

**SINGAPORE MEDICAL COUNCIL DISCIPLINARY TRIBUNAL INQUIRY FOR
DR TAN YEW WENG DAVID ON 2 DECEMBER 2014**

Disciplinary Tribunal:

Prof Ong Yong Yau - Chairman
A/Prof Foo Chee Liam
Mr Tan Boon Heng - Legal Service Officer

Counsel for the SMC:

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

Respondent:

Mr Eric Tin Keng Seng
Ms Jessica Foo
(M/s Donaldson & Burkinshaw LLP)

DECISION OF THE DISCIPLINARY TRIBUNAL

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

A. INTRODUCTION

1. This inquiry examines the appropriate sanction(s) against the medical practitioner in question acting in breach of Article 4.5.1.2 of the Singapore Medical Council Ethical Code and Ethical Guidelines ("SMC ECEG") which brings disrepute to the medical profession under section 53(1)(c) of the Medical Registration Act (Cap. 174).

B. EVENTS LEADING TO THE INQUIRY

2. The respondent, Dr Tan Yew Weng David (the "Respondent") is a registered medical practitioner who was practising at David Tan Medical Aesthetics, situated at 391B Orchard Road, #09-04, Ngee Ann City Tower B Singapore 238874 (the "Clinic") at the material time.
3. The complainant is the Regulatory Compliance Division of the Ministry of Health ("the Complainant"). In a letter dated 13 December 2010 ("the Complaint"), the Complainant brought to the attention of the Singapore Medical Council ("SMC") an advertising feature in one issue of the TODAY newspaper dated 29 July 2010 ("the Advertisement"). The Complainant noted that in the Advertisement, the Respondent "might have contravened the SMC ECEG, inter alia, paragraph 4.5.1.2 ("Association with non-medical companies or non-medical products or services") and paragraph 4.5.2 ("Association with promotion of vitamins, tonics, health and nutrition supplements") by associating himself with the promotion of "Reduze" that is distributed under the company name Avenza".

4. In accordance with Section 39 of the Medical Registration Act (Cap 174) (Rev. Ed. 2004) (the "MRA"), the matter was referred to the Complaints Committee of the SMC for further investigation. The Complaints Committee subsequently directed that an exculpatory statement be obtained from the Respondent, which was submitted on or around 8 July 2011. Following the Complaints Committee's investigations, the matter was referred to the Disciplinary Tribunal for a formal inquiry and the Respondent was notified on 3 February 2012.
5. A Notice of Inquiry dated 3 October 2013 in respect of the Complaint was served on the Respondent on the same date. Pursuant to representations made by the Respondent, the SMC agreed to withdraw one of the two charges set out in the Notice of Inquiry dated 3 October 2013. An Amended Notice of Inquiry dated 11 November 2014 ("the Amended NOI") sets out one amended charge against the Respondent which was duly served on him.

C. THE AMENDED CHARGE

6. In this inquiry, the SMC has preferred one amended charge against the Respondent for having acted in breach of Article 4.5.1.2 of the SMC ECEG and therefore in a manner which in the opinion of the Disciplinary Tribunal brings disrepute to the medical profession under section 53(1)(c) of the Medical Registration Act (Cap. 174) ("the MRA"). It is as follows:

"You, DR TAN YEW WENG DAVID, a registered medical practitioner (MCR No. 07337G) practising at 391B Orchard Road, #09-04, Ngee Ann City Tower B, Singapore 238874, are charged as follows:

While being:

- (a) associated in an official capacity with a non-medical product named Reduze ("the Product") and a non-medical company named Avenza Pte Ltd ("Avenza"), which marketed the Product, by representing yourself as the Medical Director of Avenza in an Advertising Feature dated 29 July 2010 in the TODAY Newspaper (page T5) ("the Advertisement") (annexed herein) which promoted the Product, and/or*
- (b) involved in the conduct of a non-medical business, i.e. the sale of the Product through Avenza, in your capacity as its Medical Director, by way of the Advertisement, you have:*
 - i. failed to take care that the Advertisement did not include any reference to your professional qualifications as a medical practitioner, and/or*

- ii. *failed to clearly separate your non-medical business from your medical practice and your medical qualifications so that the public is not misled into believing that the Product is medically beneficial or is being endorsed by a doctor,*

in breach of Article 4.5.1.2 of the Singapore Medical Council Ethical Code and Ethical Guidelines on “Association with non-medical companies or non-medical products”, in that:

PARTICULARS OF MISCONDUCT

- (1) *You caused and/or allowed the Advertisement to include a column which reproduced your photograph and highlighted, in italics, your comments as follows:*

