SINGAPORE MEDICAL COUNCIL DISCIPLINARY COMMITTEE INQUIRY FOR DR DAVID CHIN MUN FOO HELD ON 7 AND 8 JUNE 2011, 21 OCTOBER 2011 AND 16 FEBRUARY 2012

Disciplinary Committee:
Dr Tan Kok Soo (Chairman)
A/Prof Siow Jin Keat
Dr Cai Yiming
Ms Tan Mui Ling (Lay Member)

Legal Assessor:
Mr Joseph Liow Wang Wu (M/s Straits Law Practice LLC)

Prosecution Counsel (M/s Harry Elias Partnership):
Mr Philip Fong
Ms Shazana Anuar

Defence Counsel (M/s Allen & Gledhill LLP):
Mr Edwin Tong
Ms Kristy Tan

DECISION OF THE DISCIPLINARY COMMITTEE

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

Charges against the medical practitioner ("the Respondent")

1. The Respondent is one Dr David Chin Mun Foo.

2. By the original Notice of Inquiry dated 18 March 2011 ("the Original NOI"), the Singapore Medical Council ("SMC") brought a total of forty six (46) charges against the Respondent. Although the charges each alleged misconduct, for different periods of time and for different patients, the charges could generally be described as relating to two broad categories.

3. For convenience, we have categorized them as follows:-

Misconduct by Improper prescription of Subutex ("Improper Prescription Charges")

In charges numbered #1 to #23, the Respondent was charged with misconduct in relation to the over-prescription and the lack of proper management of his patients in relation to the prescription of Subutex.

Misconduct by reason of financial conflict by the introduction, implementation and participation in an incentive scheme and surcharge scheme ("Financial Scheme Charges")

In charges #24 to #46, the Respondent faced charges alleging that he had introduced, implemented and/or participated in a financial incentive scheme for patients to refer other patients to the clinic (the "Incentive Scheme"); the charges also refer to another scheme referred to herein as the "Surcharge Scheme" wherein the clinic which the Respondent worked at would charge patients, who requires Subutex, a 'surcharge' for returning to the clinic earlier than previously agreed.

4. At the start of the Hearing, the original NOI was amended. The amended NOI made certain amendments, amongst which, included the deletion of charges numbered #5, 6, 10, 14, 15, 16, 17 and 21.

5. The Prosecution proceeded on the remaining 38 charges. At the commencement of the hearing, the Respondent pleaded guilty to all the charges relating to Improper Prescription Charges that were not withdrawn, namely charges numbered #1 to 4, 7 to 9, 11 to 13, 18 to 20, 22 and 23.

6. The Respondent claimed trial in respect of all the Financial Scheme Charges.

Evidence Adduced at the hearing

7. The Prosecution called only one witness, namely one Dr P ("**PW1**").

Evidence of PW1

8. The nature of the evidence given by PW1 was expert evidence and he gave evidence that Cognitive Behavioural Therapy is a treatment approach that is utilized for treatment of drug addicts and that seeks to modify the behaviour of drug addicts by enforcing certain behaviour. As the imposition of the Surcharge Scheme was not positive enforcement (i.e. it sought to punish the patient) it was not Cognitive Behavioural Therapy. The witness expressed the view that punishment will not deter the patient because if he is driven to secure the drug of choice, a financial disincentive will not be effective. The Prosecution witness gave the view that if the medical practitioner was concerned for the drug addicts, he could have opted to say to his

patients that if they came earlier than scheduled, no drugs would be available. They were of the view that the practice of the clinic where the Respondent worked at was to perpetuate the use of drugs. They drew this conclusion from the fact that what the clinic in question was doing was simply saying, "I penalize you and fine you $5 but you still get the drugs". The experts therefore disagree that the Surcharge Scheme was part of a proper contingency management.

