

IN THE REPUBLIC OF SINGAPORE

SINGAPORE MEDICAL COUNCIL DISCIPLINARY TRIBUNAL

[2021] SMCDT 2

Between

Singapore Medical Council

And

Dr Ho Tze Woon

... Respondent

GROUNDS OF DECISION

Administrative Law — Disciplinary Tribunals

Medical Profession and Practice — Professional Conduct — Suspension and Fine

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Singapore Medical Council

v

Dr Ho Tze Woon

[2021] SMCDT 2

Disciplinary Tribunal — DT Inquiry No. 2 of 2021

Prof Ho Lai Yun (Chairman), Dr Swah Teck Sin and Mr Kevin Ng (Legal Service Officer)

11 December 2020 and 21 January 2021

Administrative Law — Disciplinary Tribunals

Medical Profession and Practice — Professional Conduct — Suspension and Fine

18 March 2021

GROUNDINGS OF DECISION

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

INTRODUCTION

1. At the material times, Dr Ho Tze Woon (“**Dr Ho**”) was a fully registered medical practitioner. He remains fully registered and is at present in medical practice. Dr Ho faced the following three charges before this Disciplinary Tribunal (“**DT**”):
 - (a) That he sought to supply a regulated medicine/drug to a person who was not his patient on or about 5 May 2017, in breach of Guideline B5(1) of the 2016 edition of the Singapore Medical Council Ethical Code and Ethical Guidelines (“**2016 ECEG**”) (the “**1st Drug Charge**”);
 - (b) That he sought to supply a regulated medicine/drug to a person who was not his patient on or about 23 October 2017, in breach of Guideline B5(1) of the 2016 ECEG (the “**2nd Drug Charge**”); and

- (c) While employed by the National Healthcare Group (“**NHG**”) Polyclinics, he downloaded and/or caused to be downloaded software /executable files known as “Houlo Video Downloader” and pornographic or obscene materials into the computers of six consultation rooms at the Choa Chu Kang Polyclinic where he worked, from or around 14 October 2014 to on or around 28 July 2016, without prior authorisation, in breach of Guideline 4.2.3.1. of the 2002 edition of the Singapore Medical Council Ethical Code and Ethical Guidelines (“**2002 ECEG**”), paragraphs 1.1 and 17.3.6 of the NHG IT Security Policy and Standards (Version 3.0) and the NHG User Guide for IT Usage & Information Sharing (the “**IT Charge**”).

BACKGROUND FACTS

2. At the Pre-Inquiry Conference held on 29 September 2020, Dr Ho indicated he would plead guilty to the three charges. At the DT hearing on 11 December 2020, Counsel for the Singapore Medical Council (“**SMC**”) stated that they would proceed on the 1st Drug Charge and 2nd Drug Charge, and that the IT Charge would be taken into consideration for the purposes of sentencing. Dr Ho pleaded guilty to the 1st Drug Charge and the 2nd Drug Charge (collectively the “**Drug Charges**”) without qualification, and he admitted to the IT Charge as well as consenting to have it taken into consideration for sentencing. An Agreed Statement of Facts (“**ASOF D**”) for the 1st and 2nd Drug Charges, and an Agreed Statement of Facts for the IT Charge (“**ASOF IT**”) were tendered.

DISCIPLINARY TRIBUNAL INQUIRY

3. In view of his plea of guilty to the 1st Drug Charge and the 2nd Drug Charge, the DT found Dr Ho guilty as charged for conduct that constituted an intentional, deliberate departure from the standards observed or approved by members of the profession of good repute and competency, and for such improper act or conduct which brings disrepute to the medical profession respectively.

