ABH.
 - A. Failure to formulate and/or adhere to any management plan**
9. The first limb common to all of the 32 Charges against Dr. ABH is that he “failed to formulate and/or adhere to any management plan for the treatment of the patients’ medical condition”.
10. The SMC’s case is that on the medical records, there is no formulation by Dr. ABH and/or adherence to any management plan. Broadly, it is Dr. ABH’s defence that he had in place a management plan for his patients i.e. a “maintenance” treatment plan. In its closing submissions the SMC’s case is that even on a maintenance treatment plan, patients cannot be put on

maintenance dosage indefinitely, on the basis of the product insert of Subutex¹.

11. Dr. ABH gave evidence under cross-examination that his treatment plan involved putting the patients on maintenance dosages as opposed to a detoxification program. Dr. PE agreed under examination that on reading the clinical notes, the prescription is consistent with the maintenance dosages for the patients². Dr. DE also gave evidence that the dosages prescribed are consistent with a maintenance plan.

12. However, the evidence relating to the maintenance treatment plan is incomplete without reference to the following:
 - (i) In his evidence on the maintenance dose, Dr. PE alluded to the eventual reduction of the dosage of Subutex for patients³.

 - (ii) Under cross-examination and when asked whether it would be good practice, Dr. DE testified that while it is possible to put patients on maintenance dosages, he would prefer to wean the patients off the medication. Dr. DE also agreed that a treatment plan should be recorded.⁴

 - (iii) In the Patient Information Leaflet of Subutex, there are references to the medication being reduced and “stopped altogether”⁵.

13. In this regard, on the evidence adduced before it, this Committee finds it is not an accepted medical practice that even if a patient is put on a maintenance

¹ See Subutex product insert at AB1- pages 77, 78

² NE 6.10.2009, Pt. 3/4, pg 52, line 5, NE 7.10.2009 Pt. 1/3, pg 11 to 12, line 21 and also at NE 7.10.2009/ Pt. 3/3, pg 12 line 12

³ See NE 6.10.2009/ Pt. 3/4, pg 46 / line 13 and NE 7.10.2009/ Pt. 1/3, pg 57 line 9

⁴ Evidence of Dr. DE, 10.11.2009

⁵ Subutex Patient Information Leaflet, AB1, page 78

treatment plan, Subutex is prescribed on an indefinite basis without any definite period.

14. Reverting to the instant case, we note Dr. ABH's evidence that his treatment goal was to put these patients on the maintenance treatment plan for "2 to 3 years"⁶. However, we do not see any documentation of such a maintenance treatment plan, for a fixed period or with an intended cessation date. On the contrary, a perusal of the periods of treatment for the 32 patients shows that 20 of these patients were prescribed Subutex for 30 months (2 ½ years) or more⁷ with little or no attempts to wean the patients off. This Committee also noted that there is no documentation in the patients' records of any plan or attempt by Dr. ABH to reduce or wean the patients off Subutex. As stated above, this Committee's view is that on the evidence, the prescription of Subutex on an indefinite basis is not an accepted medical practice and cannot be in the interests of the patients. On that basis, we cannot accept that the course of treatment that Dr. ABH claimed to have formulated or implemented for his patients amounted to an acceptable treatment or management plan.
15. In this regard, in respect of Charge Nos. 5 to 12, 16 to 22, 24 and 27 to 30 (totalling 20 Charges) where the periods of prescription of Subutex exceeded 30 months or more, this Committee finds that the SMC has successfully proven limb (a) therein.

B. Inappropriate prescribing practice

- 16 This limb, which is also common to all of the 32 Charges against Dr. ABH is that he "engaged in inappropriate prescribing practice" to his patients referred to in the Charges without exercising an acceptable standard of diligence and

⁶ Cross-examination of Dr. ABH, 9.11.2009

⁷ Schedule 1, SMC's Closing Submissions, Patient / Charge Nos. 5 to 12, 16 to 22, 24 and 27 to 30.

care. The relevant prescriptions of Subutex are contained in the Schedules annexed to the Notice of Inquiry.

17. In the course of the hearing, it was contended that the dosages prescribed to the patients were well within the 32 mg dosage stipulated in the Subutex Information Leaflet. Counsel for Dr. ABH contended that there was no evidence that Dr. ABH failed to exercise an acceptable standard of diligence and care in the regular prescription of Subutex.

18. This Committee make the following findings in respect of this element of the Charges:
 - (i) In respect of the prescribed dosages for the patients, this Committee accepts that they are within acceptable limits, coupled with the evidence on why dosages were increased on certain occasions.

