

**SINGAPORE MEDICAL COUNCIL DISCIPLINARY TRIBUNAL INQUIRY FOR
DR HENG BOON WAH JOSEPH HELD ON 26 JULY 2016**

Disciplinary Tribunal:

Prof Walter Tan – Chairman
Dr Vaswani Chelaram Moti Hassaram
Mr Ng Peng Hong – Legal Service Officer

Counsel for SMC:

Mr Kevin Ho
Ms Jacqueline Tang
(M/s Braddell Brothers LLP)

Counsel for the Respondent:

Mr Christopher Chong
Mr Melvin See
(M/s Dentons Rodyk & Davidson LLP)

GROUNDINGS OF DECISION OF THE DISCIPLINARY TRIBUNAL

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

Background

1. The Respondent, Dr Heng Boon Wah Joseph, is a registered medical practitioner. He had pleaded guilty before this Disciplinary Tribunal to all the 47 charges preferred against him under section 53(1)(d) and punishable under section 53(2) of the Medical Registration Act (Cap. 174, 2014 Rev Ed) (“**MRA 2014**”). The remaining 31 charges were taken into consideration for the purpose of sentencing with the consent of Dr Heng. The details of all the charges including those to be taken into account for the purpose of sentencing were set out in the Notice of Inquiry by the Disciplinary Tribunal dated 2 February 2016. As all the charges were similar in nature, and for ease of reference, one example, the first charge, was reproduced as follows:

*That you, **Dr HENG BOON WAH JOSEPH**, are charged that you, between 5 January 2011 and 17 March 2011, whilst practising as a medical practitioner at Heng Clinic & Surgery, Singapore, acted in breach of Guidelines 4.1.1.6 and 4.1.3 of the Singapore Medical Council’s Ethical Code and Ethical Guidelines (“ECEG”) in that you failed to provide appropriate care, management and treatment to your patient, namely one P1, by inappropriately prescribing hypnotics to the said P1, in breach of the Ministry of Health Clinical Practice Guidelines on the Prescribing of Benzodiazepines (2/2008) (“CPG”) and the Ministry of Health Administrative Guidelines on the Prescribing of Benzodiazepines and Other Hypnotics dated 14 October 2008 (MH70:41/24 Vol. 3) (“MOH Administrative Guidelines”) to wit:*

PARTICULARS

- a. You gave multiple prescriptions of the drug known as Nitrados (of up to 30 tablets per consultation) beyond the recommended 2 to 4 weeks to the said P1 on various occasions, particulars of which are set out at Schedule 1 annexed hereto; and
- b. You continued your prescription of Nitrados to the said P1 beyond a cumulative period of 8 weeks and failed to refer the said P1 to a medical specialist and/or psychiatrist for further and/or joint management,

and your aforesaid conduct constituted an intentional, deliberate departure from standards observed or approved by members of the profession of good repute and competency, and that in relation to the facts alleged you are guilty of professional misconduct under section 53(1)(d) of the Medical Registration Act (Cap. 174).

2. The Schedule referred to in the charge read as follows:

S/N	Date	Interval (days)	No of Nitrados	Doctor's Comments
1	05/01/2011	-	30	Poor onset of sleep 4 hrs/day, quarrel with wife, no problem with CNB, BP 120/80, no injection marks, C&R, HR:78/min, advice given to decrease coffee.
2	23/01/2011	18	30	No sleep for 3 days, no problem with CNB, Coffee*1 tea*1, BP 120/85, no tremors, no injection marks, C&R, advice given to reduce coffee & tea.
3	17/02/2011	25	30	Sleep 4 hours/day, occasional quarrel with wife, no problem with CNB, coffee*2 tea*2, BP 120/80, no injection marks, C&R, advice given to reduce coffee & tea.
4	17/03/2011	28	20	Slow onset of sleep 5 days, sleeps 4hrs/day, no social issues, no problem with CNB, coffee*1 tea*1, BP 120/80, no injection marks, C&R, advice given to avoid coffee & tea.
	Total	71	110	