The Submission on Sentence by the SMC

4. The SMC sought orders that Dr Ho be:
- (a) Suspended for a period of five (5) months;
 - (b) Censured;
 - (c) Provide a written undertaking to the SMC that he will not engage in the conduct complained of and any similar conduct in the future; and

- (d) Pay the costs and expenses of and incidental to these proceedings, including the costs of solicitors to the SMC.
- 5. The SMC submitted that the offences committed by Dr Ho fell into the Slight Harm and Medium Culpability category of the sentencing matrix set out in *Wong Meng Hang v Singapore Medical Council [201] 3 SLR 526* (“*Wong Meng Hang*”).
- 6. The two occasions where Dr Ho sought to supply the regulated medicine/drug to the intended recipient, Mr C, did not ultimately take place. No actual harm was therefore caused to Mr C. However, the SMC submits that there is still Slight Harm caused to public confidence in the medical profession by the fact that Dr Ho took all practical steps towards completing the two transactions. These actions abused the trust the public have in doctors and damaged the standing of the profession.
- 7. The SMC further submitted that Dr Ho’s conduct should fall in the Medium Culpability category as Dr Ho admitted Mr C was not his patient, knew that Cialis was a regulated medicine/drug, and went about to take steps to actively try to supply the Cialis to Mr C on not one but two occasions, even after the first transaction fell through. This conduct fell short of that expected of medical practitioners.

The Mitigation by the Counsel for Dr Ho

- 8. Counsel for Dr Ho submitted the level of Harm should be categorised as Slight and the level of Culpability as Low using the *Wong Meng Hang* sentencing matrix. In mitigation, Counsel for Dr Ho stated that he:
 - (a) Did not sell Cialis or any controlled medicine/drug to Mr C or anyone else, and that Cialis was not an addictive drug like codeine.
 - (b) Had pleaded guilty at the earliest opportunity, had no antecedent and this was his first brush with the law.
 - (c) Is the sole breadwinner supporting his elderly parents and grandmothers.

- (d) Was prejudiced by the inordinate delay of more than two years from the receipt of the complaint regarding the 1st and 2nd Drug Charges, and more than three years for the IT Charge.

DELIBERATION OF THE DT

Finding on the 1st and 2nd Drug Charges

9. B5(1) of the 2016 ECEG states that the “*prescription of medicine is a privilege (a doctor) is accorded and one of the most important responsibilities (a doctor)*” has. A doctor “*must prescribe, dispense or supply medicines only to patients under your care.*” In unequivocal terms, the Handbook on Medical Ethics (2016 Edition) also sets out for doctors that “*You are obliged to prescribe or dispense medicines only to patients under your care and not to persons with whom you have no professional relationships*”.
10. In respect of the 1st and 2nd Drug Charges, the regulated medicine/drug Dr Ho sought to supply to Mr C was Cialis, a brand name for Tadalafil. Tadalafil is a regulated medicine/drug listed under the Schedule of the Poisons Act. Dr Ho admitted that Mr C was not a patient under his care at any time. Even though the two transactions did not eventually go through at the last minute, the intention by Dr Ho to supply Mr C the Cialis was clear as further admitted by Dr Ho. Having found Dr Ho guilty as charged, and with him agreeing unconditionally to the facts as set out in the ASOF-D, Dr Ho has clearly breached a fundamental tenet of being a doctor.

Sentencing Considerations

11. It is likely this is the first time a case of this factual matrix has come before a DT i.e. a doctor attempting to sell a regulated medicine/drug, ostensibly obtained in a proper manner originally for his own medical condition, to someone who is not a patient. The DT would categorise the present misconduct as non-clinical care in nature.
12. The relevant sentencing principles here would be the public interest requirements of upholding the standing and reputation of the profession, and preventing the erosion of public confidence in the profession, as set out in *Wong Meng Hang* at [23]. The DT needs to consider the principles of specific and general deterrence as well, as enunciated in *Singapore Medical Council vs Kwan Kah Yee* [2015] 5 SLR 201 at [55].

13. The Sentencing Guidelines for Singapore Medical Disciplinary Tribunals (July 2020 Edition) (the “**Sentencing Guidelines**”) states that the harm-culpability sentencing matrix set out in the *Wong Meng Hang* case (“**the Sentencing Matrix**”) would apply not only to clinical care offences where there was harm to the victim, but also in non-clinical care offences where there could be harm or potential harm to the reputation of the medical profession or the public healthcare system. Both the Counsel for the SMC and Dr Ho also used the Sentencing Matrix in the course of their sentencing submissions and mitigation plea. The DT now turns to the Sentencing Matrix as a guide to determine the appropriate starting point for the sentence.

