

**SINGAPORE MEDICAL COUNCIL
DISCIPLINARY COMMITTEE INQUIRY FOR DR CHAI CHWAN
HELD ON 3 AND 4 APRIL 2012**

Disciplinary Committee:

Dr Lim Cheok Peng (Chairman)
A/Prof Christopher Cheng
Prof Christopher Goh
Dr Raymond Ang (Lay Member)

Legal Assessor:

Mr Vinodh Coomaraswamy SC
(Shook Lin & Bok LLP)

Counsel for the SMC:

Mr Philip Fong
Ms Shazana Anuar
(Harry Elias Partnership LLP)

Counsel for the Respondent:

Mr Lek Siang Pheng
Mr Melvin See
Mr Benjamin Yam
(Rodyk & Davidson LLP)

DECISION OF THE DISCIPLINARY COMMITTEE

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

1. INTRODUCTION

1.1 The Respondent

1.1.1 The Respondent, Dr Chai Chwan, graduated from the National University of Singapore with a medical degree in 1989.¹

1.1.2 Since April 1999, the Respondent has been practising as a general practitioner at the Little Cross Family Clinic in Tampines.² In March 2005, the Respondent started a second clinic known as My Little Family Clinic in Jalan Bukit Merah. The Respondent closed My Little Family Clinic in 2008 as a result of certain complaints to the SMC which have given rise to these disciplinary proceedings and others. Dr Chai Chwan is the licence applicant and the owner of Little Cross Family Clinic³ and was, before its closure, the licence applicant and owner of My Little Family Clinic.⁴

¹ Mitigation plea, para 3.

² Mitigation plea, para 8.

³ 1 SF para 1.

⁴ 2 SF para 1.

1.2 The complaints

1.2.1 On 8 December 2005, the Clinical Assurance and Audit (“CAA”) branch of the Ministry of Health (“MOH”) inspected both the Little Cross Family Clinic in Tampines and the My Little Family Clinic in Jalan Bukit Merah. These inspections resulted in four complaints by the MOH in respect of the Respondent’s professional conduct.

1.2.2 These proceedings involve only the third and fourth of these four complaints. The complaints which this Committee has been convened to inquire into are the Complaints dated 10 August 2007⁵ relating to Little Cross Family Clinic and 30 April 2008⁶ relating to My Little Family Clinic. These two complaints shall be referred to as the Complaints.

2. THESE PROCEEDINGS

2.1 Subutex Charges

2.1.1 As a result of the Complaints, the SMC preferred 71 charges against the Respondent in two broad groups. The first group of charges related to the Respondent’s management of patients for whom the Respondent prescribed Subutex (“the Subutex Charges”). The Respondent faced a total of 49 Subutex Charges comprising 27 Subutex Charges in relation to patients seen at Little Cross Family Clinic and 22 Subutex Charges in relation to patients seen at My Little Family Clinic.

2.1.2 In respect of all 49 of the Subutex Charges, the SMC alleged by way of particulars to the charges that:

- a. The Respondent failed to formulate or adhere to any management plan for those patients to whom he prescribed Subutex.
- b. The Respondent failed to record or document sufficient or any details of the patient’s diagnosis, symptoms, condition or management plan so as to enable him properly to assess the patient’s medical condition over the period of treatment; and
- c. The Respondent inappropriately prescribed Subutex to the patients concerned bearing in mind the amounts of Subutex prescribed to those same patients by other doctors employed by the Respondent at the clinics in circumstances where the Respondent knew or ought to have known of those other amounts.

2.1.3 In addition to these particulars, in relation to the Subutex Charges arising from the Respondent’s practice at the Little Cross Family Clinic, the SMC also

⁵ 1 PIB 3, Tab 3.

⁶ 1 PIB 4, Tab 3.

alleged by way of an additional particular that the Respondent had failed to conduct a detailed intake assessment of the condition of each patient concerned.