Total Amount of Nitrados 110 tablets x 5 mg = 550 mg

3. The Respondent agreed and admitted to the following Statement of Facts:
- “3. At all material times, Dr Heng knew or ought to have known that he was obliged and/or required under the ECEG to, inter alia :-*
- (a) refer his patient to another doctor with the necessary expertise where his competence in managing the patient is exceeded (per Guideline 4.1.1.6 of the ECEG); and*
 - (b) prescribe, dispense or supply medicines only on clear medical grounds and in reasonable quantities as appropriate to the patient’s needs (per Guideline 4.1.3 of the ECEG);*
- 4. At all material times, Dr Heng also knew or ought to have known that he was obliged and/or required to comply with:-*
- (a) the Ministry of Health Clinical Practice Guidelines on the Prescribing of Benzodiazepines (2/2008); and*
 - (b) the Ministry of Health Administrative Guidelines on the Prescribing of Benzodiazepines and Other Hypnotics dated 14 October 2008 (MH 70:41/24 Vol. 3) (collectively, the “MOH Guidelines”).*
- 5. At all material times, Dr Heng knew or ought to have known that the MOH Guidelines required him to comply with inter alia the following standards :-*
- (a) benzodiazepine / hypnotic use should be limited to 2 to 4 weeks, at the lowest dose, taken intermittently, and only when necessary; and*
 - (b) patients should not be further prescribed with benzodiazepines / hypnotics and must be referred to the appropriate specialist for further management if they have been prescribed benzodiazepines / hypnotics beyond a cumulative period of 8 weeks.”*

Our Findings

4. As the Respondent had admitted to the Statement of Facts and pleaded guilty to the charges preferred against him, we accordingly find the Respondent’s conduct constitutes an intentional, deliberate departure from standards observed or approved by members of the profession of good repute and competency and is guilty of professional misconduct under section 53(1)(d) of the MRA 2014.

Respondent’s Submissions on Sentencing & Mitigation Plea

5. In mitigation, Counsel for the Respondent tendered a written mitigation dated 17 June 2016. Counsel urged the Disciplinary Tribunal to consider, among other things, the following, that:

- (a) the Respondent was remorseful and made an early plea of guilt;
 - (b) he was a first time offender;
 - (c) he acted out of a genuine desire to help his patients and did not seek to profit from the prescription of Nitrados;
 - (d) he was a caring doctor and this was supported by the testimonials from his long-standing patients;
 - (e) he looked after many underprivileged patients, some of whom struggled daily to make ends meet. He also did house calls for some of them at nominal fees of not more than \$50;
 - (f) he suffered extra-curial punishment from the stress and anxiety arising from the long disciplinary process;
 - (g) the Health Sciences Authority ("**HSA**") informed the Respondent that they did not find any contravention under their purview during the inspection of his clinic.
6. Counsel further submitted that an appropriate sentence in this case was a suspension of three months with no fine, a censure and an undertaking not to repeat the conduct complained of.

Prosecution's Submissions on Sentencing

7. Counsel for SMC submitted a set of sentencing precedents for the Disciplinary Tribunal's consideration on 17 June 2016 and a further submission dated 19 July 2016. Counsel urged the Disciplinary Tribunal to order a period of suspension from four to six months; a fine of more than \$10,000 and the usual orders in relation to the imposition of censure, undertaking and payment of the Singapore Medical Council's ("**SMC**") fees and expenses.
8. Counsel for SMC also highlighted the following aggravating factors and sentencing considerations:-
- (a) The misconduct involved was the inappropriate prescription of addictive medication. This is a serious offence because the patient may develop dependence on such medicine.
 - (b) The Respondent faced a substantial number of charges – 47 charges were proceeded with and the remaining 31 charges were taken into consideration for sentencing purposes. In other words, harm was caused to an unusually high number of patients.
 - (c) There were many instances of inappropriate prescription of benzodiazepines or hypnotics over a relatively short period of three months.
 - (d) The maximum fine was increased from \$10,000 under section 45(2)(d) of the Medical Registration Act (Cap. 174, 2004 Rev Ed) ("**MRA 2004**") to

\$100,000 under section 53(2)(e) of the MRA 2014. Fines imposed for cases under the MRA 2004 should be considered in that context.