The Harm-Culpability Sentencing Matrix

14. For the ease of reference, the Sentencing Matrix is set out here.

Harm	Slight	Moderate	Severe
Culpability			
Low	Fine or other punishment not amounting to suspension	Suspension of 3 months to 1 year	Suspension of 1 to 2 years
Medium	Suspension of 3 months to 1 year	Suspension of 1 to 2 years	Suspension of 2 to 3 years
High	Suspension of 1 to 2 years	Suspension of 2 to 3 years	Suspension of 3 years or striking off

Level of Harm

15. In the 1st Drug Charge, Mr C refused to accept the regulated medicine/drug because the packaging was damaged. In the 2nd Drug Charge, the transaction was called off prior to Mr C and Dr Ho meeting each other because they could not agree on the price for the Cialis.
16. Counsel for Dr Ho argued that there was no potential widespread harm, compared to the cases of *In the Matter of Dr Cheng Shao Lin Benny* [2016] SMC DT 1 (“**the Benny Cheng**” case) and *In the Matter of Dr Liew Kert Chien* [2016] SMC DT (“**the Liew Kert Chien**” case). In the *Benny Cheng* case, the doctor was convicted in the criminal

courts on five charges of selling a total of 60 litres of Dhasedyl (a cough syrup containing codeine) to three individuals who were not his patients. He was sentenced to a total fine of \$35,000, in default to serve five weeks imprisonment by the criminal court. The DT in the *Benny Cheng* case sentenced him to a suspension of 18 months, fine of \$15,000 together with the usual orders. This was after taking into consideration the other 37 similar charges, which amounted to a total of 504 litres of Dhasedyl being sold. In the *Liew Kert Chien* case, the doctor was convicted in the criminal courts on one charge of supplying Procodin syrup and Beacodyl syrup (both syrups containing codeine) to 30 addicts. He was sentenced to a fine of \$4,500 in default to serve 18 days imprisonment by a criminal court. The DT ordered that Dr Liew be suspended for 12 months and to pay a fine of \$5,000 along with the usual orders.

17. The DT agrees with the Counsel for the SMC that the *Benny Cheng* and *Liew Kert Chien* cases can be distinguished from the present matter. Both dealt with either a vast quantity of regulated medicines/drugs being potentially supplied to the public or regulated medicines/drugs supplied to addicts. Both doctors were convicted on criminal charges before being brought before a DT. In both cases, harm could either come upon those whom the drugs were supplied or sold to as codeine is known to be addictive if abused for non-medical purposes or could further feed the addiction of those already hooked on it. These factors are not present in the case against Dr Ho. Therefore, the harm caused in the *Benny Cheng* and *Liew Kert Chien* cases were clearly to a much higher degree.
18. The DT also agrees with the submission by both Counsel that there was no actual harm caused to Mr C, nor to the wider public, in respect of the attempted supply of Cialis. This was because Dr Ho only attempted to supply the Cialis to Mr C and not to more persons, and both transactions failed.
19. However, when considering the actions of Dr Ho from the broader perspective of public confidence in the medical profession, the DT is of the view that there would be an impact because of the *expectation* of the public. Doctors are able to dispense medicines and drugs in the Poisons Act without a license from the proper authority because that is a privilege granted to doctors who are treating patients under their care. The public would reasonably expect Dr Ho not to sell regulated medicines/drugs to a person he has not medically examined nor under his medical care. This trust in the medical profession

would be impacted because of the callous way Dr Ho disregarded the medical ethics guidelines and rules. For these reasons, the DT agrees with the Counsel for the SMC that there was some harm caused by Dr Ho to the standing of the medical profession and the public confidence in it, albeit still in the Slight category because it was limited to two occasions which were eventually fell through.

Level of Culpability

20. While both Counsel agreed that the level of Harm is Slight, Counsel for the SMC and Counsel for Dr Ho differed when it came to the level of Culpability. The latter submitted that while there may have been a profit motive, it was mainly motivated by Dr Ho's intent to help out Mr C. His Counsel argued that had making profit been the true objective of Dr Ho, there would have been more sales to other individuals. Therefore, his Culpability should be classified as Low.