“I was really impressed when I saw the results of the clinical studies” says Dr David Tan, medical director of AVENZA. “Not only was the weight loss significant but more importantly, REDUZE seems to have improved the lipid profile and cholesterol levels of the study participants.” Dr David Tan, Medical Director of Avenza ‘,

- (2) *You caused and/or allowed the Advertisement to include the reference “Dr David Tan, Medical Director of Avenza”, and/or*

- (3) *You caused and/or allowed the Advertisement to include references to the effect that the Product is ‘Clinically Proven’, that the Product is a ‘NEW CLINICAL BREAKTHROUGH’ and that the Product is a ‘Scientific Breakthrough’,*

and that in relation to the alleged facts you have been guilty of such improper act or 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).”

D. THE UNDISPUTED FACTS

- 7. In the Accounting and Corporate Regulatory Authority (“ACRA”) Company Profile for Avenza, the Respondent is identified as a director of Avenza. The ACRA Company Profile for Avenza is a public record. It is not in dispute that Avenza is a non-medical company and Reduze is a non-medical product which is not licensed by the Health Sciences Authority.

- 8. In the Advertisement, the Respondent made the following statement:

“I was really impressed when I saw the results of the clinical studies” says Dr David Tan, medical director of AVENZA. “Not only was the

weight loss significant but more importantly, REDUZE seems to have improved the lipid profile and cholesterol levels of the study participants.” Dr David Tan, Medical Director of Avenza”.

The Advertisement also claimed that:

- (a) the Product is ‘Clinically Proven’;
 - (b) the Product is a ‘NEW CLINICAL BREAKTHROUGH’; and
 - (c) the Product is a ‘Scientific Breakthrough’.
9. Article 4.5.1.2 (Association with non-medical companies or non-medical products or services) states that a doctor may be associated in an official capacity with a non-medical product or service or with a non-medical company. His position may be shown on the company’s stationery, literature or website, but the doctor shall be careful not to include any reference to his professional qualifications or services. A doctor is not prohibited from conducting non-medical business, but this must be clearly separated from his medical practice and his medical qualifications so that the public is not misled into believing that the non-medical product or service is medically beneficial or is being endorsed by a doctor.
10. In causing and/or allowing the abovementioned statements and the above claims in the Advertisement to be made, the Respondent had failed to ensure that the Advertisement did not include any reference to his professional qualifications as a medical practitioner. In the circumstances, the Respondent had failed to separate his non-medical business (as a director of Avenza and who is promoting the sale of the Product) from his medical qualifications and medical practice so that the public is not misled into believing that the Product is medically beneficial or is being endorsed by a doctor.

E. AT THE DISCIPLINARY TRIBUNAL (DT) INQUIRY

11. At the DT inquiry, the Respondent elected to plead guilty to the amended charge.
12. The Respondent admitted to the Agreed Statement of Facts submitted by the Counsel for the SMC, Mr Philip Fong (‘Mr Fong’). Accordingly, the DT found the Respondent guilty of the charge and convicted him on the charge.

F. SMC’S SUBMISSION ON SENTENCE

13. SMC’s Counsel, Mr Fong, informed the DT that the SMC will not make any submission on sentence and will leave it to the DT to arrive at an appropriate sentence.

G. IN MITIGATION

14. In mitigation, Counsel for the Respondent, Mr Eric Tin, urged this DT to consider the following mitigating factors:
- (a) the Respondent was relatively new to the non-medical product business when he allowed the publication of the Advertisement;
 - (b) he did try to take precautions by consulting the SMC ECEG at the material time;
 - (c) he thought he had dutifully complied with the said Article 4.5.1.2 by not referring to his academic qualifications and details of his clinic where he performed medical practice, all of which did not find expression or reference in the Advertisement;
 - (d) he had no intention at all to mislead or deceive anyone with any of the Advertisement contents; and
 - (e) there is also no evidence of harm to the public by the Advertisement or their consumption of Reduze in the Ministry of Health's letter to SMC dated 13 December 2010 which triggered this Inquiry.

