

**SINGAPORE MEDICAL COUNCIL DISCIPLINARY TRIBUNAL INQUIRY FOR  
DR CHENG SHAO LIN BENNY HELD ON 5 JANUARY 2016**

**Disciplinary Tribunal:**

Associate Professor Roy Joseph (Chairman)  
Dr Chan Wing Kwong  
Mr Victor Yeo Khee Eng (Legal Service Officer)

**Counsel for SMC:**

Mr Burton Chen  
Mr Tham Chang Xian  
Ms Loh Yu Wei Junie  
(M/s Tan Rajah & Cheah)

**Counsel for the Respondent:**

Ms Mak Wei Munn  
Ms Christine Tee  
(M/s Allen & Gledhill LLP)

**GROUND OFS OF DECISION OF THE DISCIPLINARY TRIBUNAL**

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

**Introduction**

1 The Respondent is a registered medical practitioner. He pleaded guilty before this Tribunal to all 5 charges preferred against him under Section 53(2) read with 53(1)(b) of the Medical Registration Act (Cap 174) ("**MRA**"). As all the five charges were similar in nature, it would suffice for purposes of these proceedings to set out one of the charges which read as follows:

**"CHARGE**

*That you, **Dr Cheng Shao Lin @ Benny Cheng (NRIC No. SXXXXXXX)**, on 16 January 2014, were convicted of an offence under Section 6(1)(a)(i) read with Section 7(1)(a) of the Poisons Act (Cap 234), in the Subordinate Courts of the Republic of Singapore (as it then was), vide HSA 000604-DSC-2013, in that on 16 March 2012, at Clifford Dispensary Jurong at Block 176 Boon Lay Drive #01-350, Singapore, without a licence from a licensing officer, you sold Codeine, a poison, listed in the Schedule to the Poisons Act (Cap 234) to three Malaysians namely "M1", "M2" and "M3", who were not patients seeking treatment from your clinic, and you are thereby liable to be punished under Section 53(2) read with section 53(1)(b) of the Medical Registration Act (Cap 174) ("**the Act**")."*

## **Background and Agreed Statement of Facts**

2 The background and salient facts as agreed between the parties revealed that the Respondent is a registered medical practitioner who, at all material times, was practising at a clinic known as “Clifford Dispensary Jurong” at Block 176 Boon Lay Drive, #01-350, Singapore.

3 On 16 January 2014, in the Subordinate Courts of the Republic of Singapore (as it then was) (“**Subordinate Courts**”), the Respondent pleaded guilty to and was convicted of 5 charges of selling, without a licence from a licensing officer, poisons (i.e. Codeine and Promethazine HCl respectively) listed in the Schedule to the Poisons Act (“**the Act**”) to 3 persons who were not his patients (“**the 5 Criminal Charges**”). Under Section 6(1)(a)(i) read with Section 7(1)(a) of the Act, a medical practitioner may, without such a licence, supply a medicine containing poisons listed in the Schedule to the Act only for the purposes of medical treatment of his own patients. The Respondent had therefore contravened the aforesaid provisions and committed an offence punishable under Section 16(1) of the Act. Another 37 similar criminal charges were taken into consideration for the purposes of sentencing.

4 The background and facts relating to the 5 Criminal Charges were set out in the Statement of Facts dated 17 October 2013 tendered to the Subordinate Courts at the time of the hearing of the 5 Criminal Charges.

5 For each of the 5 Criminal Charges, the Respondent was sentenced to a fine of \$7,000 and one week’s imprisonment in default of payment thereof, i.e. the Respondent was fined a total of \$35,000 with five weeks’ imprisonment in default of payment thereof in respect of the 5 Criminal Charges.

6 In the present Disciplinary Tribunal (“**DT**”) inquiry, the Respondent elected to plead guilty to all 5 charges preferred against him under Section 53(2) read with Section 53(1)(b) of the MRA in respect of his convictions on the 5 Criminal Charges as set out in the Notice of Inquiry dated 31 August 2015.

