

**SINGAPORE MEDICAL COUNCIL DISCIPLINARY TRIBUNAL INQUIRY FOR
DR LIEW KERT CHIAN HELD ON 4 FEBRUARY 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:

Mr Maurice Cheong
Mr Freddy Lim
(M/s Lee & Lee)

GROUNDINGS OF DECISION OF THE DISCIPLINARY TRIBUNAL

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

Introduction

- 1 Dr Liew Kert Chian (“**the Respondent**”) is a registered medical practitioner. He pleaded guilty before this Tribunal to one charge preferred against him under Section 53(2) read with 53(1)(b) of the Medical Registration Act (Cap 174) (“**MRA**”). The charge reads as follows:

CHARGE

*That you, **Dr Liew Kert Chian (NRIC No. SXXXXXXX)**, on 17 October 2013, were convicted of an offence under Section 6 read with Section 7(3) of the Poisons Act (Cap. 234), in the Subordinate Courts of the Republic of Singapore (as it then was), vide HSA 000330-DSC-2013, in that between 2 January 2011 and 5 October 2011, at Temasek Clinic & Surgery, Block 73 Bedok South Ave 3 #01-460, Singapore, you supplied medicine, to wit, Procodin and Beacodyl cough syrup containing Codeine, which is listed in the Schedule to the Poisons Act, without entering particulars of the said supply in a book which is kept and used regularly for the purpose of Section 7(3) of the said Act, 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).*

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 “Temasek Clinic & Surgery” at Block 73 Bedok South Ave 3 #01-460, Singapore.
- 3 On 17 October 2013, in the Subordinate Courts of the Republic of Singapore (as it then was) (“**Subordinate Courts**”), the Respondent pleaded guilty to and was convicted of one charge of supplying Procodin and Beacodyl cough syrup containing Codeine, which is listed in the Schedule to the Poisons Act (“**the Act**”), without keeping a proper record of the said supply, of the Act (“**the Criminal Charge**”). Section 6 read with Section 7(3) of the Act requires a medical practitioner to enter the necessary particulars of the supply of a medicine containing poisons listed in the Schedule to the Act into a book which is kept and used regularly for this purpose.
- 4 A second charge of failing to keep a proper register of the supply of every quantity of a drug (i.e. Nimetazepam specified in the Second Schedule to the Misuse of Drugs Regulations under Regulation 14(1)(a) of the Misuse of Drugs Regulations (Cap. 185) was also taken into consideration for the purposes of sentencing.
- 5 The background and facts relating to the Criminal Charge were set out in the Statement of Facts (Amended) dated 11 September 2013 tendered to the Subordinate Courts at the time of the hearing of the Criminal Charge.
- 6 The Respondent was sentenced to a fine of \$4,500 in default of payment thereof, 18 days’ imprisonment.
- 7 In the present Disciplinary Tribunal (“**DT**”) inquiry, the Respondent elected to plead guilty to the single charge preferred against him under Section 53(2) read with Section 53(1)(b) of the MRA in respect of his conviction on the Criminal Charge as set out in the Notice of Inquiry dated 31 August 2015.
- 8 In summary, the salient facts relating to the single charge before the DT were as follows:
 - (a) Between 2 January 2011 and 5 October 2011, the Respondent supplied, without making a prescription, Procodin Syrup and Beacodyl Syrup containing Codeine (collectively, “**Cough Syrup**”) to over 30 cough syrup addicts in his clinic;
 - (b) The Respondent had instructed his clinic assistants to charge the cough syrup addicts \$22 for each 90ml bottle of Cough Syrup;
 - (c) The records of the purchase of Cough Syrup by these cough syrup addicts would first be made in pencil in their treatment cards and then later erased, leaving no records of these sales in either the dispensing record or in the treatment cards; and

- (d) As a result, seventy 3,800ml canisters (a total of 266,000ml or 266 litres) of Procodin Syrup and three 3,800ml canisters (a total of 11,400ml or 11.4 litres) of Beacodyl Syrup were unaccounted for.