Reasons for the Sentence

9. In determining the appropriate sentence, the Disciplinary Tribunal had considered all the circumstances of the case set out in the Agreed Statement of Facts, the Sentencing Submissions and the Mitigation Plea.
10. The Disciplinary Tribunal wished to reiterate the oft-expressed principle that inappropriate prescription of benzodiazepines and other hypnotics is a serious misconduct. The long-term consumption of hypnotics may lead to the development of drug dependence and tolerance by patients. Accordingly, we were of the view that the main sentencing consideration must be one of deterrence.
11. In determining the appropriate penalty to be imposed, we took into account the 47 charges which the Respondent have pleaded guilty to and the 31 charges which he admitted and agreed to be taken into account for the purpose of sentencing. A total of 78 patients were involved in the charges preferred against the Respondent. We agreed with Counsel for SMC that this was an aggravating factor.
12. We also noted, as highlighted by Counsel for SMC, the number of instances of inappropriate prescription of benzodiazepines / hypnotics which was given over a relatively short period of only about three months.
13. We agreed with Counsel for SMC that there were instances where Dr Heng continued prescribing Nitrados to patients when the circumstances gave rise to a plausible suspicion of drug dependence / abuse (see [19] of Counsel for SMC's submission dated 19 July 2016). We took this into account when assessing the appropriate sentence to be imposed in the present case.
14. Based on the precedents which were brought to our attention, the sentence for such offences was a suspension between three to six months and a fine ranging from \$3,000 to \$10,000. In two of the cases submitted, there was no fine ordered. The orders for a censure, an undertaking not to reoffend and costs were always imposed. In our view, the length of the suspension and the quantum of fine, if any, depended on, among other things, the facts of the case and the culpability of the Respondent.
15. We took note that the maximum fine was increased from \$10,000 to \$100,000. It was incumbent on the SMC to explain the circumstances that warrant a higher sentence. In the present case, we agreed with the Prosecution that in view of the aggravating factors, in particular, the number of charges involved and the continued prescribing of Nitrados to patients when the circumstances gave rise to a plausible suspicion of drug dependence / abuse, that a fine of more than \$10,000 should be imposed on the Respondent in addition to suspension.

16. Among other factors, we considered and gave full credit to the Respondent for his early plea of guilt, his full cooperation rendered during investigation, his contributions to the underprivileged in our society, his remorsefulness and the good testimonials by his patients.
17. We have also taken into account the fact that the Respondent received extra-curial punishment due to the lengthy disciplinary process (see *Low Cze Hong v Singapore Medical Council* [2008] 3 SLR 612 at [89] ("*Low Cze Hong*"). Nearly two and a half years elapsed between 3 September 2013 when SMC notified the Respondent of the complaint against him and 2 February 2016 when he was served with the Notice of Inquiry. This period was only slightly shorter than what the offender in *Low Cze Hong* had to go through.
18. With due respect, while the Respondent was led by the HSA officer to believe that his management of patients was acceptable, the Respondent ought to have known the medical guidelines set by the Ministry of Health. In any event, the Respondent has admitted in the Statement of Facts that he knew or ought to have known that he was obliged to comply with the medical guidelines set out by the Ministry of Health. We also agreed with Counsel for SMC that the contents of the HSA letter dated 30 December 2011 did not suggest that Dr Heng's prescription practice was acceptable. In fact, the said letter clearly stated that Dr Heng's prescribing patterns for Nitrados tablets 5mg were rather high. We were of the view that the letter suggested that Dr Heng's prescription practice of Nitrados did give rise to concerns regarding his professional / ethical practice as a doctor. Hence, the matter was referred to the SMC. With due respect, the HSA letter should not be used as corroborative evidence.

Orders by this Disciplinary Tribunal

19. Having regard to all the circumstances of the case and considering the submissions and precedents cited, we hereby ordered that the Respondent:-
 - (a) be suspended from medical practice for a period of four **(4) months**;
 - (b) pay a penalty of **\$15,000**;
 - (c) be censured;
 - (d) give a written undertaking to the SMC that he will not engage in the conduct complained of and any similar conduct; and
 - (e) pay the costs and expenses of and incidental to these proceedings, including the costs of the solicitors to the SMC.

Publication of Decision

20. We order that the Grounds of Decision be published.

21. The hearing is hereby concluded.

Dated this 15th day of August 2016.