2.2 **The Financial Conflict Charges**

2.2.1 The second group of charges which the Respondent faced comprised 22 charges arising only from the MOH complaint dated 30 April 2008 in respect of his practice at My Little Family Clinic.

2.2.2 These charges (“the Financial Conflict Charges”) alleged that the Respondent improperly placed himself in a financial conflict arising from his clinical practice contrary to section 4.6.2 of the Ethical Code and Ethical Guidelines by introducing his patients to, implementing and participating in a scheme whereby:

- a. A patient would be given a discount on future treatment if he introduced other patients seeking Subutex to the clinic (“the Incentive Scheme”); and
- b. A patient who sought treatment at the clinic before his appointed time would be made to pay a surcharge (“the Surcharge Scheme”).

2.3 **Consolidation**

2.3.1 The charges arising under both Complaints were consolidated at a pre-inquiry conference and have proceeded as a single inquiry into the Respondent’s conduct.

2.3.2 All 71 charges were fixed to be heard by this Committee on 3, 4 and 5 April 2012.

2.4 **Respondent pleads guilty**

2.4.1 On 3 April 2012, the first day fixed for hearing, both counsel informed the Committee that the Respondent intended to take a certain course of action as a result of the SMC’s decision not to proceed on certain of the charges against the Respondent. The hearing was stood down for the Statement of Facts to be agreed and a plea in mitigation prepared.

2.4.2 The hearing resumed on 4 April 2012. The Prosecution informed the Committee that the SMC was proceeding only on:

- a. 15 of the Subutex Charges comprising 11 charges in relation to Little Cross Family Clinic and 4 charges in relation to My Little Family Clinic;⁷ and
- b. 16 of the Financial Conflict charges in relation to My Little Family Clinic. Of these 16 Financial Conflict Charges, the Prosecution relied:
 - (i) only on the Surcharge Scheme in respect of 6 charges;
 - (ii) only on the Incentive Scheme in respect of 5 charges; and
 - (iii) on both schemes in respect of 5 charges.⁸

2.4.3 The 31 charges on which the Prosecution intended to proceed were thereupon read to the Respondent and he pleaded guilty to those 31 charges without qualification. Two agreed statements of facts, one in respect of Little Cross Family Clinic and one in respect of My Little Family Clinic, were then tendered to and read to the Committee.

2.4.4 The Committee then heard from Counsel for the Respondent and Counsel for the Prosecution on mitigation.

3. MITIGATION

3.1 Subutex Charges

3.1.1 In mitigation on the Subutex Charges, counsel for the Respondent made the points set out in the following paragraphs. None of these points were challenged by the Prosecution.

3.1.2 The period of consultation involved in the charges was from 13 April 2005 to 7 December 2005,⁹ a relatively short time period of just under 8 months.

3.1.3 Of this time period, more than 6 months was before MOH issued, for the first time, any guidelines on the treatment of opiate dependence using Subutex on 26 October 2005 and only 6 weeks was after these guidelines were issued. Further, even within this 6-week period, the Respondent had very few consultations. In any case, the Respondent had not been charged with breaching the MOH guidelines of 26 October 2005.¹⁰

⁷ See P1 and P2.

⁸ See P1 and P2.

⁹ R2 at para 12.

¹⁰ R2 at para 15.