21. Counsel for the SMC countered that Dr Ho knew that Mr C was not his patient; knew that he should not have supplied or attempted to supply the Cialis; knew that Cialis was a regulated medicine/drug under the Poisons Act and could only be dispensed by prescription; took all necessary steps to follow through in supplying the Cialis to Mr C on two separate occasions; that the first occasion failed only because the packaging was wet and Mr C rejected accepting the Cialis for that reason; and that Dr Ho repeated the conduct for the second transaction. For his recalcitrant conduct and blatant disregard of his obligations under the 2016 ECEG, Counsel for the SMC submitted that Dr Ho's Culpability should fall within the Medium category.

22. According to the Sentencing Guide (page 28 at [53]), culpability in its most straightforward meaning is blameworthiness. To what level of blame should Dr Ho's misconduct be assessed? In the Sentencing Guide illustrations of the Sentencing Matrix for Non-Clinical Care Misconduct (pages 37 and 38), the illustrations for Low and Medium Culpability (both with Slight Harm) indicate that frequency of the misconduct and intention is a factor to be considered. In the Low Culpability illustration, there was a single isolated breach by the doctor of accessing the hospital records of her father. It was done out of concern for the father. In the Medium Culpability example, there were repeated breaches by the doctor in accessing the medical records of her spouse knowing that such acts were unauthorised. However, the acts were motivated out of safety

concerns for her own safety and not motivated by financial gain or other malicious intent.

23. In Dr Ho's case:

(a) While Dr Ho states that he wanted to help Mr C obtained a cheaper price for the Cialis, that is tempered by his mitigation plea (“MP” paragraph 26) stating that Dr Ho did seek to profit from the sale of the Cialis. Therefore, it does not appear that Dr Ho was entirely altruistic about his intentions.

(b) Nothing in his text messages with Mr C seem to indicate that this was anything but a purely business transaction:

(i) In relation to the 1st Drug Charge, the text message between Mr C and Dr Ho on 5 May 2017 were as follows (ABOD-D page 17):

“Dr Ho (3:12pm): Hi, can I know who is this? I got a miss call from this number
Mr C (3:18pm): Yes I were supposed to confirm price of 5mg Cialis... still waiting
Mr C (3:18pm): *U
Mr C (3:19pm): Can u cfm price per box pls. Tks
Mr C (5:18pm): Hello??
Dr Ho: (9.32pm): Around 8am I can reach ur place”

Mr C proceeds to give his address to Dr Ho in the next text message.

(ii) In relation to the 2nd Drug Charge, the text message between Mr C and Dr Ho on 23 October 2017 were as follows (ABOD-D page 16):

“Mr C (4:27pm): Hi, do u still have stock for Cialis 5mg?
Dr Ho (6:04pm): Yeap
Mr C (6:13pm): Same price? Need to get 1 mth supply
Dr Ho (6:44pm): Yes”

The messages continue (on dates not specified) between Mr C and Dr Ho to arrange for a time and place to meet. The pertinent transaction messages were as follows (ABOD-D on the following pages):

Page 15

“Dr Ho (8:43pm): Hi, you still want?
Mr C (8:46pm): Yes. Sorry today busy”

...

Pages 12 to 11

“Mr C (12:24pm): Do you need me to bring exact change?
Dr Ho (12:25pm): Got change
Mr C (12:26pm): How many per box this time?
Dr Ho (12:36pm): Included gst 203. But 200 will do
Mr C (12:36pm): How many pills?
Mr C (12:37pm): Last time per box was 14
Dr Ho (12:43pm): 28”

Page 10

“Mr C (5:34pm): Btw, why r u charging GST?
Dr Ho (5:34pm): Not me, its supplier”

...

Page 9

“Mr C (5:43pm): Supplier? I’m not even getting a receipt!
Mr C (5:43pm): Like this it’s not much diff from buying from clinic!
Dr Ho (5:44pm): Ok 190 is ok. U coming or not?
Mr C (5:44pm): Otw. \$180?”

