SINGAPORE MEDICAL COUNCIL DISCIPLINARY TRIBUNAL INQUIRY FOR DR CHEW YEW MENG VICTOR HELD ON 15 FEBRUARY 2017 AND 7 APRIL 2017

Disciplinary Tribunal:
Prof Sonny Wang Yee Tang (Chairman)
Dr Khoo Chong Yew
Mr Bala Reddy (Legal Service Officer)

Counsel for SMC:
Mr Kevin Ho
Mr Xiao Hongyu
(M/s Braddell Brothers LLP)

Counsel for the Respondent:
Mr Charles Lin
Ms Tracia Lim
(M/s MyintSoe & Selvaraj)

GROUNDS 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, Dr Chew Yew Meng Victor ("**Dr Chew**"), is a general practitioner who was practising at a medical clinic known as Canberra Medical Clinic (subsequently renamed Canberra Medical Aesthetics) at the material time when the subject matter of this complaint arose. Dr Chew had been treating a patient, Mr P ("**the Patient**") for, among other things, upper respiratory tract infection, occasional cough and intermittent insomnia at all material times since 2006. The treatment of the Patient over the years involved, among other things, the prescription of Codeine-containing cough mixture and benzodiazepines (i.e. *Dormicum* and *Diazepam*). A complaint dated 26 September 2012 ("**the Complaint**") was made by the Patient's brother in relation to Dr Chew's treatment of the Patient.

2 Arising out of this Complaint, a total of four charges were preferred against Dr Chew before the Disciplinary Tribunal ("**the Tribunal**") by the Singapore Medical Council ("**SMC**"). However, amendments were made to the charges and one of the charges (i.e. second charge) was withdrawn by the SMC following written representations from Dr Chew. The SMC then proceeded on the three remaining amended charges in relation to Dr Chew's inappropriate prescriptions of benzodiazepines to the Patient, failure to keep clear and accurate medical records of the Patient with sufficient detail and failure to refer the Patient to a psychiatrist and/or appropriate specialist for management of the Patient's medical issues in a timely manner.

3 Dr Chew pleaded guilty to all three amended charges and after due consideration, the Tribunal ordered that Dr Chew:

(a) be suspended for a period of **four (4)** months;
(b) be fined $12,000;
(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 cost and expenses incidental to these proceedings, including the costs of the solicitors to the SMC.

We now set out our reasons below.

Proceedings before the Disciplinary Tribunal

4 At the Tribunal Inquiry on 15 February 2017, Dr Chew pleaded guilty to the following three amended charges:

"***1ST CHARGE (AMENDED)***

*That you, Dr Chew Yew Meng Victor, are charged that you, between 3 November 2008 and 26 September 2012, whilst practising as a general practitioner at the medical clinic known as Canberra Medical Clinic (subsequently renamed to Canberra Medical Aesthetics), located at Block 306A Canberra Road, #01-01, Singapore 751306 (the "**Clinic**"), you had acted in breach of Guideline 4.1.3 of the Singapore Medical Council Ethical Code and Ethical Guidelines ("**ECEG**") in that you failed to provide appropriate care, management and treatment to your patient, namely one Mr P ("**Patient**") by inappropriately prescribing Benzodiazepines to the said Patient, in breach of the Ministry of Health's Administrative Guidelines on the Prescribing of Benzodiazepines and other Hypnotics dated 14 October 2008 (MH 70:41/24 Vol.3) ("**MOH Administrative Guidelines**") and the Clinical Practice Guidelines for the Prescribing of Benzodiazepines (2/2008) ("**CPG**"), to wit :-*

Particulars

(a) You prescribed Dormicum on 6 occasions, particulars of which are set out in Schedule 1 annexed hereto;

(b) You prescribed Diazepam to the Patient on 16 occasions, particulars of which are set out in Schedule 1 annexed hereto;

(c) On 22 occasions, particulars of which are set out in Schedule 1 annexed hereto, you continued to prescribe Benzodiazepines to the Patient even though he had been prescribed Benzodiazepines beyond a cumulative period of 4 weeks prior to 3 November 2008;

(d) You co-administered Benzodiazepines with a cough mixture containing Codeine, namely Dhasedyl on 13 occasions, particulars of which are set out in Schedule 1 annexed hereto;

and your aforesaid conduct constitutes an intentional, deliberate departure from the 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).

3RD CHARGE (AMENDED)

That you, Dr Chew Yew Meng Victor, are charged that you, between 3 November 2008 and 26 September 2012, whilst practising as a general practitioner at the Clinic, you had acted in breach of Guideline 4.1.2 of the ECEG in that you failed to maintain sufficient details in the Patient's medical records, to wit:-

Particulars

(a) Paragraph (c) of Annex A of the MOH Administrative Guidelines states that:-

"the following information must be documented in the medical record of every patient who is prescribed with benzodiazepines / other hypnotics: (i) Comprehensive history, including psychosocial history and previous use of benzodiazepines or other hypnotics …"

(b) Paragraph (d) (iii) of Annex A of the MOH Administrative Guidelines states that physical signs or evidence of tolerance, physical / psychological dependence or any illicit use or misuse of benzodiazepines or other drugs (e.g. needle tracks on skin, inappropriate lethargy) should be documented.