- 3.1.4 The sentencing precedents showed that for cases involving Subutex before the issue of the MOH guidelines, the disciplinary tariff was a financial penalty without suspension; whereas for cases involving Subutex after the issue of the MOH guidelines, suspension was the norm. This, however, should be treated as a pre-guideline case for the reason set out in paragraph 3.1.3 above.¹¹
- 3.1.5 In other SMC cases involving charges for misconduct in managing patients to whom Subutex was prescribed involving doctors from the Respondent's own clinics, both doctors received a financial penalty without suspension. One was ordered to pay a financial penalty of \$3,000¹² and the other was ordered to pay a financial penalty of \$6,000.¹³
- 3.1.6 The Respondent had shown compassion for and a desire to help drug abusers overcome their addiction from an early stage in his medical career. He had acted on this through involvement in a halfway house in 1989, while he was serving his National Service as a Medical Officer, by pursuing certification in motivational strategies and counseling skills to help addicts and by attending workshops.¹⁴
- 3.1.7 When Subutex was approved for use in Singapore in January 2002, there were no guidelines and no formal training for general practitioners in its use. Aware of the literature on the therapeutic benefits and wide safety margin believed to exist at that time, the Respondent began to use Subutex to treat his patients. He did so to the best of his knowledge and clinical judgment and with his patients best interests in mind.¹⁵
- 3.1.8 The Prosecution's own expert accepted that:¹⁶
- a. The Respondent adhered in general to the MOH's Guidelines of Treatment of Opiate Dependence issued on 26 October 2005;
 - b. The Respondent carried out urine tests regularly;
 - c. The Respondent was diligent in checking for IV marks on patients to ensure that Subutex was not being abused;
 - d. The Respondent of his own accord introduced a practice whereby he would directly observe patients taking Subutex medication in the clinic.

¹¹ R2 at para 16.

¹² P3, No. 2

¹³ P3, No. 1

¹⁴ R1, para 4 to 10.

¹⁵ R1, para 11 to 13.

¹⁶ R1, para 19.

- e. Save for a handful of cases, there was no concomitant prescription of other psychotropic drugs.
- 3.1.9 Notwithstanding paragraph 3.1.8e above, the SMC chose not to charge the Respondent with prescribing Subutex concomitantly with benzodiazepines and it would be improper for the Committee to go beyond the scope of the charges by punishing him for having done that in only a handful of cases.¹⁷
- 3.1.10 Although the Respondent had been subject to 4 complaints and another set of disciplinary proceedings arising from his management of patients to whom he had prescribed Subutex, that could not be considered an aggravating factor because the misconduct before this Committee took place before he had been found guilty of misconduct in those other proceedings.¹⁸
- 3.1.11 Finally, it was submitted on behalf of the Respondent that the usual consideration of deterrence was not a factor which the Committee should take into account in imposing a sentence on the Respondent because, now that Subutex was no longer approved for use in Singapore, the sentence imposed in this case could not have any deterrent effect on either the Respondent¹⁹ himself nor on the medical community as a whole.
- 3.2 Financial Conflict Charges**
- 3.2.1 In mitigation on the Financial Conflict Charges, counsel for the Respondent made the points set out in the following paragraphs. Again, these points were not challenged by the Prosecution.
- 3.2.2 The Respondent waived consultation fees for Subutex patients who attended on the scheduled appointment date, even though time was spent on consultation. The Respondent introduced the Surcharge Scheme to deter patients from returning to his clinic before their scheduled appointment date by charging them a token sum of \$4 or \$5 for each day that they attended earlier than their scheduled appointment date. This was because such a consultation would involve additional time in ensuring that the patient was not attending early because he was diverting or abusing his medication.
- 3.2.3 Of the 11 patients who were referred to in the 11 charges which proceeded on the Surcharge Scheme, 3 patients paid the surcharge one and another 5 patients paid the surcharge twice. Any financial benefit was minimal.²⁰

¹⁷ R2, para 5 and 10.

¹⁸ R1, para 49.

¹⁹ R1, para 23 to 26.

²⁰ R1, para 26.