7 In summary, the salient facts relating to the 5 charges preferred against the Respondent in this DT inquiry were as follows:

- (a) On 16 March 2012, 20 March 2012 and 23 March 2012 respectively, the Respondent sold Dhasedyl Syrup containing Codeine and Promethazine HCl to three Malaysians, namely “M1”, “M2” and “M3” (“**the Buyers**”);
- (b) Codeine and Promethazine HCl are controlled substances listed in the Schedule to the Act;
- (c) The Buyers were not patients seeking medical treatment from the Respondent;
- (d) The Respondent charged the Buyers \$8 for each 120ml bottle of Dhasedyl Syrup sold; and
- (e) On these three occasions, the Respondent sold a total of 60,000ml (or 500 120ml bottles) of Dhasedyl Syrup containing Codeine and

Promethazine HCl, and was paid a sum of \$4,000 in respect of the Dhasedyl Syrup.

## **Findings**

8 As the Respondent admitted to his previous convictions, and that he further admitted to the Agreed Statement of Facts and pleaded guilty to the present 5 charges, the Tribunal accordingly found the Respondent guilty of having been convicted of an offence implying a defect in character which makes him unfit for his profession within the meaning of Section 53(1)(b) of the MRA.

## **Mitigation**

9 Counsel for the Respondent tendered a written mitigation plea (marked as “RPM”). In the mitigation plea, his Counsel highlighted that the Respondent had pleaded guilty early to the 5 charges against him under Section 53(2) read with Section 53(1)(b) of the MRA and had also agreed to the Agreed Statement of Facts tendered by the Singapore Medical Council (“SMC”).

10 His Counsel also highlighted the Respondent’s personal background, in particular, that he is 82 years old and suffering from ill health. He is currently a retiree; having ceased active clinical practice with effect from 6 April 2012, shortly after the events leading to these charges took place. His Counsel highlighted the Respondent’s lack of antecedents in his 45 years of active medical practice, his good character and distinguished public service.

11 The Respondent’s Counsel highlighted the circumstances leading to the offences, in particular, that the three buyers were Malaysian gangsters who presented themselves uninvited at the clinic without registering themselves for a consultation and demanded that the Respondent sell Dhasedyl Syrup to them on 5 January 2012. They presented blue identification cards to the Respondent and identified themselves as “M1”, “M2” and “M3” (the “**3 Malaysian gangsters**”). When the Respondent responded that he was not allowed to sell Dhasedyl to them and informed them that he was prohibited from prescribing more than 2 bottles of 120ml Dhasedyl to a patient within 4 days, the 3 Malaysian gangsters told the Respondent that they were secret society members who could harm the Respondent and his family if he did not comply with their demands. The 3 Malaysian gangsters also told the Respondent to think about their demand overnight and that they would return to the clinic the following day. The 3 Malaysian gangsters warned the Respondent not to report the matter to the authorities.

12 The next day, the 3 Malaysian gangsters returned to the clinic to ask the Respondent for his decision. The Respondent informed them that he would follow the law and not sell Dhasedyl to them. The 3 Malaysian gangsters then told the Respondent that that was not the right way to deal with them and that they would protect him if he acceded to their demands. They told the Respondent that if he did not accede to their demands, they would proceed to:

- (a) fabricate allegations of molest against the Respondent;
- (b) assault or rob the Respondent when he leaves his clinic;
- (c) harm the Respondent and his family;
- (d) puncture the Respondent's car tyres, scratch his car or splash paint on his car; and
- (e) harass the Respondent's patients.

13 The 3 Malaysian gangsters left after telling the Respondent that they would return again. Three days later, on 9 January 2012, the 3 Malaysian gangsters returned to the clinic. During that time, they brought with them weapons. A knife, a parang, a catapult, and a bullet were placed in the consultation room. They asked the Respondent again if he would sell Dhasedyl to them.

14 Out of grave fear for the well-being and lives of his family and himself, the Respondent felt that he had no choice but to succumb to the demands of the 3 Malaysian gangsters. The 3 Malaysian gangsters then told the Respondent that they would purchase bottles of Dhasedyl at \$8 per bottle. There was no negotiation on the terms of the price and sale.