(c) Paragraph (o) of Annex A of the MOH Administrative Guidelines states that patients who are non-compliant with professional advice or warnings to reduce intake of benzodiazepines / other hypnotics and patients who refuse to be referred to a specialist should be counselled appropriately. Such refusal should be documented in the patients' medical records.

(d) In breach of the MOH Administrative Guidelines, you did not document the following details in the Patient's medical records:

(i) a comprehensive history of the Patient, including but not limited to the Patient's psychosocial history and previous use of Benzodiazepines or other hypnotics;

(ii) any warning of the Patient about potential addiction to Benzodiazepines;

(iii) any refusal by the Patient to be referred to a specialist; and

(iv) the Patient's diagnosis, symptoms, conditions, advice given and/or management plan such as to enable you to properly assess the medical condition of the Patient over the period of treatment;

and your aforesaid conduct constitutes an intentional, deliberate departure from the 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).

4TH CHARGE (AMENDED)

That you, Dr Chew Yew Meng Victor, are charged that you, between 3 November 2008 and 26 September 2012, whilst practising as a general practitioner at the Clinic, you had acted in breach of Guidelines 4.1.1.5 and 4.1.1.6 of the ECEG in that you failed to refer the Patient to a psychiatrist and/or appropriate specialist for management of the Patient's medical issues in a timely manner, to wit:-

Particulars

(a) Paragraph (k) of Annex A of the MOH Administrative Guidelines states that:

"where there are doubts about dosage prescription or tapering of Benzodiazepines / other hypnotics, a psychiatrist or other specialists should be consulted."

(b) In breach of the MOH Administrative Guidelines, you failed to consult a psychiatrist or other specialist when there were doubts about the dosage prescription or tapering of Benzodiazepines / other hypnotics with respect to the patient;

(c) At no time during your management and treatment of the Patient between 3 November 2008 and 26 September 2012 did you refer the Patient to a psychiatrist for a thorough psychiatric assessment of his substance abuse problems; and

(d) By failing to refer the Patient to a psychiatrist, you failed to facilitate joint management, collaboration and communication with the

specialists in respect of the Patient's treatment, management and the prescription of medication to the Patient,

and your aforesaid conduct constitutes an intentional, deliberate departure from the 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)."

5 Dr Chew admitted to the Agreed Statement of Facts tendered by Counsel for the SMC, Mr Kevin Ho. Dr Chew acknowledged that he was bound by the 2002 edition of the SMC Ethical Code and Ethical Guidelines ("**2002 ECEG**") at the material time and knew that he was obliged and/or required under the 2002 ECEG to, *inter alia*:

"*(a) Provide competent, compassionate and appropriate care to his patient (per Guideline 4.1.1.5 of the 2002 ECEG);*

(b) 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 2002 ECEG);

(c) keep clear, accurate, legible and sufficiently detailed medical records, (per Guideline 4.1.2 of the 2002 ECEG); and

(d) 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 2002 ECEG)."

6 Dr Chew also knew and acknowledged that he was required to comply with the MOH Clinical Practice Guidelines on the Prescribing of Benzodiazepines (2/2008) ("**CPG**"); and the MOH Administrative Guidelines on the Prescribing of Benzodiazepines and Other Hypnotics dated 14 October 2008 (MH 70:41/24 - Vol. 3) ("**MOH Administrative Guidelines**"), which set out the following standards:

"(a) for outpatient treatments, patients should not be prescribed with highly addictive Benzodiazepines such as midazolam (per Guideline 5.1.2 of the CPG);

(b) Benzodiazepine / hypnotic use should be limited to short-term relief (between 2 to 4 weeks), at the lowest dose, and taken intermittently (per Guideline 5.1.1 of the CPG);

(c) long-term chronic use of Benzodiazepines is not recommended and continued or repeat Benzodiazepine prescriptions should be accompanied by appropriate clinical review, clear indications and adequate documentation (per Guideline 5.1 of the CPG);

(d) *caution should be exercised when prescribing Benzodiazepines for patients with a history or evidence of alcohol or other substance abuse (per paragraph (m) of the MOH Administrative Guidelines);*

(e) *the use of Benzodiazepines to treat anxiety disorders is limited to short-term relief (2-4 weeks) of anxiety that is severe, disabling or subjecting the individual to unacceptable distress. It is associated with problems of dependence, rebound anxiety and withdrawal symptoms on cessation (per Guideline 3.4 of the CPG);*

(f) *patients receiving Benzodiazepines should be routinely advised about the risk of developing dependence (per Guideline 5.1.1 of the CPG); and*

(g) *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 (per paragraph (n)(i) of the MOH Administrative Guidelines).*"

The Complaint

7 On or about 26 September 2012, the SMC received the Complaint from the Patient's brother. The Complaint stated that the Patient had been purchasing addictive substances, such as sleeping pills and codeine-containing cough mixtures, for several years.