Evidence of the Respondent

9. The Respondent elected to give evidence and he called Dr D (**DW2**) to give expert witness testimony.

10. The Respondent's testimony was that he was employed by the relevant clinic up to February 2006. He was a part timer and was paid a sum of S$4,900 per month with no additional agreed benefits. His duties were principally to man the clinic with another colleague, known as Dr A. They were both engaged by the principal owner of the clinic known as Dr B. From time to time, the Respondent would receive a little more money to manage the clinic for Dr B. The sum was not dependent on the number of patients and not dependent on surcharge imposed by the clinic. The Respondent asserted that the entire administration of the clinic was by Dr B. He asserted that he had never implemented this Incentive Scheme nor rewarded any patient under the Incentive Scheme. He also gave evidence that the Surcharge Scheme was not his idea. In this regard, he also highlighted a part of Dr B's written response to a complaint related to this matter (see AB – 2499) where Dr B had admitted that the Incentive Scheme was his idea and had nothing to do with his employees. The Respondent testified that in relation to the Surcharge Scheme, when he first joined Dr B's clinic he was told that he should discourage patients from coming in earlier.

11. During re-examination, the Respondent asserted that apart from imposing a fine for Subutex users when they come earlier than their scheduled date, he would also carry out a clinical examination for the purpose of ascertaining that they were not abusing drugs.

Evidence of DW2

12. DW2 gave evidence that he viewed the Surcharge Scheme as part of a Contingency management treatment plan which disincentivise the patient from taking Subutex. He described it as a "Carrot and Stick" method to try to secure compliance with treatment plan. His evidence was that in terms of weighing the evidence, Cognitive Behaviour Therapy is well recognized. He accepted the opinion of Dr P (PW1) in so far as that the punitive element is less active in Cognitive Behaviour Therapy. However he pointed out that it is implicit in many treatment plans, that there are disincentives; for example, less drugs to take home, imposing urine test, etc. His view was that the fine imposed in the clinic where the Respondent worked at was an acceptable form of disincentive. DW2 gave the view that the disincentive element of such treatment plan is something that doctors are all familiar with. He expressed the view that what is often arguable is how effective such a disincentive is, but in his view, there is no doubt that the intention behind the fine was that it was a form of negative reinforcement.

13. In connection with the aforesaid view, DW2 pointed out to the case notes of some of the Respondent's patients [see Agreed Bundle Volume 4 at page 1499 and at page 1501] to point out that it appeared to him that there was evidence to suggest that the patients did comply with the treatment plan as a result of the Surcharge Scheme.

Determination of this Disciplinary Committee in respect of the Financial Scheme Charges

14. This Disciplinary Committee was assisted by the submissions made by counsels for SMC and the Respondent. The Disciplinary Committee is grateful for their assistance.

15. Having considered the submissions, we are of the view that the issues that this Disciplinary Committee has to decide, in respect to the Financial Scheme Charges, are as follows:-

    (a) Whether there is any evidence, in respect of that part of the Financial Scheme Charges, that shows, beyond reasonable doubt, that the Respondent had introduced, implemented or participated in the incentive scheme referred to in the amended NOI?; and

(b) Whether the Surcharge was, without any reasonable doubt, an improper payment from the patients?

Disciplinary Committee's Finding in respect of Incentive Scheme

16. In relation to the alleged misconduct relating to the 'incentive' scheme, we find as follows:-

(a) Based on the evidence adduced before us, particularly the evidence that arose during cross-examination, it is clear to this Disciplinary Committee that the Respondent knew of the 'incentive' scheme that was put into place by Dr B;

(b) There is no doubt in our mind that the 'incentive' scheme is improper as it could be said to be an indirect 'fee sharing' arrangement with patients;

(c) There is no evidence that the Respondent had conceived the incentive scheme. To the contrary, the evidence leaves no doubt that the incentive scheme was Dr B's idea;

(d) This Disciplinary Committee also finds that it was clear that the Respondent, despite knowing that the incentive scheme was in place, did nothing to stop its implementation by the clinic;

(e) The Respondent did not receive any financial benefit from this scheme; and

(f) PW1, in the course of cross-examination, expressed his view that based on his review of the notes obtained from the Respondent and the clinic where the Respondent worked, he was not able to find anything to show that the Respondent had administered the Incentive Scheme. PW1 also agreed that he was not able to find anything that indicated any misconduct on the part of the Respondent in respect of the Incentive Scheme.