H. THE DT'S OPINION

15. We had carefully considered the nature and circumstances of the charge. In determining the appropriate penalties, we wish to make following observations:
- (a) While we agree that the Respondent did not make reference in the Advertisement to his academic qualifications and details of his clinic where he performed medical practice, we have observed that that the Respondent made concerted and repeated references to the fact that he was a "**Medical**" Director (*emphasis ours*) in the Advertisement;
 - (b) read in the context of the Advertisement, the Respondent's intent in including the word, "**Medical**" to attach to his role as a Director of Avenza is evidently clear. The addition of the word "**Medical**" gives readers of the Advertisement the impression that the product would have been safe for use, medically beneficial, and has been endorsed by a physician. In fact, the ACRA search merely identified the Respondent as a director of Avenza and not "Medical Director". We are inclined towards the view that the decision to add the word "**Medical**" was pre-meditated and calculated to leverage on his professional qualification as a medical practitioner. It is this mischief that the DT should mete out an appropriate sentence against the Respondent;

- (c) we agree with both solicitors that there does not appear to be any SMC case precedent directly on point re the matter before us, i.e. one where the alleged breach is that of the said Article 4.5.1.2. This is believed to be a first case. Be that as it may, the DT was referred to several precedents for comparative purposes. We acknowledge that the offending conduct of the Respondent in the present case was not as egregious as these cited below:
- (i) in the case of **Dr A** (2009), the Respondent was fined \$5,000 for failure to maintain medical confidentiality by disclosing or allowing the disclosure to a third party of two photographs taken of the patient without the patient's consent and breach of 4.1.6 of the SMC's ECEG for association with persons not qualified to provide medical or medical support services;
 - (ii) in the case of **Dr B** (1998), the Respondent was penalized with a 6-month suspension for distributing a pamphlet advertising the medical services provided by his company and name cards bearing the names of 4 other doctors at 4 branch clinics for the purpose of obtaining patients or promoting a professional advantage. The advertisement was wrongful as it was designed to mislead the public into thinking that there were 4 doctors with the company and that there were 4 branch clinics forming part of the group, when in fact that was not the case;
 - (iii) in the case of **Dr C** (1998), the Respondent was penalized with a 3-month suspension for advertising in a widely circulated magazine and offering skin treatment at a discounted price at the Therapy Centre or for free to lucky participants, together with a photograph showing for the purpose of obtaining patients and/or promoting the doctor's professional advantage and the intent here was to mislead the public into thinking that the Therapy Centre was a licensed medical clinic; and
 - (iv) in the case of **Dr W** (2011), these 3 cases involved offending advertisements caused or allowed by the Respondent wherein fines of between \$7,000 and \$10,000 were meted out by the Disciplinary Committees. We do note that Dr W's cases may be distinguished from our present case considering the number of charges, nature of the offending advertisement and the extent of the breach of the ECEG by virtue of the more egregious conduct on the part of Dr W.
- (d) we note that this is the Respondent's first offence. He has been in medical practice for about 16 years since 2 November 1998. Prior to the present proceedings, he has a hitherto clean record. Besides having contributed to charitable causes, a number of his peers have also given testimonials testifying to his professional competence, conscientiousness and the ethical management of his patients; and

- (e) compared against the backdrop of these cases, in terms of the degree of seriousness of the wrong, we find that the Respondent's offending conduct is at the lower end of the spectrum i.e. not as serious as the cases of **Dr B, Dr C and Dr W**. However, the DT would not agree that the Respondent's case is less serious when contrasted with **Dr A's** case. In **Dr A's** case, the offending conduct is merely one of recklessness in breaching the confidentiality of his patient. In contrast, in the present case, we are of the view that the Respondent took a pre-meditated and calculated move to draw attention to the fact that he was a medical practitioner in the advertisement endorsing a product thus contravening the guidelines. There was clearly an intention to use his medical qualification to benefit himself by swaying potential consumers to purchase the product. In this regard, while a monetary penalty instead of a suspension will be sufficient to deter such conduct, we do not think that the monetary penalty imposed should be any lower than \$5,000 i.e. the penalty imposed against **Dr A**. As the motivation for the committing of the breach is for financial gain, it would be a mockery of the system if the penalty imposed does not adequately reflect the medical profession's clear disapproval of such behavior.

I. THE DT'S DECISION

16. In arriving at the appropriate sentence, the DT had regard to **all** the relevant circumstances of the case, including the nature of the offence, the Respondent's early plea of guilt and the mitigation tendered.
17. Bearing in mind the above, this Tribunal determines that the Respondent is to:
- (a) pay a penalty of **\$5,000**;
 - (b) be censured;
 - (c) to give a written undertaking to the SMC that he will not engage in the conduct complained of or any similar conduct; and
 - (d) to pay the costs and expenses of and incidental to these proceedings, including the costs of the solicitors to the SMC.

J. PUBLICATION OF DECISION

18. We order that the Grounds of Decision be published with the necessary redaction of identities and personal particulars of persons involved.
19. The hearing is hereby concluded.

Dated this 2nd day of December 2014.