8 On or about 2 July 2013, the Complaints Committee ("**CC**") received Dr Chew's written letter of explanation. Following Dr Chew's explanation to the CC, the matter was referred to this Tribunal to consider the charges aforementioned. The relevant paragraphs of the Agreed Statement of Facts relating to the charges were as follows:

*"**FACTS RELATING TO THE RE-AMENDED 1ST CHARGE***

14. Between 3 November 2008 and 26 September 2012, in breach of the MOH Administrative Guidelines, the CPG and the 2002 ECEG, Dr Chew:-

(a) prescribed Dormicum, a Benzodiazepine, to the Patient on 6 occasions;
(b) prescribed Diazepam, a Benzodiazepine, to the Patient on 16 occasions;
(c) continued to prescribe Benzodiazepines (i.e. Dormicum or Diazepam) to the Patient on 22 occasions, even though the Patient had been prescribed Dormicum beyond a cumulative period of 4 weeks prior to 3 November 2008; and

(d) co-administered Benzodiazepines with a Codeine-containing cough mixture (i.e. Dhasedyl) on 13 occasions,

particulars of which are set out in the Schedule at Annex B of the NOI.

15. At all material times, Dr Chew was aware:-

(a) of the addictive nature of the Benzodiazepines he was prescribing to the Patient and the possibilities for abuse;
(b) that the Patient had become dependent on codeine containing cough mixtures and Benzodiazepines;
(c) that the Patient's medical conditions, i.e. stress, anxiety disorder, chronic back pain, cough mixture usage and insomnia, were getting out of hand; and
(d) that the Patient suffered from anxiety disorders / depression; and
(e) that the Patient had, between 2 June 2009 and 5 October 2009, refused to consult a psychiatrist for treatment.

16. Dr Chew failed to provide appropriate care, management and treatment to the Patient. He also failed to prescribe, dispense or supply medicines only on clear medical grounds and in reasonable quantities as appropriate to the Patient's needs. He had acted in breach of Guideline 4.1.3 of the 2002 ECEG.

FACTS RELATING TO THE AMENDED 3RD CHARGE

17. Between 3 November 2008 and 26 September 2012, in breach of the MOH Administrative Guidelines and Guideline 4.1.2 of the 2002 ECEG, Dr Chew failed to document the following details in the Patient's medical records :-

(a) a comprehensive history of the Patient, including but not limited to the Patient's psychosocial history and previous use of Benzodiazepines or other hypnotics (per paragraph (c) of the MOH Administrative Guidelines);
(b) any warning to the Patient about potential addiction to Benzodiazepines (per paragraph (g) of the MOH Administrative Guidelines);
(c) any refusal by the Patient to be referred to a specialist (per paragraph (o) of the MOH Administrative Guidelines); and
(d) the Patient's diagnosis, symptoms, conditions, advice given and/or management plan such as to enable him to properly assess the medical condition of the Patient over the period of treatment.

18. *Dr Chew failed to keep clear and accurate medical records of the Patient with sufficient detail and breached Guideline 4.1.2 of the 2002 ECEG.*

FACTS RELATING TO THE AMENDED 4TH CHARGE

19. *Between 3 November 2008 and 26 September 2012, in breach of the MOH Administrative Guidelines and Guidelines 4.1.1.5 and 4.1.1.6 of the 2002 ECEG, Dr Chew:-*

    (a) *failed to consult a psychiatrist or other specialist when he had doubts about the dosage prescription and the tapering of Benzodiazepines or other hypnotics, with respect to the Patient (per paragraph (k) of the MOH Administrative Guidelines);*
    (b) *failed to refer the Patient to a psychiatrist for a thorough psychiatric assessment of his substance abuse problems (per paragraph (n) of the MOH Administrative Guidelines); and*
    (c) *failed to facilitate joint management, collaboration and communication with the appropriate specialists in respect of the Patient's treatment, management and the prescription of medication to the Patient.*

20. *Between 2 June 2009 and 5 October 2009, Dr Chew advised the Patient to consult a psychiatrist but the Patient refused to be referred to one.*

21. *Dr Chew claims that on or about 7 December 2009, the Patient informed him that he was seeing a psychiatrist at Hospital A. Dr Chew says that he advised the Patient to ask for a referral to see an addictions psychiatrist for short term admission and detoxification. He also says that it was only after the Patient agreed to consider his advice that he agreed to continue helping the Patient with his dependence on Benzodiazepines, supposedly by prescribing decreasing amounts of cough mixtures and Diazepam.*

22. *Between 8 July 2009 and 23 June 2010, the Patient consulted Dr A at Hospital A.*

23. *On or about 10 June 2010, the Patient informed Dr Chew that he was consulting Dr B at Hospital B. The Patient supposedly informed Dr Chew that Dr B had confirmed that there was no need for a brief admission to detoxify.*