Findings

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

Mitigation

- 10 Counsel for the Respondent tendered a written mitigation plea. In the mitigation plea, his Counsel highlighted that the Respondent had pleaded guilty early to the charge preferred against him by the Singapore Medical Council (“**SMC**”). This was his first brush with the law in that he did not have any criminal record prior to the conviction of the Criminal Charge, and it was the first time that he faced a DT inquiry.
- 11 His Counsel highlighted the Respondent’s family circumstances, in particular, that he is the sole breadwinner for his family, comprising his wife who is a homemaker and two young daughters, aged 7 and 12 years old respectively. He also supports his elderly, ailing and bed-ridden mother who is 81 years old, and contributes to the expenses of his parents-in-law. His father passed away in late 2005. In short, the Respondent is said to bear a huge financial burden and the financial expenses for the family impose a great financial strain on him.
- 12 His Counsel also highlighted that the gravamen of his conviction was in relation to his failure to keep proper records of the supply or dispensation of Cough Syrup and that the Respondent had revamped his clinic’s record-keeping and medicine-dispensing system since 5 October 2011. The Respondent had since also instituted stringent checks and balances to prevent any recurrence and he only prescribes hypnotics in accordance with current guidelines.
- 13 His Counsel also submitted statistics of the number of Community Health Assist Scheme patients with acute upper respiratory infection seen by the Respondent between 2011 and 2014 against the quantity of Cough Syrup ordered by the clinic to show that while the patient base had risen over the years, the orders of Codeine-based Cough Syrup have remained substantially lower than the 2011 levels. In short, his Counsel sought to impress upon the Tribunal that the Respondent had learnt his lesson and that he is now careful to ensure that the record keeping of the dispensation of medicine is accurate and compliant with the relevant regulations.

- 14 In the Respondent's submissions in reply on the sentencing, his Counsel sought to distinguish the sentencing precedents cases cited by Counsel for SMC, namely, the cases concerning Dr Khoo Buk Kwong ("**Dr Khoo BK**") and Dr Ho Thong Chew ("**Dr Ho TC**"). His Counsel submitted that those cases were clearly more serious compared to the Respondent's case, and reiterated that the gravamen of the Respondent's conviction was related to a failure to keep proper records of the supply or dispensation of Cough Syrup.
- 15 The Respondent's Counsel further submitted that given the circumstances, suspension was not appropriate and that a fine and censure, together with an undertaking not to engage in the conduct complained of would be sufficient punishment in the present case.

Submission on Sentencing

- 16 In its written submission on sentencing, Counsel for SMC submitted that the gravity of the Respondent's offence and conduct warranted:
- (a) a suspension for a period of 12 to 15 months;
 - (b) a written censure;
 - (c) the giving of a written undertaking to the SMC not to repeat the offences the Respondent had been convicted of or any similar conduct; and
 - (d) the Respondent pay the costs and expenses of these proceedings, including the legal costs incurred by the SMC.
- 17 Counsel for SMC highlighted that the following aggravating factors in the Respondent's case:
- (a) The Respondent had over a period of 9 months, blatantly supplied Cough Syrup without prescription to more than 30 of his registered patients whom he knew to be cough syrup addicts.
 - (b) The Respondent supplied a large quantity of Cough Syrup and a total of 277.4 litres of Cough Syrup were unaccounted for.
 - (c) The Respondent profited from such sales by selling each 90ml bottle of Cough Syrup for \$22.
 - (d) The Respondent sought to conceal evidence of these sales of Cough Syrup by erasing the records of the purchase that were made in the patients' treatment cards, leaving no records of these sales in the dispensing records or treatment cards. This showed that the Respondent had blatantly devised and carried out a scheme to conceal his wrongdoings so as to perpetuate his unlawful financial gains without regard to the harm caused to his patients.
- 18 Counsel for SMC further submitted that the Respondent had abused the trust that society reposes in doctors by dispensing potentially dangerous substances irresponsibly, and recklessly disregarded a doctor's duty to "do no harm". Instead of upholding his professional role as a "gatekeeper" of medicine containing poisons, the Respondent deliberately assisted in perpetuating the

detrimental addiction of his patients to such a poison. His actions were entirely motivated by greed, without a thought for the harm that he was bringing to his patients and with no accountability for the same.