24. Dr Ho was aware that Mr C was not his patient and that Cialis was a regulated medicine/drug. Yet, there was little in the relevant text messages between the two to give the impression that Dr Ho was doing anything more than just trying to complete the two transactions. For the 1st Drug Charge, there was clearly an intent by Mr C to buy Cialis from Dr Ho, and for Dr Ho to sell it to Mr C. Dr Ho admitted in his statement to the MOH investigator (ABOD-D page 42 at [Q8/A8]) that he and Mr C had an arrangement to meet at Mr C’s house to talk about Cialis and for him to pass Mr C the drug. Dr Ho admitted that the sale proceeded to nearly the completion but was ultimately not successful. In the text messages related to the 2nd Drug Charge, Mr C had asked Dr Ho if he still had supply of Cialis to which Dr Ho replied in the affirmative. Dr Ho later followed up with Mr C if he still wanted the Cialis. Following this, there was negotiations as to the price for the box of Cialis, with Dr Ho starting at \$203 and reducing it \$190 before Mr C counter offered \$180. Again, all actions to supply the Cialis to Mr C were taken by Dr Ho. Dr Ho’s intent to supply Cialis to Mr C for a price could not be clearer and more palpable.
25. Dr Ho had admitted that that he knew that Cialis was a drug that could only be dispensed by a doctor’s prescription. Yet, he did not appear to have reflected on his actions in the aborted transaction of 5 May 2017. Instead, he seemed to be more opportunistic the second time around in trying again to sell Cialis to Mr C.

26. The DT is of the view that although it is just two transgressions that Dr Ho faces, the circumstances surrounding each of them showed clearly Dr Ho's state of mind i.e. his blatant and deliberate disregard for the 2016 ECEG he had to abide to. The second transaction, aborted at the last minute only because the price could not be agreed upon, reflected an even higher-level of blameworthiness. Dr Ho completely failed in his obligation to live up of one of the most sacred responsibilities of a doctor, that of prescribing medication only a patient under his care. Accordingly, the DT is unable to agree with Counsel for Dr Ho that his Culpability should be categorized as Low. It should be assessed as Medium.

Sentencing Range

27. Based on the Sentencing Matrix of Slight Harm and Medium Culpability, the DT finds no reason to depart from the prescribed sentencing range of between 3 months to 1-year suspension on each charge proceeded with.

Precedents

28. Counsel for the SMC submitted that there was no direct precedent that would be similar to the facts of the case at hand. Counsel for the SMC highlighted the *Benny Cheng* case, as did Counsel for Dr Ho. The pertinent facts of that case have already been described above, and the DT has distinguished that case from this as being far more serious in its impact on the public. The cases of *Benny Cheng* and *Liew Kert Chien* (also described above) serve to emphasize that where the harm or potential harm to the public is significant, and where the doctors were driven by and did gain profit, the sanctions levied against them would be severe.

Starting Point for Sentencing

29. While the *Benny Cheng* and *Liew Kert Chien* cases have been distinguished and not directly on point, the DT did take reference from them for a relative starting point in the sentence. The sentence for Dr Benny Cheng was 18 months suspension and a \$15,000 fine, while Dr Liew Kert Chien received a 12-month suspension and a \$5,000 fine. The DT agrees that the level of harm and culpability on the part of Dr Ho is much lower in comparison. As such, the DT is of the view that the appropriate starting point for sentencing should be the minimum 3 months suspension on each charge.

Aggravating Factors

30. A factor noted by the DT was that Dr Ho had been downloading and storing unauthorised software/executable files, pornographic and obscene materials in the computers of the Choa Chu Kang Polyclinic where he worked, from around 14 October 2014 to around 28 July 2016. This is the subject matter of the IT Charge which is to be taken into consideration for sentencing. After an investigation by the National Healthcare Group (NHG), he was dismissed from the employment of NHG on 24 February 2017 because of the misconduct. A few months later on 5 May 2017, the misconduct relating to the 1st Drug Charge arose, followed by the misconduct relating to the 2nd Drug Charge on 23 October 2017.
31. The fact that Dr Ho starting the selling of Cialis to Mr C less than three months after his dismissal by the NHG appears to the DT to be a distinct lack of remorse for his misconduct at the Choa Chu Kang Polyclinic. He seemed to have progressed from one level of misconduct to a higher level of misconduct without learning his lesson. One could have reasonably expected a professional in his field to reflect on his misconduct, obtain the necessary help, and to try to reacquire and maintain the level of integrity expected of a medical professional.
32. Another factor noted by the DT was that Dr Ho had obtained the Cialis in question from clinics in Singapore and Malaysia. He said these clinics were where he went to consult for his own medical issues (ABOD-D page 42 at [Q14/A14 and Q15/A15]). It therefore appears that Dr Ho obtained the Cialis for his own medical condition, and intended to, in effect, re-sell the Cialis to Mr C at a negotiated price. The implication of this was that Dr Ho may not have actually needed the Cialis for himself (or that he already had enough for himself). All this is compounded by his Mitigation Plea, where it was plainly stated that (in the context of sentencing in the *Benny Cheng* and *Liew Kert Chien* cases) “...while *Dr Ho may have sought to profit from the sale* (emphasis added), he did not eventually do so whereas Dr Liew and Dr Benny profited greatly from sales.” (“MP” paragraph 26).
33. Dr Ho is a member of a highly respected profession. The Physician’s Pledge he took was to practise the profession with conscience and dignity. He was expected to abide by the ECEG to maintain the highest standards of moral integrity and intellectual