17. In our view, the charges in relation to the Incentive Scheme were based on the act of 'introduction', 'implementation' and 'participation'. It was not a charge for omission to prevent or stop Dr B from carrying out the said financial incentive scheme.

18. As such, it is our view that the Prosecution has not proven beyond reasonable doubt the charges which it preferred against the Respondent i.e. that the Respondent had introduced, implemented or participated in the "incentive scheme".

Disciplinary Committee's Finding in relation to the Surcharge Scheme

19. We now deal with the particulars relating to the 'surcharge' scheme.

20. Based on the Respondent's own explanatory statement to the SMC as found in the Agreed Bundle of Documents (Volume 2) [marked as **2AB-337**], he had knowledge of the 'surcharge' scheme and he further admits that he did impose the surcharge fine on some patients who turned up earlier than scheduled. [See paragraph 4 at the Agreed Bundle of Documents (Volume 2) marked as **2AB-338**].

21. This Disciplinary Committee is therefore satisfied beyond reasonable doubt that the Respondent did *implement* the surcharge scheme. However, this does not in itself mean that the Prosecution has made out a case of misconduct against the Respondent.

22. This Disciplinary Committee forms the view, since the improperness of the Surcharge Scheme has been challenged by the Respondent's counsel, that the Prosecution has the burden to show beyond reasonable doubt that the implementation of the Surcharge Scheme amounts to misconduct. At paragraph 24 of its Opening Statement, the Prosecution suggests that financial conflict exists when payment is received from a patient where the patient receives no clinical advantage.

23. The question therefore is whether the implementation of the Surcharge Scheme by the Respondent was clearly an improper payment of money ***or*** whether it was part of a deterrent plan of the clinic to manage patients from attending earlier than scheduled and consuming more Subutex than prescribed.

24. The evidence from the Respondent suggests that the Surcharge Scheme was part of the deterrent plan of the clinic to manage and discourage patients from returning earlier than scheduled and/or to consume more Subutex than prescribed.

25. During cross-examination, PW1 agreed that the giving of a discount for drugs was not inappropriate. PW1 also agreed that the Surcharge Scheme would not encourage

patients to return earlier than scheduled, that the degree of compulsion acting on the drug patient would be the same even if there was no Surcharge Scheme and that it would not act as an additional compulsion on the patient to obtain Subutex from the Respondent or the clinic where he works at.

26. We also accept the views of DW2 which was in our view, a fair and balanced view of the Surcharge Scheme. We accepted the evidence of DW2 to the extent that he conceded that he was not impressed by the clinical usefulness of the Surcharge Scheme and formed the view that the Surcharge Scheme had limited usefulness. He formed the view, which we accept as valid, that the Surcharge Scheme had limited usefulness because it did help patients but must be considered in terms of overall proportionality. We accept DW2's views that a doctor in such circumstances may face difficult challenges in managing patient addiction. DW2 stated that packing a patient away when he shows up earlier than expected conflicts with the obligation to treat and see what can be done for a patient as he may have genuine reasons for seeking treatment early. We see merit in what DW2 states, namely, that the surcharge imposed represents a message that this behaviour is not to be encouraged but at the same time not to disrupt the lives of the patient.

27. Taking into account the overall burden that the Prosecution has, we are not satisfied that the Prosecution has been able to prove proven beyond reasonable doubt that the 'surcharge' was an improper payment from patients.

28. We also note that it cannot be said that the Surcharge Scheme is improper because in our view, the Surcharge Scheme appears consistent with and within the range of acceptable Cognitive Behavioural Therapy. The fact that it is of 'limited use' does not change this fact and it cannot be said, beyond reasonable doubt, that the Surcharge Scheme was an improper payment.