- 19 Counsel for SMC highlighted the sentencing precedents, where Part I of the Annex A of the Sentencing Precedents sets out precedents wherein the disciplinary charges were based on the medical practitioner's conviction for criminal offences involving the unlawful sale of Cough Syrup containing Codeine, while Part II of Annex A of the Sentencing Precedents sets out precedents wherein the disciplinary charges were based on the medical practitioner's professional misconduct in the prescription of medicine containing Codeine. Counsel for SMC submitted that the Respondent's case should be treated more seriously than a case that involved the medical practitioner's mismanagement of the prescription of medicine to his patients and that the Respondent's reprehensible conduct placed him on a similar level of seriousness as Dr Ho TC's case and more serious than Dr Khoo BK's case.

Reasons for the DT's Orders

- 20 The Tribunal considered the sentencing precedents submitted by Counsel for SMC and was of the view that the Respondent's conduct was clearly more serious than the cases cited in Part II of Annex A of the Sentencing Precedents, which mainly involved professional misconduct in the prescription of medicine containing Codeine and related to the mismanagement of the patients. Except for one case (Dr Tan Hui Hoon's case), the Respondents in the rest of these cases all received a period of suspension ranging from 3 to 6 months and a financial penalty ranging from \$1,000 to \$10,000.
- 21 The Tribunal noted that the present case was not a case where the medical practitioner had only failed to exercise due care in the management of his patients as demonstrated in the cases cited in Part II of Annex A of the Sentencing Precedents. Instead, the facts and circumstances showed that the Respondent had no qualms in selling the Cough Syrup to cough syrup addicts without prescription in his clinic. The Tribunal found it deeply troubling that the Respondent had recorded the purchase of the Cough Syrup in pencil in the patients' treatment cards, only to erase the entries thereafter, and leaving no records of the dispensation record or the treatment cards for these sales.
- 22 This clearly showed a high degree of planning and a systematic and deliberate concealment of such sales from the records by the Respondent. The Respondent knew that the registered patients who visited his clinic regularly to purchase the Cough Syrup were cough syrup addicts. The Respondent saw it fit to profit from their addiction instead of properly treating them of the addiction and recklessly disregarding the potential harm that could be caused to these patients. Furthermore, the Respondent must have known that erasing the prescription from the patient's treatment card could adversely impact and endanger the said patient's subsequent treatment and management. Hence, the

Respondent had clearly violated his duty “to do no harm” and abused the trust reposed in him as a medical practitioner.