honesty. By doing what he did to obtain the Cialis ostensibly for himself and then attempt to re-sell later for profit raises questions regarding his integrity. It matters little the transactions fell through and he did not gain any actual revenue as a result.

Mitigation Plea

34. The DT will, for completeness, briefly address certain points raised in mitigation.

That Dr Ho Did Not Sell Cialis To Mr C Or Anyone Else

35. This is plainly irrelevant to the charges at hand. The charges do not relate to Dr Ho actually supplying the Cialis to Mr C, but instead that he had “sought to supply” the Cialis to Mr C. This was admitted to Dr Ho when he pleaded guilty to the charges without qualification, and in his statement to the MOH investigator (ABOD-D page 42 at [Q8/A8] and pages 43 at [Q16/A16]).

That Cialis Is Not As Addictive As Codeine

36. The DT is of the view that this submission is also not relevant to the charges at hand. The charges concern the supply of a regulated medicine/drug by Dr Ho to a person not under his medical care. Had the regulated medicine/drug in question been addictive, that may have well been a significant aggravating factor to be considered.

That There Was An Undue Delay In The Proceedings

37. Counsel for Dr Ho stated that in relation to the 1st and 2nd Drug Charges, and the IT Charge, it took over two years and over three years respectively from the time the SMC received the complaints to Dr Ho receiving the Notices of Inquiry. It appears that Counsel for Dr Ho started the clock from the time the complaint was first received by the SMC i.e. 1 November 2017 for the 1st and 2nd Drug Charges, and 28 February 2017 for the IT Charge. The Notices of Inquiry for the Drug Charges and IT Charge were both served on Dr Ho on 16 March 2020. Counsel for Dr Ho submitted that his client had suffered anxiety and distress of having the potential disciplinary proceedings hanging over him for such a long period.

38. In the context of a mitigation plea, the principles to be considered of whether a delay in prosecution should impact sentencing were articulated in *Ang Peng Thiam v Singapore Medical Council* [2017] 5 SLR (“the *Ang Peng Tiam* case”). They are: there was an

inordinate delay in the prosecution; the delay was not occasioned by the respondent; and the delay caused the doctor to suffer real injustice or prejudice. If indeed there was an inordinate delay not occasioned by the respondent, and the respondent suffered real injustice or prejudice, it would be from a point of fairness that the DT should consider a reduction in the sentence.

39. The DT agrees with the Counsel for Dr Ho that the matters relating to the Drug and IT Charges were not unduly complex. However, it is noted by the DT that the investigations for the IT Charge appeared to have proceeded first, before the complaints related to the 1st and 2nd Drug Charges were brought to the attention of the SMC. The Notice of Complaint informing Dr Ho of the complaints related to the IT Charge and the 1st and 2nd Drug Charges were issued on 2 February 2018 and 4 September 2018 respectively. Thereafter, the drug matters culminated in the Letter from the Complaints Committee to the SMC and to Dr Ho on 19 March 2019. Shortly thereafter, the Letter from the Complaints Committee to the SMC and Dr Ho regarding the IT matter was issued on 29 March 2019. The Notice of Inquiry for both matters were issued on the same day to Dr Ho, i.e. 16 March 2020. In addition, this DT is aware of another complaint made against Dr Ho for an incident which occurred in early 2017. Therefore, it appears the IT matter, the drug matters and this third matter were all being “consolidated” to be dealt with together to minimize the need to appoint separate DTs for each set of matters. The DT finds this a reasonable step to take, as the complaints of the alleged misconduct related to the IT and drug matters all came about in 2017, and the incident related to the third matter occurred in early 2017. Ultimately, the IT and drug matters were handled by this DT, and the third matter by a separate DT.

