IN THE REPUBLIC OF SINGAPORE

SINGAPORE MEDICAL COUNCIL DISCIPLINARY TRIBUNAL

[2023] SMCDT 4

Between

Singapore Medical Council

And

Dr Tham Ngiap Boo

… *Respondent*

GROUNDS OF DECISION

Administrative Law – Disciplinary Tribunals

Medical Profession and Practice – Professional Conduct – Professional misconduct under section 53(1)(*d*) Medical Registration Act (Cap. 174, 2014 Rev Ed)

Medical Profession and Practice – Professional Conduct – Removal from Register of Medical Practitioners – Penalty order

Singapore Medical Council
v
Dr Tham Ngiap Boo

[2023] SMCDT 4

Disciplinary Tribunal – DT Inquiry No. 4 of 2023
Prof K Satku (Chairman), Dr Swah Teck Sin, Mr Kow Keng Siong (Judicial Service Officer)
15 August 2022 and 24 October 2023

25 October 2023

GROUNDS OF DECISION

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

Introduction

1 The respondent is Dr Tham Ngiap Boo ("**Dr Tham**"). He is a medical practitioner who has been in practice since 1960. At all material times, Dr Tham practised as a general practitioner at his own clinic, N B Tham Clinic Pte Ltd.

The Charges

2 Dr Tham has pleaded guilty to 25 charges under s 53(1)(*d*) of the Medical Registration Act (Cap 174, 2014 Rev Ed) ("**MRA**"). These charges relate to the following types of professional misconduct:

(a) ***Inadequate medical records.*** Nine counts of having intentionally and deliberately departed from the standards of the medical profession by failing to keep legible, complete, and accurate medical records of sufficient detail in respect of his patients. This standard can be found in guideline 4.1.2 of the 2002 edition of the Singapore Medical Council Ethical Code and Ethical Guidelines ("**2002 ECEG**") as well as paragraphs (a), (c), (d) and (g) of the Ministry of Health Administrative Guidelines on the Prescribing of Benzodiazepines and Other Hypnotics dated 14 October 2008 ("**MOH Administrative Guidelines**").

(b) ***Improper prescription.*** Eight counts of having intentionally and deliberately departed from the standards of the medical profession by inappropriately prescribing benzodiazepines and other hypnotics to his patients. This standard can be found in guideline 4.1.3 of the 2002 ECEG, paragraphs (i) and (n) of the MOH Administrative Guidelines, as well as s 5.1.1 of the Ministry of Health Clinical Practice Guidelines on the Prescribing of Benzodiazepines (2/2008) ("**MOH Clinical Practice Guidelines**").

(c) ***Failure to make referral.*** Eight counts of having intentionally and deliberately departed from the standards of the medical profession by failing to refer, or refer in a timely manner, his patients to a psychiatrist or medical specialist with the necessary expertise for the further management of their medical condition and need for the drugs. This standard can be found in guideline 4.1.1.6 of the 2002 ECEG and paragraph (n) of the MOH Administrative Guidelines.

3 A summary of Dr Tham's charges is at **Annex A**. Details of the applicable guidelines that had been breached can be found in **Annex B**.

The Facts

Inadequate medical records

4 Medical practitioners are obliged to keep proper medical records of their patients. The number of occasions where Dr Tham had intentionally and deliberately breached this basic duty are as follows:

Charge	Patient	No. of occasions
1	P1	26
4	P2	13
7	P3	55
8	P4	26
11	P5	7
14	P6	23
17	P7	30
20	P8	23
23	P9	15
	Total no. of occasions	**218**

Improper prescription

5 Medical practitioners also have an obligation to ensure that they prescribe benzodiazepines and hypnotics only on clear medical grounds and in reasonable quantities. Dr Tham had intentionally and deliberately breached this duty as follows:

Patient	Concurrent prescription of 2 or more benzodiazepines	Prescribed benzodiazepine beyond a cumulative period of 8 weeks	Failed to limit benzodiazepine use to short-term relief to 4 weeks
P1 3rd Charge	26 occasions	24 occasions	25 occasions From 24.12.14 – 01.09.16 (1 year, 8 months, 13 days)
P2 6th Charge	NA	11 occasions	12 occasions From 14.01.15 – 10.08.16 (1 year, 6 months, 17 days)
P4 10th Charge	NA	24 occasions	25 occasions From 05.01.15 – 05.09.16 (1 year, 8 months, 10 days)
P5 13th Charge	NA	4 occasions	5 occasions From 04.12.15 – 16.08.16 (11 months)
P6 16th Charge	NA	20 occasions	21 occasions From 02.02.15 – 25.08.16 (1 year, 7 months, 13 days)
P7 19th Charge	14 occasions	27 occasions	14 occasions From 29.04.15 (later period) – 16.09.16 (1 year, 4 months, 27 days)
P8 22nd Charge	NA	21 occasions	22 occasions From 06.01.15 – 31.08.16 (1 year, 7 months)
P9 25th Charge	3 occasions	11 occasions	14 occasions From 10.03.15 – 16.08.16 (1 year, 7 months, 21 days)
Total	**(1)**	**(2)**	**(3)**

Patient	Concurrent prescription of 2 or more benzodiazepines	Prescribed benzodiazepine beyond a cumulative period of 8 weeks	Failed to limit benzodiazepine use to short-term relief to 4 weeks
323 occasions[1]	**43 occasions**	**142 occasions**	**138 occasions**

Failure to make referral

6 Finally, medical practitioners are obliged to ensure that they practise within the limits of their own competence, and where appropriate, refer their patients to another doctor with the necessary expertise. Dr Tham had breached this duty when he failed to refer his patients to the relevant specialists for proper management after having prescribed benzodiazepines and hypnotics to them for a cumulative period of eight weeks.

Sentencing Submissions

7 In *Wong Meng Hang v Singapore Medical Council* [2019] 3 SLR 526 *("**Wong Hang Meng**")*, the Court of Three Judges laid down a "Harm" – "Culpability" sentencing framework for professional misconduct cases. For further details of this framework, see **Annex C**.

8 Applying this framework, the SMC made the following submissions:

(a) Dr Tham's improper prescription charges and failure to refer charges fell within the category of *Moderate Harm – High Culpability* of the framework. In other words, *each* of these charges should in principle attract a sentence of between *24 to 36 months' suspension* from medical practice. Considering the

[1] The total number is derived by adding (1), (2) and (3).

circumstances of the individual charges, (i) 10 of the charges should attract 27 months' suspension each, (ii) 4 of the charges should attract 32 months' suspension each, and (iii) two of the charges should attract 33 months suspension each.[2]

(b) As for Dr Tham's inadequate record charges, each of them should attract a sentence of three months' suspension.[3]

(c) Three of the highest sentences for Dr Tham's improper prescription charges and failure to refer charges, as well as two of the sentences for his inadequate record charges, should run consecutively. This would lead to an aggregate sentence of *104 months' suspension* (i.e., 33 months + 33 months + 32 months + 3 months + 3 months).

(d) There had been prosecutorial delay in the matter. As such, a one-third sentencing discount would be appropriate. This means that a sentence that would sufficiently reflect the gravity of the Dr Tham's misconduct as well as the totality principle is about *69 months' suspension* (i.e., 104 months x 1/3).[4]

(e) However, as s 53(2)(*b*) of the MRA imposes a cap on the maximum period of suspension that a Disciplinary Tribunal may impose, Dr Tham should be sentenced to only *36 months' suspension* (i.e., the maximum statutory cap): *SMC v Wee Teong Boo* [2023] 3 SLR 705 ("***Wee Teong Boo***") at [7].[5]

9 Dr Tham tendered the following brief mitigation plea:[6]

[2] SMC's Submissions on Sentencing (Revised) dated 3 October 2023 at [39], [40], [92], [108] and [110].
[3] SMC's Submissions on Sentencing (Revised) dated 3 October 2023 at [101], [105] – [108].
[4] SMC's Submissions on Sentencing (Revised) dated 3 October 2023 at [110], [111] and [119] – [124].
[5] SMC's Submissions on Sentencing (Revised) dated 3 October 2023 at [5] and [124].
[6] Mitigation dated 29 July 2022.

"In my 63 years of medical practice, this is my first offence, for which I am truly sorry.

I have learned from my mistakes and I undertake not to repeat them.

As I am advanced in age (88) I am planning to retire next year. I hope I am given sufficient time to arrange the transfer of my patients to other doctors.

I appreciate the Tribunal will favorably consider the above mitigation submissions."