- 23 The Tribunal also noted that the offence only came to light when a friend of an addict informed the Health Sciences Authority (“HSA”) that her friend had been abusing cough mixtures and pills that he had personally purchased from the doctor from the Temasek Clinic & Surgery in the treatment room. The HSA then conducted an inspection at the clinic and visited the Respondent’s residence on 5 October 2011 and discovered the offence. Quite clearly, the Respondent had blatantly supplied Cough Syrup to cough syrup addicts for over a period of 9 months until it was discovered, and it was not a case where the Respondent, being the sole proprietor of the clinic, had voluntarily decided to put a stop to the sales out of his own remorse. To that extent, very little weight could be accorded to his plea of guilt.
- 24 The offence committed by the Respondent was undoubtedly serious and the Tribunal was of the view that a clear and unequivocal message had to be sent to both the medical community and the public that such offences would not be tolerated.
- 25 The Tribunal wished to address several points raised in the mitigation by Counsel for the Respondent. First, the Tribunal could not agree that the gravamen of the Respondent’s conviction was related to a mere failure to enter the particulars of the supply in a book and a failure to keep proper records. Quite clearly, the Tribunal would have to examine the nature of the offence, as well as the facts and circumstances surrounding the offence in order for the Tribunal to imply a defect of character and to determine the appropriate sanction to impose.
- 26 This was not a case of mere inadvertence or inexperience on the part of the sole proprietor medical practitioner in failing to keep proper records. The underlying motivation behind the failure was to deliberately conceal the sale of the Cough Syrup to the addicts and surely this was an aggravating factor that could not be ignored by the Tribunal.
- 27 Secondly, the Tribunal could not attribute any weight to the submission that the Respondent had since revamped his clinic’s record-keeping and medicine-dispensing system and instituted stringent checks and balances to prevent any recurrence. As rightly pointed out by Counsel for SMC, this was not a case of mere carelessness on the part of the medical practitioner in failing to keep proper record but a systemic ploy by the Respondent to record entries in pencil in the treatment cards of his patients and deliberately erasing the entries thereafter to ensure that there were no records in the dispensing record or treatment cards for the sales.
- 28 Thirdly, with due respect to the learned Counsel, the Tribunal did not see how the statistics submitted by the Counsel for the Respondent was of any assistance to his mitigation. The Tribunal did not agree with the submission that the fact that his patient base had risen over the years and the orders of

Codeine-based Cough Syrup had remained substantially lower than the 2011 levels was a strong indication that the Respondent had learnt from his past mistakes. On the contrary, the sharp drop in the quantity of Cough Syrup ordered by the Respondent from 154 gallons in 2011 to 69 gallons in 2012, to 86 gallons in 2013 and to 95 gallons in 2014 despite a significant increase from 89 to 799 patients with acute upper respiratory infection only served to show up the magnitude of the concealed sales in 2011, and the orders of the Cough Syrup by his clinic would have been much less if not for the Respondent's reprehensible conduct.

- 29 The Tribunal was not able to give any weight to the mitigation for what was essentially required and expected of the Respondent in the first place, that is, to fulfill his professional duties and responsibilities to dispense medicine responsibly and comply with the relevant rules and regulations governing the dispensation of medicine.
- 30 When considering the appropriate orders to make, the Tribunal was mindful of the sentencing precedents cited by Counsel for SMC. As stated above, the Tribunal was of the view that the Respondent's conduct was clearly more serious than the cases cited in Part II of Annex A of the Sentencing Precedents, which mainly involved professional misconduct in the prescription of medicine containing Codeine and related to the mismanagement of the patients.
- 31 As for the two cases cited in Part I of Annex A of the Sentencing Precedents, where disciplinary charges were instituted based on the doctor's criminal conviction for the unlawful sale of cough mixtures containing Codeine by the medical practitioners to people who were not patients of the offenders, the Tribunal was of the view that the facts in the DT inquiry for Dr Ho TC were clearly far more aggravated than the present case and the said DT ordered the removal of Dr Ho TC's name from the Register of Medical Practitioners. As for the DT inquiry for Dr Khoo BK, the Tribunal noted that the DT had considered Dr Khoo BK's family circumstances and that he was made a bankrupt. Hence, the DT finally ordered Dr Khoo BK 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.
- 32 Suffice to note, the mitigating factors present in Dr Khoo BK's case were not available to the Respondent. Moreover, the salient facts in Dr Khoo BK's case were quite different from the present case in that Dr Khoo BK 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.
- 33 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 DT

34 Having carefully considered all the facts and circumstances, the respective submissions of the parties, and the sentencing precedents cited, the Tribunal ordered that the Respondent:

- (a) be suspended for a period of **12 months**;
- (b) pay a penalty of **\$5,000**;
- (c) be censured;
- (d) give a written undertaking to the SMC that he will not engage in the conduct complained of or 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 Grounds of Decision

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

36 The hearing is hereby concluded.

Dated this 25th day of February 2016.