40. In addition, Counsel for Dr Ho did not make it known to the DT whether his client was cognizant of the respective complaints sent to the SMC by the NHG for the IT matter on 27 February 2017, and by the Police for the drug matters on 1 November 2017. It would appear to the DT that Dr Ho was only informed of the potential disciplinary proceedings when the Notice of Complaint was issued by the SMC to Dr Ho on 2 February 2018 for the IT matter, and on 4 September 2018 for the drug matters. Both Notices of Complaint requested Dr Ho to furnish an explanation. This would mean that the delay was just over two years for the IT matter, and about 1.5 years for the drug matters, until the Notice of Inquiry was issued to Dr Ho on 16 March 2020 for both matters.

41. For the *Ang Peng Tiam* case, the proceedings took about four years from the time the Complaints Committee requested the written explanation, until the Notice of Inquiry was issued. The DT *In the Matter of Dr Goh Yong Chiang Kelvin* [2018] SMCDDT 2 at [65] put matters in the following context:

“While inordinate delay was not to be measured against time in absolute terms, it was nevertheless, important to address the length of time from the perspective of quasi- criminal proceedings. As noted in *Ang Peng Tiam ...*”Time is needed for criminal and quasi-criminal processes to run their course”.

42. The DT is of the view that the time taken for the IT and drug matters was not unreasonably long, given that there were statements to be taken from Mr C, and further enquires to made of the Police relating the IT and drug matters. With the “consolidation” of the IT matter and the drug matters to be dealt with together, the DT is of the view that overall, there was no delay that could be deemed to be inordinate.

43. In addition, aside from Counsel for Dr Ho asserting that his client suffered anxiety and stress of having the potential proceedings hanging over his head, there was no further evidence proffered to the DT as to how Dr Ho had been specifically prejudiced in the conduct of his defence or otherwise affected because of the delay. From the professional and financial standpoints, the DT understands that Dr Ho, at all material times, has been and is still practising as a doctor. At the DT hearing on 11 December 2020, Dr Ho confirmed he was working as a locum doctor. He therefore was not prejudiced from those standpoints.

Other Sentencing Considerations

44. The DT now turns to other sentencing considerations:

IT Charge To Be Taken Into Consideration For the Purpose Of Sentencing

45. For charges that are not proceeded with but are admitted to by the accused, and where there is consent for them to be taken into consideration, these charges can be considered by the DT for the purposes of sentencing (“**TIC charges**”) in accordance with Regulation 41(1) of the Medical Registration Regulations 2010. This means that the sentence for the charges proceeded could be calibrated further, e.g. the overall sentence could be enhanced in appropriate cases that call for such a move.

46. The DT is of the view that the IT Charge is a fairly serious one that requires consideration in the overall sentence. Dr Ho had persisted with the unauthorised downloading of software/files and pornographic or obscene materials into the Choa Chu Kang Polyclinic computers over a period of 21 months, from around 14 October 2014 to 28 July 2016. These breaches of the Guideline 4.2.3.1 of the 2002 ECEG, paragraphs 1.1 and 17.3.6 of the NHG IT Security Policy and Standards (Version 3.0) (“**IT Policy**”), and the NHG User Guide for IT Usage & Information Sharing (“**IT Guide**”) could have caused repercussions on the integrity of the NHG healthcare IT infrastructure. The misconduct by Dr Ho clearly affects the standing and reputation of the medical profession in the eyes of the public.
47. Generally for TIC charges, any enhancement of the sentence should not be more than what is available had the TIC charges been proceeded with. In *Lim Hsien Hwei v Public Prosecutor* [2014] SGHC 63, Chao Hick Tin JA at [26] explained:
- “Accordingly, I was of the view that as a matter of principle, when an outstanding offence was taken into consideration for the purposes of enhancing the sentence for another offence which the accused person had been convicted of, the enhancement could only be in respect of the forms of punishment which were prescribed for the offence that was taken into consideration.”
48. In this case, had the IT Charge proceeded, it would have attracted at the very least a Slight Harm and Low Culpability categorization. There would have been some harm done to the reputation of the medical profession, and some potential harm to the healthcare IT infrastructure e.g. the introduction of viruses. There was a definite degree of culpability. This is because Dr Ho did breach the 2002 ECEG and the relevant NHG IT Policy and IT Guide numerous times by downloading unauthorised files and materials on many occasions over a nearly two-year period. Under the Slight Harm and Low Culpability categorization, the sentencing range would have been the lowest i.e. a fine or other punishment not amounting to suspension. As the IT Charge is a TIC charge which did not proceed, there were limited submissions from both Counsel on this. The DT thus does not think it proper under the circumstances to go beyond considering the lowest sentencing range available.