- 3.2.4 The Respondent introduced the Incentive Scheme because he observed there were addicts who were not under the management of a doctor and who were instead obtaining Subutex on the black market and abusing it. The purpose of the Incentive Scheme was to encourage the Respondent's patients who knew such addicts to bring those addicts within the medical framework and thereby stop abusing Subutex. The Incentive Scheme offered the Respondent's patients a token credit of up to \$20 to be set off against future charges over several sessions provided that the introduced abuser continued with proper treatment.²¹
- 3.2.5 Of the 10 patients whom the Respondent told about the Incentive Scheme, only one patient introduced one abuser and earned a total discount of \$14.²²
- 3.2.6 The Respondent accepts in hindsight that he ought not to have introduced such a scheme even though he acted with good intentions and with no intent that it should be a marketing scheme.²³
- 3.2.7 As for sentencing precedents, there was only one case cited to the Committee where a medical practitioner was found guilty of misconduct by reason of a financial conflict. In that case, the practitioner had for his own financial benefit sold skincare products including medical creams improved by him to two patients without authority from the hospital administration. That practitioner was censured, ordered to pay a financial penalty of \$4,000 and ordered to pay the costs of the proceedings.²⁴
- 3.2.8 The Respondent therefore submitted that in his case too no suspension was warranted.
- 3.3 **Testimonials**
- 3.3.1 The Committee also had the benefit of testimonials from a number of medical practitioners who had opportunity to observe the Respondent's character over a number of years.
- 3.3.2 The one common theme running through these testimonials was that the Respondent's character was not such that he would act to advance his own financial interests in his clinical practice. Thus, for example:
- a. Professor A said in a letter dated 30 March 2012²⁵ that he had known the Respondent since he was 17 and that "it was unthinkable and not

²¹ R1, para 27 to 30.

²² R1, para 30.

²³ R1, para 29.

²⁴ R2, para 44 to 46.

²⁵ Mitigation Plea, Tab C.

consistent with [the Respondent's] character that he would profiteer from the sale of subutex without any regard for the safety of his patients".

- b. Dr B said in a letter dated 28 February 2010 that he had known the Respondent since they both started at medical school in 1984 and had found him to be "an upright character, a person with integrity."²⁶ Further, Dr B said "I have never found him calculative or concerned about his personal gain."
- c. Dr C said in a letter dated 24 February 2010 that he had known the Respondent since secondary school days and "he has never occurred to me as a mercenary and irresponsible person".²⁷
- d. Dr D said in a letter dated 24 February 2010 that he has known the Respondent for 23 years and "can confirm that he is a man of integrity and he is dedicated to his work and family."²⁸
- e. Dr E said in a letter dated 23 February 2010 that he has known since their teenage years and that the Respondent is "always ready to guide people that he knows to the right path."²⁹

4. THE COMMITTEE'S FINDINGS

4.1 Subutex Charges

- 4.1.1 Following the plea in mitigation and response, the Committee considered the submissions of both the Respondent and the Prosecution and gave brief oral grounds of its decision, informing the parties that a written decision would follow. This is that written decision.
- 4.1.2 On the 15 Subutex Charges, the Committee accepted the mitigation put forward on the Respondent's behalf and agreed that a suspension was not warranted. The Committee decided that a financial penalty of \$5,000 plus a censure and the requirement of the undertakings set out in paragraphs 5.1.1d(i) and 5.1.1d(ii) below would be commensurate to the Respondent's misconduct and consistent with the sentencing precedents.
- 4.1.3 While the Committee had regard to all the points made in mitigation, the following points weighed most heavily on the Committee deliberations:
 - a. The Committee treated this as a pre-guideline case as the bulk of the Respondent's misconduct took place before 26 October 2005. It is true

²⁶ Mitigation Plea, Tab C.

²⁷ Mitigation Plea, Tab C.

²⁸ Mitigation Plea, Tab C.

²⁹ Mitigation Plea, Tab C.

that during the period of misconduct which is in question in this inquiry, 13 April 2005 to 7 December 2005,³⁰ the CAA of MOH had already inspected the Respondent's clinics and lodged complaints with the SMC dated 1 September 2003 and 28 September 2004.³¹ So it can be said that, by reason of the inspections and complaints, in the period which this Committee is considering, April to December 2005, the Respondent should have been even more acutely aware of his obligations as regards good clinical practice in the management of his Subutex patients. However, we accept the mitigation put forward that the Respondent, however misguided, treated these patients to the best of his knowledge and clinical judgment and in what he genuinely thought was their best interests;³²

- b. The Committee accepted that the Respondent was not motivated by financial gain in engaging in the misconduct in question. Instead, the Respondent was motivated by a genuine, though misguided, desire to help his patients battling with drug addiction;
- c. The Committee bore in mind the fact that the Respondent had pleaded guilty and shown contrition.