29. In our view, the Prosecution has not been able to satisfy us beyond reasonable doubt that the Surcharge Scheme was an improper payment to the clinic where the Respondent worked at and not merely an attempt to carry out Cognitive Behavioural Therapy (which was, perhaps, of limited effectiveness or even poorly conceived).

30. Furthermore, it has not been proven beyond reasonable doubt that the act of imposing the surcharge had no possible deterrent effect on the specific patient's named in the charges from attending earlier at the clinic or consuming their medication faster than

prescribed. In fact, the Prosecution's expert had only expressed doubts *as to the efficiency* of such a financial deterrent as imposed; its own expert could not say with certainty that such a financial deterrent in the form of the Surcharge Scheme in the present case could not possibly be a deterrent consistent with a drug management program for patients.

31. As there is no evidence, which this Disciplinary Committee could safely rely on, to support a finding that the Respondent's implementation of the Surcharge Scheme an improper payment by patients to the clinic which the Respondent was employed at, we find that the Prosecution's case in relation to the Surcharge Scheme is not made out.

Finding of the Committee

32. Accordingly, this Disciplinary Committee orders as follows:

(a) In relation to charges #1 to 4, 7 to 9, 11 to 13, 18 to 20, 22 and 23, as you have entered a Plea of Guilt, this Disciplinary Committee **convicts** you of these 15 charges of professional misconduct within the meaning of section 45 (1)(d) of the Medical Registration Act.

(b) In relation to charges #24 to #46, we **acquit** you of those charges.

(c) Since charges numbered #5, 6, 10, 14, 15, 16, 17 and 21 were withdrawn by the Prosecution, we similarly **acquit** you of the same.

Sentencing

33. Upon hearing submissions on sentencing from the Prosecution and the mitigation plea presented by the counsel for the Respondent, we made the following orders:-

(a) that the Respondent be fined a sum of $6,000.00; *(We add that we have imposed a fine of $6,000.00 because unlike the case of involving Dr B. which was highlighted to us, the Respondent had improperly prescribed and had inadequately managed his patients for a period (although a short one) after the 2005 Guidelines was issued.)*

(b) that the Respondent be censured; and

(c) that the Respondent undertakes not to, in the future, carry out the conduct complained of in relation to the Subutex charges.

Costs issue

34. Counsel for the Respondent forcefully submitted that this Disciplinary Committee should exercise its discretion and not allow for the SMC's costs in relation to the Subutex charges. Counsel for the Respondent pointed out that a successful Respondent cannot recover costs from the SMC and given the fact that the bulk of the time was spent on the Financial Incentive and Surcharge Scheme charges, this Disciplinary Committee should be sympathetic to the Respondent's position and deny SMC costs. Counsel for the Respondent suggests that if it was the situation where the SMC gets costs in any event, then the SMC may, in cases where it had only one good charge, choose to prefer 100 charges instead.

35. We have been advised that in criminal proceedings, defendants may obtain costs from the prosecution if the prosecution had acted maliciously or in bad faith. There is no evidence of malice or bad faith on the part of SMC in this case. We accept that we have the discretion and could deny SMC costs of the Subutex charges but, in the exercise of our discretion, we decline to do so. We must point out that a finding of not guilty, is not the same as a finding of innocence and in this case, we take into account that SMC has a public duty to prosecute cases where, on the face of the evidence and information which it has, there is some reason to believe that a doctor has been guilty of misconduct.

36. Accordingly, our order on costs is that the Respondent is hereby ordered to pay the costs and expenses of SMC in relation to the Subutex charges only. By this order, pursuant to section 45 (7) of the Medical Registration Act, the said costs and expenses shall include, amongst other things, the costs and expenses of any assessor or advocate and solicitor appointed by the Medical Council for proceedings before the Disciplinary Committee.

37. In addition to the orders made above, we further hereby order that the Grounds of Decision be published.

38. The hearing is hereby concluded.

Dated this 16th day of February 2012.