15 In short, Counsel for the Respondent urged the Tribunal to consider that the offences were committed under grave fear and duress and there was no intention to profit. To avoid further encounters with the 3 Malaysian gangsters, the Respondent decided to close the clinic and cease active clinical practice altogether on or around 6 April 2012.

16 Counsel for the Respondent further sought to highlight the key differences in the sentencing precedents cases cited by Counsel for SMC, namely, the cases concerning Dr Khoo Buk Kwong and Dr Ho Thong Chew, and submitted that the key differences should warrant the imposition of a more lenient sentence in the present case. The Respondent's Counsel submitted that given the circumstances, and that there was an extremely low risk of the Respondent re-offending, a fine coupled with a censure and undertaking, and an order for payment of costs would be an appropriate sentence in the Respondent's case.

### **Submission on Sentencing**

17 In the written submission on sentencing, Counsel for SMC submitted that the reprehensibility of the Respondent's conduct warranted:

- (a) an 18-month suspension;
- (b) a fine of \$15,000;
- (c) a written censure;
- (d) the giving of a written undertaking by the Respondent not to repeat the offences the Respondent had been convicted of; and
- (e) the Respondent to pay the costs and expenses of these proceedings, including the legal costs incurred by the SMC.

18 However, on the date of the hearing, Counsel for SMC informed the Tribunal that the SMC was no longer seeking a fine but maintained their submission for a suspension and the other orders. Nevertheless, Counsel for SMC referred to the sentencing precedents and highlighted the following aggravating factors in the Respondent's case:

- (a) The Respondent had sold a large quantity of 60,000ml (or 60 litres) of Dhasedyl Syrup containing Codeine and/or Promethazine HCl over 3 occasions which took place within a short period of 8 days. Taking into account the other 37 similar charges, a total of 504,000ml (or 504 litres) of Dhasedyl Syrup containing Codeine and/or Promethazine HCl was sold over the course or approximately three and half months.
- (b) These sales of Dhasedyl Syrup were made to 3 persons who were not his patients and who were known to the Respondents to be Malaysian gangsters.
- (c) The Respondent knew that the Dhasedyl Syrup that he sold to the 3 Malaysian gangsters would end up being sold to members of the public, and that there was no control over the ultimate users of the Dhasedyl Syrup and the potential harm that could be caused to the public.
- (d) The Respondent profited from such sales by selling each 120ml bottle of Dhasedyl Syrup for \$8.

19 Counsel for SMC submitted that the Respondent was guilty of a flagrant abuse of the trust that society reposes in doctors. He had failed to dispense potentially dangerous substances responsibly, and had instead recklessly disregarded a doctor's duty to "do no harm". The Respondent's actions were entirely motivated by greed and he had no accountability to any users of the Dhasedyl Syrup that he had sold or for any potential side effects or complications resulting from their consumption of the same.

20 Instead of upholding his professional role as a "gatekeeper" of medicine containing poisons, he became an "enabler" to gangsters peddling the poisons to members of the public on a large scale.

21 Counsel for SMC highlighted that the aggravating factors indicate dangerous conduct on the part of the medical practitioner and urged the Tribunal to deter such conduct from ever occurring again. Furthermore, in view of the potential widespread harm that could be caused by the Respondent's reprehensible conduct, a clear, unequivocal and consistent message has to be sent to both the medical community and the public that such serious offences cannot be tolerated.

### **Reasons for the DT's Orders**

22 The Tribunal agreed with Counsel for SMC that the offences committed by the Respondent were serious and that a clear and unequivocal message has to be sent to both the medical community and the public that such offences cannot be tolerated.

23 The Tribunal also noted the aggravating factors highlighted by the SMC's Counsel, in particular, that the quantity of Dhasedyl Syrup sold was not a small

quantum, the sale continued over a period of three and half months, and the Respondent had profited from the sales. The Respondent must have known that the Dhasedyl Syrup would eventually end up being sold to members of the public. Given that there was no control over the ultimate users of the Dhasedyl Syrup, the Respondent had completely disregarded the potential harm that could be caused to these users.