4.1.4 As far as the appropriate quantum of the financial penalty was concerned, the Committee had regard to the fact that the Prosecution proceeded against the Respondent on 15 Subutex Charges in this inquiry. In the Respondent's previous disciplinary inquiry involving 122 similar charges over a different period, the Respondent was ordered to pay a financial penalty of \$7,000.³³ Further, another doctor from the Respondent's practice who pleaded guilty to 10 similar charges in relation to the same period which this Committee is inquiring into was ordered to pay a financial penalty of \$3,000.³⁴ Taking \$3,000 as the floor and \$7,000 as the ceiling, therefore, the Committee was of the view that the quantum of the financial penalty which was commensurate to the Respondent's misconduct and consistent with the sentencing precedents was \$5,000.

4.1.5 The Committee was also of the view that the Respondent ought to be censured and ought to give the undertakings set out in paragraph paragraphs 5.1.1d(i) and 5.1.1d(ii) below.

³⁰ R2 para 12.

³¹ R1, para 49.

³² R1, para 13.

³³ P3, No. 8.

³⁴ P3, No. 2.

4.2 Financial Conflict Charges

- 4.2.1 On the 16 Financial Conflict Charges, the Committee also accepted the mitigation put forward on the Respondent's behalf and agreed that a suspension was not warranted. The factor which weighed heaviest in the Committee's deliberations was the fact that the Committee accepted the submission in mitigation, supported by the testimonials, that it was a desire to help drug addicts and drug abusers, and not financial gain, which was the Respondent's motive in introducing both the Surcharge Scheme and the Incentive Scheme.
- 4.2.2 Further, although the Respondent did receive some financial gain, we accepted that the amounts involved were so small as to constitute no real financial gain.
- 4.2.3 As regards the quantum of the financial penalty, the Committee had regard to the precedent cited on behalf of the Respondent where the practitioner was ordered to pay a financial penalty of \$4,000 for benefiting personally and improperly from the sale of skin care products. The Committee bore in mind that this was a more serious case, involving the prescription of medication, than the precedent cited. Weighed against that was the fact that in the precedent case, financial gain was clearly the motive for the misconduct whereas here it was not.
- 4.2.4 Balancing those factors, the Committee was of the view that ordering the Respondent to pay a financial penalty of \$3,000 was commensurate with the Respondent's misconduct in this case and consistent with the sentencing precedents cited.
- 4.2.5 The Committee was also of the view that the Respondent ought to be censured and ought to give the undertakings set out in paragraph 5.1.1d(iii) below.

5. **CONCLUSION**

5.1 **Orders made**

5.1.1 The Committee accordingly orders as follows:

- a. On the Subutex Charges, we order the Respondent to pay a financial penalty of **\$5,000**;
- b. On the Financial Conflict Charges, we order the Respondent to pay a financial penalty of **\$3,000**;
- c. On both sets of charges, the Respondent shall be and is hereby censured;
- d. On both sets of charges, the Respondent shall give the following undertakings as to his future conduct:
 - (i) To manage his patients and prescribe medication with more rigour;
 - (ii) To keep proper records of his consultations with his patients; and
 - (iii) Not to enter into any arrangements with his patients which breach Section 4.6.2 of the Ethical Code and Ethical Guidelines.
- e. We order the Respondent to pay the costs and expenses of and incidental to these proceedings, including the costs of the solicitors to the SMC and the Legal Assessor.

5.2 **Publication of decision**

5.2.1 We hereby order that the Grounds of Decision be published.

5.2.2 The hearing is hereby concluded.

Dated this 4th day of April 2012.