Consecutive Sentences

49. Counsel for the SMC submitted that the sentences for the 1st and 2nd Drug Charges should run consecutively. In *Yip Man Hing Kevin v Singapore Medical Council* [2019]

5 SLR 320, the Court of Three Judges made plain that for that case, it would have been appropriate for the DT to state explicitly the individual sentence for each charge. In that case, the doctor had been under a distinct duty on each of the three separate occasions in question to assess the patient's condition when prescribing sick leave or light duties. An individual sentence for each of the three charges should therefore have been imposed, and in the circumstances present in that case, the sentences should run consecutively.

50. In the present case, Dr Ho attempted to supply Cialis to Mr C on two occasions. On both occasions, Dr Ho knew that he was under a duty under the 2016 ECEG to only supply regulated medicine/drugs to a patient under his care. The two occasions were also some 5.5 months apart, a fairly long period of time. This clearly shows that Dr Ho should have assessed his role and responsibilities as a doctor on each of the two distinct occasions that Mr C contacted him for the Cialis. The one-transaction rule, where two or more offences are committed in the course of a single transaction, also clearly does not apply in this case due to the length of time between the two occasions. The DT agrees with the Counsel for the SMC that an individual sentence for the 1st Drug Charge and the 2nd Drug Charge be imposed, and that the sentences run consecutively.

SENTENCE

51. The DT is cognizant that the Counsel for the SMC submitted that a sentence of three months for each of Drug Charges be imposed. However, taking into account the aggravating factors set out above, and the need to give serious consideration to the IT Charge for the purposes of sentencing, the DT concludes that a three (3) month suspension and a \$1,000 fine should be imposed for each of the two Drug Charges, and that the sentence is to run consecutively for a total of six (6) months suspension and a \$2,000 fine. This would send a clear general deterrence message to the medical profession at large that each professional must always be mindful that dispensing regulated medicine/drugs is a privilege that only doctors and select healthcare professionals have, and the privilege must never be taken lightly. In addition, that all medical professionals must also abide strictly by the IT policies and guides of their organization and to not take cybersecurity for granted.
52. Having said all that, Dr Ho's early plea of guilt on the 1st and 2nd Drug Charges and his consent for the IT Charge to be taken into consideration has all helped to save hearing

time and resources for the DT. The DT therefore exercises its discretion to reduce the suspension by a month for a total of five (5) months suspension. This suspension, together with the fine, would address the need to protect the public confidence in the medical profession as well as to uphold the reputation of the profession.

53. To conclude, having fully considered all the facts and circumstances, the respective submissions of both parties, and the sentencing precedents cited, this DT orders that Dr Ho be:
- (a) Suspended from the Register of Registered Medical Practitioners for **five (5) months**;
 - (b) Fined \$2,000;
 - (c) Censured;
 - (d) Required to give a written undertaking to the SMC that he will not engage in the conduct complained of or any similar conduct; and
 - (e) Required to pay the costs of these proceedings, including the costs of the solicitors to the SMC.

PUBLICATION OF DECISION

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

Prof Ho Lai Yun
Chairman

Dr Swah Teck Sin

Mr Kevin Ng
Legal Service Officer

Ms Angelia Thng, Ms Crystal Tan and Mr Colin Wu (M/s Braddell Brothers LLP)
for Singapore Medical Council; and

Mr Amos Cai (M/s Yuen Law LLC)
for the Respondent.