 - (ii) However, we reiterate our views set out above that even on a maintenance program, patients cannot be prescribed Subutex indefinitely. In this regard, we find that Dr. ABH's practice of prescribing Subutex is inappropriate, and without an acceptable standard of diligence and care insofar as patients were prescribed Subutex on an indefinite basis. For the benefit of Dr. ABH, we limit it to the 20 charges in respect of Patients 5 to 12, 16 to 22, 24 and 27 to 30 as set out above.

We therefore come to the conclusion that limb (b) of the above Charges are made out.

19. On a related note, the SMC had attempted to introduce evidence of certain lapses by Dr. ABH of his practice of prescribing Subutex e.g. collection of Subutex by persons other than the patients (relating to Patients 23 and 30).

Given our finding in 12(b) above, it is unnecessary to make any finding on this aspect of the evidence.

20. We would comment on a further point. In the course of the proceedings, counsel for the SMC made repeated references to recommendation by the College of Family Physicians that each general practice clinic should have no more than 5 cases of opiate dependence at any one time. It is undisputed that Dr. ABH had stated that he manages about 90 opiate-dependent patients and that in any event, the present Charges concerned 32 patients.
21. Apart from it perhaps being an attempt to make the point that due to the large numbers of patients Dr. ABH would not be well placed to properly treat his patients, we do not see the relevance of this line of evidence. Further, this Committee also borne in mind that Dr. ABH is not charged for any breach of guidelines or recommendations in respect of the large number of opiate-dependent patients. We therefore did not place any reliance on this aspect of the evidence in reaching our decision in these proceedings.

C. Adequate or proper documentation of patients' records

22. This is a limb that is also common to all 32 Charges. The SMC's case is that Dr. ABH did not record or document in his patients' medical records details or sufficient details of the patients' diagnosis, symptoms and/or condition and/or advice given and/or any management plan such as to enable a proper assessment of the patients' medical condition over the period of treatment.
23. It is Dr. ABH's case that on the evidence,
 - (i) the maintenance of the patients' record was of sufficient detail such that the facts relied upon by the SMC are not made out, and/or

- (ii) that even though if there was any deficiency in note taking at the first consultation of his patients, he is not charged with inadequate history taking.

24. In the course of the proceedings, the Committee had been referred by both counsel to the patients' medical records in respect of the Charges. The Committee notes the following aspect of the evidence relating to these medical records:

- (i) Both expert witnesses agree that for such opiate-dependent patients as those seen by Dr. ABH, a comprehensive history taking is necessary for proper treatment by a physician.
- (ii) Except for patient No. 7, there is no recording of the specific management plan for these patients, even though Dr. ABH's evidence was that the plan was to keep them on a maintenance program for "2 or 3 years"⁸. Dr. ABH admitted under cross-examination that there was no express recording of such a management plan.
- (iii) However, Dr. ABH testified under cross-examination that even though no express words were used in his patients' records of a "maintenance dosage" treatment plan, a physician perusing the medical records will be able to "figure out" that the patients are on maintenance dosages.

25. This Committee notes that in paragraph 4.1.2 of the Ethical Code and Guidelines⁹, it is stated that:

"Medical records kept by doctors shall be clear, accurate, legible and shall be made at the time that a consultation takes place, or not long

⁸ Cross-examination of Dr. ABH, 9.11.2009

⁹ Prosecution's Bundle of Authorities, Tab 3, page 7

afterwards. Medical records shall be of sufficient detail so that any other doctor reading them would be able to take over the management of a case. All clinical details, investigation results, discussion of treatment options, informed consents and treatment by drugs or procedures should be documented'

26. While this Committee accepts that Dr. ABH is not expressly charged with any breach of paragraph 4.1.2 of the Ethical Guidelines, we take the view that in considering whether particular (c) is made out, we can refer to paragraph 4.1.2 as a yardstick for the standard of record keeping required of physicians, and in that regard it is not irrelevant to these proceedings.
27. On history taking, with reference to the submission by Dr. ABH's counsel, while this Committee recognises the distinction between history taking and the recording of subsequent consultations, we take the view that adequate history taking at the first consultation form part of the obligation of maintaining patients' records, and the standard prescribed in paragraph 4.1.2 of the Ethical Guidelines applies to history taking as well as subsequent consultations. This is also supported by the concerns of both experts that for opiate-dependent patients, history taking is important.
28. In the present case, the Committee is not satisfied that on the evidence, Dr. ABH had properly maintained the relevant patients' records for the management of the patients' treatment:
 - (i) Notably, while there was some history taking, the standard fell short of what was required, as stated by the expert witnesses.
 - (ii) Further, in the course of Dr. ABH's evidence, we observed that reliance was placed by him on his recollection of the consultations with the

patients. If Dr. ABH's records were properly documented in the first place, there would be no such necessity.