24 In this regard, the Tribunal agreed with Counsel for SMC that the Respondent had abused the trust that society reposes in doctors to dispense medicine responsibly. Instead of fulfilling his professional role and responsibility to ensure that medicine is properly prescribed to his patients, he saw it fit to sell the Dhasedyl Syrup to gangsters for them to peddle poisons to members of the public.

25 When considering the appropriate orders to make, the Tribunal was mindful of the sentencing precedents cited by Counsel for SMC, where disciplinary charges were instituted based on the doctor's conviction for criminal offences involving the illegal sale of cough mixtures containing Codeine and/or Promethazine by the medical practitioners to people who were not patients of the offenders.

26 Suffice for the Tribunal to note, the facts in the DT inquiry concerning Dr Ho Thong Chew ("**Dr Ho**") were clearly far more aggravated than the present case and the DT ordered the removal of Dr Ho's name from the Register of Medical Practitioners. As for the DT inquiry concerning Dr Khoo Buk Kwong ("**Dr Khoo**"), the Tribunal noted that the DT had considered Dr Khoo's family circumstances and that he was made a bankrupt. Hence, the DT finally ordered Dr Khoo to be suspended for a period of 9 months (when the DT thought that a suspension of 12 months would be warranted), without ordering a financial penalty.

27 Quite clearly, the mitigating factors present in Dr Khoo's case were not available to the Respondent. Moreover, the salient facts in Dr Khoo's case were quite different from the present case in that Dr Khoo became involved in the supply of the medicine thinking that all necessary licences had been obtained and he assisted the authorities to try to stop the shipment once he knew that it was illegal for the company to engage in the trade. Again, these factors were not present in the Respondent's case.

28 The Respondent's Counsel sought to persuade the Tribunal that the culpability of the Respondent was lower as compared to that of Dr Khoo. With due respect to the learned Counsel, the Tribunal did not agree with the submission. On the contrary, the Tribunal was of the view that very little weight could be placed on the Respondent's claims that he had sold the Dhasedyl Syrup to the 3 Malaysian gangsters out of grave fear and duress.

29 First, the Respondent clearly had sufficient time to think over the demands of the gangsters. Knowing that the gangsters would return to his clinic to insist on their demands, the Respondent would have ample time to report the matter and seek assistance from the authorities. Instead, he agreed to sell the Dhasedyl Syrup to them. Secondly, the transactions continued for over a period of few months with increasing regularity on no less than 21 occasions, and the Respondent also profited from these transactions. Thirdly, one would have expected the Respondent to uphold the integrity

of and the trust reposed on his profession. Instead, he made the conscious decision to transact with the gangsters without any regard to the potential harm that could be caused from the indiscriminate peddling of poisons by these people.

30 The Respondent's Counsel highlighted that the Respondent did not initiate, plan or collude with the gangsters to sell Dhasedyl Syrup. Suffice to note, these were hardly mitigating factors that the Tribunal could consider. Instead, the Tribunal was of the view that had the Respondent initiated, planned or colluded with the gangsters to sell Dhasedyl Syrup, then these would clearly constitute aggravating factors which would warrant a more severe sanction.

31 Be that as it may, the Tribunal was prepared to accord some weight to the mitigation that the Respondent decided to close his clinic in early April 2012 to avoid further encounters with the 3 Malaysian gangsters.

32 For the above reasons, the Tribunal was of the view that a period of suspension and a financial penalty were clearly warranted in this case.

#### **Orders by this Disciplinary Tribunal**

33 Having carefully considered all the facts and circumstances, the respective submissions of the parties and the sentencing precedents cited, the Tribunal makes the following orders that the Respondent:

- (a) be suspended for a period of **12 months**;
- (b) pays a penalty of **\$10,000**;
- (c) be censured;
- (d) gives a written undertaking to the SMC that he will not engage in the conduct complained of or any similar conduct; and
- (e) pays the costs and expenses of and incidental to these proceedings, including the costs of the solicitors to the SMC.

#### **Publication of Grounds of Decision**

34 We also order that the Grounds of Decision be published.

35 The hearing is hereby concluded.

Dated this 1<sup>st</sup> day of February 2016.