24. *Dr Chew states that he had reason to doubt the Patient's claims and after he had done some research, he believed what the Patient said was true.*

25. *Between June 2010 and the end of 2012, the Patient consulted Dr B at his clinic. At that time, Dr B was a visiting consultant at the Hospital B.*

26. *At all material times, Dr Chew did not communicate and/or consult with the Patient's psychiatrists to discuss the management of the Patient with them.*

27. *Dr Chew failed to provide appropriate care, management and treatment to the Patient and to practise within the limits of his own competence, and had thus breached Guidelines 4.1.1.5 and 4.1.1.6 of the 2002 ECEG.*"

9 Dr Chew admitted that he had acted in breach of his obligations under the 2002 ECEG, CPG and MOH Administrative Guidelines and hence guilty of professional misconduct under Section 53(1)(*d*) of the Medical Registration Act ("**MRA**").

10 We heard the address on sentence by Mr Kevin Ho for the SMC as well as the mitigation plea by Dr Chew's Counsel, Mr Charles Lin. We carefully considered all the submissions and would deal with some of the pertinent matters raised by both Counsel in our decision.

Submissions on sentence

11 Mr Kevin Ho submitted that the appropriate sentence in this case should be:

(a) a period of suspension for at least four (4) months;
(b) a fine of $12,000 or more; and
(c) the imposition of censure, undertaking and payment of the SMC's fees and expenses (the "**Usual Orders**").

12 Mr Kevin Ho further submitted that in determining the sanctions to be imposed in medical disciplinary proceedings, a Disciplinary Tribunal may take into account considerations of both general and specific deterrence (*Singapore Medical Council v Kwan Kah Yee* [2015] 5 SLR 201 at [50] and [55]). He stressed that the need to ensure that the objective of general deterrence is met is "*especially acute*" in cases involving hypnotic medication because of the serious harm such practice could cause to patients, where they could "*become addicted to Benzodiazepines and codeine-containing medication, or worse, the* [doctor could be] *simply fuelling an existing addiction*" (*inter alia*, *Dr Tan Teck Hong* [11 October 2011] at [17]), and also because of the disrepute that such conduct brings to the medical profession (*inter alia*, *Dr Tan Boon Huat* [29 June 2011] at [7]). He submitted that a suspension is always warranted in such cases as it reflects the severity of such improper conduct and acts as a deterrent to the profession at large.

13 As for sentencing precedents, Mr Kevin Ho tendered and relied upon a table of nine sentencing precedents for the Tribunal's reference. Based on the table, it was submitted

that the benchmark sentences for medical practitioners who have been convicted of professional misconduct involving, *inter alia*, the inappropriate prescription of benzodiazepines and/or hypnotics were as follows:

(a) a suspension from practice is always imposed, with the period typically ranging from 3 to 6 months, depending on the severity of the offence (e.g. the number of charges, the quantity of medication prescribed, the length of time, etc);
(b) a fine is ordinarily imposed in the range of $3,000 to $15,000, the extent of which depends on the mitigating factors of each case; and
(c) the Usual Orders are always imposed.

14 In relation to the 3rd charge (amended), Mr Kevin Ho submitted that the failure to keep proper medical records "*should not be seen as a minor or technical breach,*" (Menon CJ in *Yong Thiam Look Peter v Singapore Medical Council* [2017] SGHC 10 at [10]). Mr Kevin Ho also cited the case of *Dr Wong Choo Wai* [2 June 2011], where the Disciplinary Committee ("**DC**") noted (at [24]) that "*for these patients that are dependent on the hypnotic medication, comprehensive history taking is necessary for proper treatment by a physician*."

15 In relation to the 4th charge (amended), Mr Kevin Ho submitted that doctors must practise within the limits of their own competency, and that in cases which involve a possible addiction to drugs, a failure to refer the patient for treatment by an appropriate specialist jeopardises the patient's well-being and warrants stern consternation.

16 Mr Kevin Ho raised two additional points for the Tribunal's consideration. First, the maximum fine under the current MRA is now a fine up to $100,000, up from $10,000 in 2004. Second, he pointed out that the Court of Three Judges in *Yong Thiam Look Peter v Singapore Medical Council* [2017] SGHC 10 recently opined (at [17]) that "*the sentencing regime for cases of medical discipline in the past has tended to be somewhat lax … comparisons with sentences imposed in past cases can only afford, at best, a starting point in the analysis*".

17 Finally, Mr Kevin Ho raised, *inter alia*, the following aggravating factors in this case:

(a) Dr Chew had already been in practice for over two decades as at the date of the Complaint.
(b) The quantity and type of medication prescribed. The misconduct involved inappropriate prescriptions of addictive benzodiazepines for a long period of time. For example, an average of 1.9 tablets of Diazepam a week was prescribed to the Patient over 129 weeks between 2 April 2009 and 21 September 2011 which well exceeded the limit of four weeks imposed by Guideline 3.1 of the CPG.
(c) The prescriptions of benzodiazepines were made in combination with codeine-containing cough mixtures on 13 occasions, a serious aggravating factor since it involved the breach of both guidelines involving the two medicines.
(d) Dr Chew was aware that the Patient had become dependent on benzodiazepines, yet continued to prescribe significant quantities of benzodiazepines to the Patient.