- (iii) We would also add that although consultations were recorded, the lack of details of each consultation and the results of any review conducted by Dr. ABH points towards a conclusion that these records were not properly maintained.
 - (iv) This Committee also cannot accept that it is good clinical practice for a physician to not expressly document a treatment or management plan that he had in mind, and then to justify this failure to document on the basis that such a plan can be inferred from the history of the previous consultations or the subsequent pattern of prescriptions of medication.
 - (v) While both medical experts gave evidence that the prescription patterns are consistent with maintenance treatment plans (putting aside the indefinite nature), we bear in mind that both experts are specialists in this field and it cannot be affirmatively stated that another general practitioner will be able to make a similar conclusion. This again highlights the importance of expressly stating in the medical records the physician's strategy or management plan for his patients, which we find lacking in the present case.
29. Finally, this Committee would add that it is in the interest of physicians to maintain patients' records, as ultimately these will form the primary evidence of the work and treatment by them. Given the codification of the obligation of proper record keeping in the Ethical Guidelines and for the reasons set out above, the failure to maintain proper records amounts to misconduct.
30. On the above basis, this Committee concludes that limb (c) of all of the above Charges has been proven.

D. Breach of Ministry of Health's Guidelines dated 26 October 2005

31. This is a limb that is relevant to Charges Nos. 1, 3, 5, 6 to 24, and 26 to 32 (a total of 29 charges).
32. This Committee cannot, on the evidence presented to it safely find that limb (d) is made out in respect of any of the 29 charges. In fact, it is notable that on the evidence, Dr. PE conceded under cross-examination that there was no breach by Dr. ABH of the relevant Guidelines relating to the prescription of opiates.

E. Inappropriate prescription of other medication with Subutex

33. This limb is relevant to Charges 12, 17, 18, 22 and 28, and relate to Dr. ABH's co-prescription of Subutex with Diazepam, Tramadol and/or Phensydyl, as the case may be.
34. It is the main thrust of the SMC's case that it is inappropriate to co-prescribe such medication with Subutex. On the other hand, it is Dr. ABH's case that there was no impropriety in the co-prescription of such medication with Subutex if the situation warranted it.
35. On a preliminary point, while counsel for the SMC raised the point that Dr. DE had stated in his report that the patients' treatment plans were at "*some variance from the Guidelines*" in respect of patients 2, 12, 18, 23, 28 and 31, we note that the complaint of improper co-prescription of other medication with Subutex was not raised by the SMC for Charges No. 2 and 31, and we therefore need not dwell further into those charges on this issue.
36. In respect of the evidence and arguments,

- (i) Dr. ABH contended that Dr. PE had conceded that the drug information leaflet for Subutex allows the co-prescription of Subutex with benzodiazepine where clinically indicated.
- (ii) Our attention is drawn by counsel for the SMC to Dr. ABH's admission under cross-examination of limb (c) of Charge 12¹⁰ relating to his inappropriate co-prescription of Valium with Subutex. Counsel for Dr. ABH submitted during closing submissions that the admission is non-material.
- (iii) On the issue of co-prescription of Phensydyl, upon a perusal of the closing submissions, Dr. ABH's case is that in respect of Charges 17 and 22, he had prescribed Phensydyl on 3 out of 174 consultations and 2 out of 185 consultations respectively.
- (iv) In respect of Charge No. 18 involving Tramadol, Dr. ABH's case is that he was trying to use Tramadol to reduce Subutex. However, he conceded that there was no recording of the reason for its use or of the fact that he had explained it to the patient¹¹.
- (v) Counsel for the SMC examined both Dr. PE and Dr. DE to make the point that co-prescription of Subutex with benzodiazepine or Phensydyl will lead to risks for the patients. In his evidence, while Dr. PE agreed with counsel for the Defence that there is no express prohibition on co-prescription of Subutex with benzodiazepine or Phensydyl, he had also testified that there will be risks involved, in respect of giving medicine

¹⁰ NE, 4.11.2009, Part 1/2, pg 114 line 13

¹¹ NE, 8.10.2009, Part 2/2, pg 31 line

containing opiate to opiate-dependent patients¹², urine tests would be affected¹³, overdosing and respiratory depression.¹⁴

- (vi) With regard to the co-prescription of Tramadol, under cross-examination Dr. DE testified that while the use of such medication is not innovative, the prescription by Dr. ABH was “unusual” in that he did not persevere in its use, and that such medication should not be used on an *ad hoc* basis.¹⁵

37. Given the evidence presented to this Committee, we cannot find that Dr. ABH’s co-prescription of Diazepam, Tramadol and/or Phensydyl in respect of the relevant patients amounted to good clinical practice. However, bearing in mind the relatively low incidences and Dr. ABH’s own concerns and apprehension of co-prescription, we are unable to say that these occasions of co-prescription are of sufficient gravity such that by themselves, they amounted to misconduct by Dr. ABH.

Findings of the Committee

38. On the totality of the evidence, this Committee finds that all of the Charges were made out by the SMC against Dr. ABH. However (and this is relevant to the appropriate sentence to be meted out), we note that not all of the particulars of each charge had been successfully proven. In summary,

- (i) Limbs (a) and (b) had been proven in respect of 20 charges i.e. Charge Nos. 5 to 12, 16 to 22, 24 and 27 to 30.

¹² NE, 6.10.2009, Part 4/4, pg 19 line 6

¹³ NE, 7.10.2009, Part 3/3, pg 21 line 22

¹⁴ NE, 7.10.2009, Part 3/3, pg 22 line 5

¹⁵ Evidence of Dr. DE, 10.11.2009

- (ii) Limb (c) of all Charges had been proven i.e. misconduct on the ground of failure to maintain good and proper medical records.
- (iii) The SMC failed to prove there was any breach of the MOH Guidelines dated 26 October 2005.
- (iv) In respect of Charges Nos. 12, 17, 18, 22 and 28, in relation to the particulars relating to the inappropriate prescription of other medication with Subutex, the acts complained of do not amount to misconduct.

39. The Committee therefore finds that Dr. ABH is guilty of the professional misconduct in respect of the Charges to the extent as stated above and called for his counsel to address us in mitigation.

Sentencing

40. In the course of mitigation, counsel for Dr. ABH had relied upon *inter alia* the following:

- (i) There was no breach of the Guidelines in the present case and this is a basis for the non-imposition of a sentence involving suspension,
- (ii) Dr. ABH had taken steps to educate and undergo courses as highlighted in the plea of mitigation,
- (iii) Dr. ABH had made various contributions to the community,
- (iv) Dr. ABH is a sole breadwinner and has 4 children, and that
- (v) there was no prior antecedents and Dr. ABH had practised as a physician for about 15 years without incidence.

41. Counsel for the SMC stated, inter alia:

- (i) The fact that there was no breach of the Guidelines is not a basis for the non-imposition of a sentence involving suspension,
- (ii) Dr. ABH did not plead guilty at the earliest opportunity, unlike the respondents in a few of the precedents presented to this Committee, and
- (iii) citing precedents, the appropriate sentence ought to be one involving the suspension of Dr. ABH, coupled with a fine.

42. After due consideration, we are of the view that the following are relevant mitigating factors:

- (i) There was no breach of the Guidelines in the present case, which is an important mitigating point,
- (ii) another important mitigating point is that there was no pattern of any persistent practice by Dr. ABH to co-prescribe Subutex with benzodiazepine or cough medicine,
- (iii) we also note the various courses and seminars attended by Dr. ABH, and this is indicative of his desire to improve his practice in this area of medicine,
- (iv) while Dr. ABH did not plead guilty, we note that he has successfully defended various aspects of the Charges relating to allegations of breaches of the Guidelines and the co-prescription of Subutex with other medication,

- (v) Dr. ABH had made various contributions to the community, as evidenced by the testimonials tendered, and
 - (vi) there was no prior antecedents and Dr. ABH had practised as a physician for about 15 years without incidence.
43. Having regard to the representations made by both counsel and the nature of the misconduct, it is this Committee's decision that the appropriate sentence is as follows:-
- (i) that Dr. ABH be fined the sum of \$5,000,
 - (ii) that Dr. ABH be censured,
 - (iii) that Dr. ABH gives a written undertaking to the Medical Council that he will not engage in the conduct complained of or any similar conduct; and
 - (iv) that Dr. ABH pays the costs and expenses of and incidental to these proceedings, including the costs of the solicitor to the SMC and the Legal Assessor.
44. The hearing is hereby concluded.

Addendum

Having heard the submissions on costs by the Defence and by Counsel for the SMC, this Committee declines to disturb the present order that Dr ABH bears the cost of these proceedings for, inter alia the following reasons:

- (i) The issues of the guidelines and co-prescription did not take up a significant portion of the time and evidence such that any departure from the present order is necessary,
- (ii) while we noted the submission of the Defence that the SMC did not succeed on all limbs of the charges, it could also be said that Dr ABH did not plead guilty at any stage of the proceedings and the order on costs should reflect that fact accordingly,
- (iii) in any event, the nature and magnitude of the sentence against Dr. ABH was derived from various factors, including the Committee's view that he ought to bear all of the costs of the proceedings. A variation of the costs order will necessitate a corresponding variation in the sentence which may be prejudicial to Dr. ABH.

Dated this 12th day of April, 2010.