(e) Dr Chew failed to consult with the Patient's psychiatrists to discuss the management of the Patient, even though doing so would have been a simple matter.
(f) Dr Chew was aware that the Patient suffered from mental illnesses such as anxiety orders and depression. Despite Guidelines 3.3 and 3.4 of the CPG stating that the use of benzodiazepines in patients with such disorders was associated with various adverse effects, Dr Chew continued to prescribe them to the Patient, thereby fuelling the Patient's existing addictions and worsening his medical conditions.

Mitigation and response to submission on sentence

18 Mr Charles Lin submitted that Dr Chew has been a caring and compassionate doctor throughout his treatment of the Patient, and was concerned about the Patient's welfare. He highlighted that Dr Chew's management of the Patient in this case was never motivated by financial gain, and his actions stemmed from a "*genuine intention and desire to help the Patient*". He asked that the Tribunal to show the utmost leniency on Dr Chew, who was a first-time offender and who had pleaded guilty at the first opportunity.

19 As regards sentence, Mr Charles Lin took pains to argue that a fine alone without a suspension would be adequate to reflect Dr Chew's culpability.

20 In relation to the 1st charge (amended), he acknowledged that the majority of disciplinary cases involving the inappropriate prescription of benzodiazepines attracted a sentence of suspension. However, he stressed that "*each case should be considered on its own facts and the culpability of the medical practitioner*", and that a suspension may not be imposed in such cases if there are exceptional circumstances. In this regard, he made reference to the case of *Dr Tan Hui Hoon* (28 September 2011) ("Dr Tan") and *Dr ABE* (12 January 2010) ("Dr ABE"), in which no term of suspension was imposed on the medical practitioners who had been convicted of misconduct involving the prescription of benzodiazepines.

21 In Dr Tan's case, Dr Tan pleaded guilty to four charges relating to the prescription of hypnotics and codeine-containing cough mixtures. Dr Tan ran a clinic with her husband, who at the time had been suspended from practice by the decision of a separate DC. The DC did not order a suspension term and made, *inter alia*, the following observations in coming to its decision (at [15]):

(a) Her predominant intention in respect of the treatment of her patients was to provide compassionate care and was not for financial gain.
(b) She was a first time offender.
(c) The number of charges against her was relatively low.
(d) Dr Tan had compelling character references.

22 In Dr ABE's case, Dr ABE pleaded guilty to nine charges, of which three charges related to the prescription of Subutex and benzodiazepines. The DC did not order a suspension.

This was in light of the fact that, *inter alia*, there was a relatively low number of charges, and Dr ABE had voluntarily ceased practice since 2007.

23 Mr Charles Lin submitted that exceptional circumstances were present in this case to justify a sentence of a fine alone, because like Dr Tan's case, Dr Chew is the sole breadwinner of his family, and the only doctor in his clinic, and a term of suspension would "*effectively deprive his family of an income and put them in dire financial straits*". Mr Charles Lin also pointed out the relatively low number of charges in the present case, and that only one charge out of the three charges related to the inappropriate prescription of benzodiazepines and cough mixture.

24 In relation to the 3rd charge (amended), Mr Charles Lin cited the case of *Dr Lim Chong Hee* (4 May 2012), where the doctor had been convicted on a charge of failure to keep proper medical records when he failed to record his discussion with his patient of a possible lobectomy in obtaining his consent. A fine was imposed without any suspension.

25 In relation to the 4th charge (amended), Mr Charles Lin acknowledged that a failure to refer a patient to a specialist usually attracted a sentence of suspension, but argued that the present case should be distinguished because Dr Chew had been regularly encouraging the Patient to see a psychiatrist for his dependency on benzodiazepines, had regularly questioned the Patient about his treatment with his psychiatrists, and also advised the Patient to see a specialist addictions psychiatrist for help.

26 Mr Charles Lin also tendered a written rebuttal to several points raised by Mr Kevin Ho, in his written submissions. He submitted that there were no aggravating factors in the present case for, *inter alia*, the following reasons:

(a) The fact that Dr Chew had been in practice for over two decades was not an aggravating factor. The aggravating factor found by the DC in *Dr ABV* [9 March 2011] was in relation to the doctor's "*indifference to the accepted standard of practice*", and not his 22 years of experience.
(b) The quantity and type of benzodiazepines prescribed was not an aggravating factor. Dr Chew had only prescribed an average of 1.9 tablets of Diazepam a week between 3 April 2009 and 21 September 2011, whereas the cases raised by Mr Kevin Ho included prescription averages of 7.5 benzodiazepine tablets per week (*Dr ABM* [16 August 2010]), 4 tablets of Dormicum per week (*Dr Ng Teck Keng* [31 October 2014]), and 3.59 tablets of Dormicum per week (*Dr Kwan Wai Chee* [12 March 2012]).
(c) Dr Chew's prescription of benzodiazepines together with codeine containing cough mixture did not breach guidelines relating to the two medicines. The guidelines for codeine containing cough mixtures do not prohibit the prescriptions of benzodiazepines together with codeine containing cough mixtures.
(d) The SMC was trying to paint Dr Chew as a doctor who was indifferent to the Patient's condition, and who was cavalier in his treatment of the Patient. However, Dr Chew was always considering what was best for the Patient as he had actively encouraged the Patient to see a psychiatrist, and had also advised the Patient to see an addictions specialist.

Reasons for the sentence imposed

Whether a suspension is appropriate

27 The main issue of contention between SMC and Dr Chew was whether the circumstances were sufficiently serious to warrant a suspension.

General principles

28 In determining the appropriate sentence to be imposed, this Tribunal was mindful of the general principles articulated by the Court of Three Judges in *Singapore Medical Council v Kwan Kah Yee* [2015] 5 SLR 201 ("***Kwan Kah Yee***") that guide sanctions in medical disciplinary proceedings.

29 First, the concept of public interest which guides the sentencing of medical misconduct extends further than just the danger which the doctor may pose to his patients.

30 Second, considerations of general and specific deterrence may be taken into account when determining the appropriate sentence. In this regard, the following elaboration by V K Rajah J (as he then was) in *Tan Kay Beng v PP* [2006] 4 SLR(R) 10, cited with approval in *Kwan Kah Yee*, is apposite :

> "31… Deterrence, as a concept, has a multi-faceted dimension and it is inappropriate to invoke it without proper appreciation of how and when it should be applied. ***It is premised upon the upholding of certain statutory or public policy concerns or alternatively, upon judicial concern or disquiet about the prevalence of particular offences and the attendant need to prevent such offences from becoming contagious.***
> Deterrence, as a general sentencing principle, is also intended to create an awareness in the public and more particularly among potential offenders that punishment will be certain and unrelenting for certain offences and offenders.
>
> 32 Deterrence however also has a more specific application. ***Specific deterrence is directed at persuading a particular offender from contemplating further mischief.*** This assumes that a penitential offender can balance and weight the consequences before committing an offence.
> …
>
> 34 ***In sentencing a particular offender, both general and specific deterrence must be scrupulously assessed and measured in the context of that particular factual matrix before deciding exactly how and to what extent each should figure in the equation***."
> [emphasis added]

Precedents

31 With the above general principles in mind, we turned to consider the sentencing norm in cases involving similar misconduct. Based on the sentencing precedents brought to our attention, the sentencing norm for misconduct in relation to the inappropriate prescription of benzodiazepines is a minimum suspension of three months, along with a monetary penalty typically in the range of $3,000 to $10,000.[1] The usual orders for a censure, undertaking not to reoffend and costs are always imposed.

32 We considered the two precedents highlighted by Mr Charles Lin where no suspension was imposed in circumstances involving the inappropriate prescriptions of benzodiazepines and other hypnotics. In our view, the two cases are distinguishable from the present case and do not meaningfully assist Dr Chew for the reasons set out below.

33 In Dr ABE's case, the DC's justification of imposing a fine alone was based on the "*unique mitigating factors*" of that case, one of which was the fact that the respondent had already voluntarily ceased medical practice since August 2007 (the date of inquiry being on 12 January 2010). The facts of Dr ABE's case are thus clearly distinguishable from the present case, and we further note the DC's cautionary statement in that case (at [9]) that:

> *"… This case ought not to be cited as precedent for the non-imposition of a period of suspension involving prescription of Subutex and/or benzodiazepines. Our decision to impose a fine without a sentence is justified on the unique mitigating factors highlighted above. … We reiterate that in cases of misconduct involving the prescription of Subutex and/or benzodiazepines, invariably a period of suspension and a fine will be imposed.*"

34 In Dr Tan's case, Dr Tan's husband, who co-ran the clinic with her, had been previously sentenced by another DC on 19 September 2011. In mitigation, Dr Tan's counsel submitted that to order a suspension against Dr Tan would be unduly harsh, for if both husband and wife were to serve their suspension sentences simultaneously, it would effectively put their clinic out of business and plunge them into dire financial straits.

35 Drawing reference to Dr Tan's case, Mr Charles Lin argued that there were exceptional circumstances in the present case to justify the imposition of a fine only, highlighting that similar to Dr Tan's case, Dr Chew was the sole breadwinner of his family and runs a one man practice at his clinic, and a term of suspension would effectively put his family into dire financial straits.

[1] Of the cases submitted to us, only one case had a fine of $15,000 (for a person facing 78 charges), and two cases where a fine of $10,000 was imposed (for persons facing 11 and 17 charges). Based on the relevant cases submitted, the full range is actually **$0 – $15,000**, with **$5,000** being most commonly ordered (10 cases) followed by $3,000 (four cases). As such we could not follow SMC Counsel's submission that a fine is "*ordinarily imposed in the range of 3K-15K*". Instead, the range is $3,000 to $10,000, which was the same as the observation made by the DT in *Dr Heng Boon Wah Joseph*.

36 With respect, we do not accept this argument. From our reading of Dr Tan's case, the DC had not held out financial hardship as constituting "exceptional circumstances" that would warrant a deviation from the sentencing norm. Instead, it may be observed that the DC had based its decision on the strength of *all* the unique mitigating factors present in that case, including its own finding that the infractions of Dr Tan in respect of two of the four charges had been "*relatively minor*" (at [15]). As we will explain below, we make no such finding in this case in respect of the 3rd Charge (amended) and 4th Charge (amended). We further note that in *Dr Ng Teck Keng* (31 October 2014) and *Dr ABT* (2 March 2011), suspensions had been imposed against the respondent doctors for similar misconduct, even though they were effectively the sole doctor running a clinic, or would have suffered financial hardship as a result of a suspension.

Circumstances of the present case

37 Having considered the sentencing principles and precedents, we examined the appropriate sentence to be imposed in the present case.

1st Charge (amended)

38 In relation to the 1st charge (amended), we were of the considered view that the inappropriate prescription of benzodiazepines and other hypnotics constitutes serious misconduct. It is well known that improper or long-term use of benzodiazepines can lead to tolerance as well as psychological and physical dependence by patients.[2]

39 While the present case only involved one patient, the misconduct involved inappropriate prescriptions of addictive benzodiazepines over a long period of time. It involved prescriptions of an average of 1.9 tablets of Diazepam 10mg a week over 129 weeks between 2 April 2009 and 21 September 2011. This far exceeded the limit of four weeks imposed by the relevant CPG Guidelines[3]. We further note Guideline 5.1.1 of the CPG which states that the use of benzodiazepines beyond four weeks is not recommended *"even when prescribed at the therapeutic dosages*". Accordingly, we agree with the submissions of Mr Kevin Ho that the length of time involved in this case was an aggravating factor.

40 In this respect, it must be noted that we do recognise Dr Chew's efforts to establish and revise his own clinical practice guidelines to limit the dose and frequency of prescriptions of Diazepam and codeine containing cough mixtures. However, the mitigating value afforded by this practice is significantly reduced in light of evidence that Dr Chew himself did not strictly follow his own internal guidelines, and had departed from them on numerous occasions. We were particularly concerned that Dr Chew had continued prescribing benzodiazepines to the Patient in circumstances that gave rise to a plausible suspicion of drug dependence and/or abuse. We found this to be an aggravating factor and took this into account when determining the appropriate sentence.

[2] MOH Administrative Guidelines of Benzodiazepines, page 140, ABOD.
[3] The relevant guidelines are Guidelines 3.1, 3.3 and 3.4, which sets 4 weeks limit for using benzodiazepines to treat insomnia, anxiety and depression respectively (see page 175 -180 ABOD). Other time limits are prescribed for other disorders. However, in the agreed facts, Dr Chew was treating the patient for insomnia, anxiety, depression and chronic back pain (paragraph [3], [15(d)]), and so other time limits are not relevant.

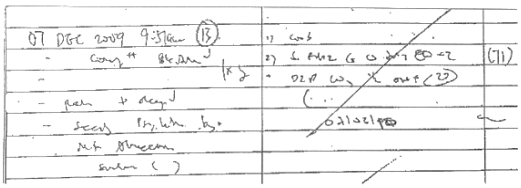
3rd Charge (amended)

41 In relation to the 3rd charge (amended), we were of the view that the failure to keep proper medical records cannot be seen as a minor or technical breach. In the present case, we observed that the need for properly documented medical records took on a greater importance in light of the fact that a referral of the Patient to a psychiatrist and/or specialist was necessary, and that such psychiatrist and/or specialist would have needed to be able to understand the patient's medical history and prior treatment in order to properly take over the management of the case.

42 Having looked at the handwritten case notes made by Dr Chew, we are of the view that the legibility of the entries was very poor. The scantiness of the original entries was also plain when contrasted with the lengthy typewritten "purported transcription" of the same notes dated 15 February 2017. A sample of an original case note and transcript is reproduced below.

Dr Chew's Case Notes for 7 December 2009

Handwritten case notes



Purported transcription

07/12/09 Insomnia, Cough, Seeing Psychiatrist.
He complained of cough, back ache that was affecting his sleep. He revealed to me he was finally seeing a psychiatrist at Mt. Alvernia

We talked about his previous denial of problems and damaging beliefs and self-defeating behavoirs like "I dont have a problem", " I may have a problem but I can handle it" and "I can control my pain/stress/insomnia/ cough mixture/ sleeping pills problem by myself". I told him that despite the past he had done well and that the biggest step to improvement had been already taken by him and that was to recognise that he had a problem and that he needed help with it. His step of seeing a psychiatrist was a major one toward the improvement of his problems.

I told him since he was already seeing a psychiatrist there was no need for me to prescribe him with diazepam and cough mixture anymore as the psychiatrist would help him to reduce these. He said "No, he(psychiatrist) and I were working on a plan to reduce the use of sleeping pills and cough mixture. He (psychiatrist) would give me a small amount and I was to get the rest from Gps." I almost fell off my chair. I did not believe him

I said "This can"t be right, were you totally honest with Him", He said "Yes"
"Are there no plans for a short admission and reduction program" " No, he said that my condition wasn't so serious" "What about your dependance on cough mixture?" "He said the same thing he (psychiatrist) would work togother with me to reduce it if he I great difficulty in withdrawal I could go to Gps to get cough mixture."

I thought to myself " Psychiatry probably have changed a lot since my medical schools days, maybe there are different methods nowadays, maybe this psychiatrist is not so familier with prescribtion drugs addiction or maybe a subspecialist would be helpful."

I said "May I suggest that you politely ask for a referal to an "addictions" psychiatrist. Just say that you are very worried about your condition and would like to see a 'addictions' specialist."

"OK, you make an apointment with the addictions psychiatrist and on my part I will continue to give you a minimal amount of cough mixture and diazepam, and as the antidepressants start to work, in a few months I will begin to reduce the medicine.It is in your own interest to start reducing the dosage and frequency of diazepam and cough mixture. You follow the directions of your psychiatrist and start reducing the diazepam by half tablets." I reassured him that with compliance with antidepressants, psychotheraphy, he would be able to overcome hid problems and his dependance.

43 We were troubled by the amount of reliance that was placed by Dr Chew on his own recollection of the consultations with the Patient which had occurred at least five years ago. The disparity between the original notes and transcripts inevitably raised doubts as to whether any details had been presented as *ex post facto* rationalisations of events. Giving Dr Chew the benefit of the doubt, we are of the view that while case notes might have enabled Dr Chew to recollect some necessary information in order to continue treating the Patient, these would not have been sufficient to allow another doctor reading them to properly take over the management of the case. The lack of legible and sufficiently detailed notes posed a threat to the timely and effective treatment of the Patient, and in our judgment, we do not consider it to be a small matter.

4th Charge (amended)

44 In relation to the 4th charge (amended), we considered Mr Charles Lin's submission in mitigation that even though Dr Chew did not personally refer the Patient to a psychiatrist, that he had at least encouraged the Patient to seek help from psychiatrists or specialists. However, we also considered that, as documented in Dr Chew's "purported transcriptions" of case notes entry 18 April 2009 and 7 December 2009, Dr Chew himself did not believe the Patient when the Patient spoke of the treatment plans discussed by the psychiatrists whom the Patient was allegedly consulting. Despite this, Dr Chew still did not make any effort to contact the psychiatrist(s) for verification or to discuss the management of the Patient when doing so would have been the most expedient and proper thing to do.

The Sentence

45 Having heard Dr Chew's mitigation, this Tribunal considered and gave full credit to Dr Chew for pleading guilty at an early stage, for his long good standing in the medical profession, his contributions to the underprivileged in society and the good testimonials tendered on his behalf. From the evidence adduced, we were also satisfied that Dr Chew was not motivated by financial gain in making the inappropriate medical prescriptions.

46 However, Dr Chew's compassionate character and volunteer work do not excuse his failure to meet the professional standards that this noble profession demands of him. Bearing in mind the aggravating factors of the case, and the fact that this is not only a case involving an inappropriate prescription of benzodiazepines and codeine containing cough mixture, but is also a case of a failure to maintain sufficient details in a patient's medical records and to refer the Patient to an appropriate specialist for management of the Patient's medical condition, we are satisfied that a four months suspension and a monetary penalty of $12,000 would be an appropriate sentence. For the avoidance of doubt, we agreed with Mr Charles Lin that the present factual matrix did not warrant an upward recalibration of the sentence in accordance with the observations made by the Honourable Chief Justice in *Yong Thiam Look Peter v Singapore Medical Council* [2017] SGHC 10 at [17]. The sentence imposed in this case does not therefore reflect any revisit of the sentencing regime for such cases.

Sentence imposed

47 Taking into account the nature of the Complaint together with Dr Chew's conduct and the need to impose a sanction which was not only sufficiently deterrent but also proportionate in all the circumstances of this case, this Tribunal ordered that Dr Chew:

(a) be suspended for a period of four (4) months;
(b) be fined $12,000;
(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 cost and expenses incidental to these proceedings, including the costs of the solicitors to the SMC.

Publication of Decision

48 We order that the Grounds of Decision be published with the necessary redaction of identities and personal particulars of persons involved.

49 The hearing is hereby concluded.

Dated this 25th day of May 2017.