Our Decision

Improper prescription and failure to make referral

10 In our view, Dr Tham's charges for improper prescription of medication to his patients and his failure to refer them to the appropriate medical specialists should be classified as *High Culpability – Moderate to Severe Harm*. Our reasons are as follows.

High Culpability

11 *First*, we note that Dr Tham's misconduct was committed for a prolonged period and with high frequency. Over a period of about two years, he had:–

(a) Failed to maintain adequate medical records on ***218 occasions***,[7]

(b) Concurrently prescribed two or more benzodiazepines on ***43 occasions***,[8]

(c) Prescribed benzodiazepine beyond a cumulative period of 8 weeks on ***142 occasions***,[9]

[7] See [4] above for details.
[8] See [5] above for details.
[9] See [5] above for details.

(d) Failed to limit benzodiazepine use to short-term relief to 4 weeks on ***138 occasions***,[10] and

(e) Improperly prescribed ***more than 13,000*** benzodiazepine and hypnotic pills to his patients.[11]

12 *Second*, we accept the SMC's expert witness, PE's evidence that Dr Tham had failed to provide sufficient and/or acceptable explanations for deviating from the accepted medical practice.[12] We further note that the dosage and types of drugs prescribed did not vary significantly over time. This indicates that Dr Tham did not have a proper treatment plan for his patients. In other words, Dr Tham had no clinical basis for his excessive prescriptions of benzodiazepines and hypnotics (which are highly addictive) to his patients for more than one and a half years – and in some cases, almost two years.[13] Just as in *Wee Teong Boo* at [49] and [50], we find that Dr Tham must have known that his excessive and prolonged prescriptions would contribute to his patients' dependency, or cause his patients to become dependent, on the drugs.

13 *Finally*, Dr Tham's misconduct involved several vulnerable patients. Five patients were above 65 years of age and thus elderly. Three patients had pre-existing medical issues (insomnia, anxiety, hypertension, diabetes, and epilepsy).[14] As a senior medical practitioner with about 63 years' experience, Dr Tham would have known of the potential harmful effects of excessive prescription of benzodiazepines and hypnotics to these vulnerable patients: see [15] and [16] below. Despite this knowledge, Dr Tham had continuously prescribed excessive quantities of benzodiazepines and hypnotics to his patients. In our view, his numerous instances of improper prescription and failure

[10] See [5] above for details.
[11] See **Annex D** for details.
[12] PE's Report at [12.7] exhibited at **ABOD TAB 7** (p. 483).
[13] See **Annex D** for details.
[14] See **Annex D** for details.

to refer them to the appropriate specialists – which were both intentional and deliberate – is reprehensible.

Moderate to Severe Harm

14 Turning to the level of harm posed by Dr Tham's misconduct, we find this to be Moderate to Severe. We make this finding for the following reasons.

15 *First*, excessive prescription of benzodiazepines and hypnotics can endanger a patient's life and health. This is because these drugs can cause:–

(a) central nervous system side effects: e.g., drowsiness, dizziness, fatigue, lethargy, amnesia, confusion, and ataxia,

(b) dependence, and

(c) other side effects – such as disinhibition and paradoxical effects (e.g., increase in aggression), occasionally headache, vertigo, salivary changes, gastrointestinal disturbances, sleep problems (e.g., somnambulism, vivid dreams), perceptual or visual disturbances, tremors, palpitations, skin reactions, blood disorders, jaundice, muscle weakness, dysarthria, urinary retention, and incontinence.[15]

16 *Second*, it bears noting that many of Dr Tham's patients were elderly or had pre-existing medical conditions. This made them especially vulnerable to the side effects of benzodiazepines. For instance:–

[15] MOH Clinical Practice Guidelines at [2.5].

(a) It is well recognised that prolonged use of benzodiazepines by the elderly is associated with an increased risk of cognitive impairment and fractures.[16]

(b) Dr Tham had issued *concurrent* prescription of benzodiazepines and hypnotics for three of his patients, namely, P1, P7, and P9. P1 had in fact been prescribed concurrently with *three* different types of benzodiazepines[17] and hypnotics for more than 20 months. Such excessive prescription had placed them at risk of potentially lethal drug-drug interactions and might have caused them to become more vulnerable to major harm.[18]

(c) P2 had hypertension, diabetes and was prone to anxiety which would negatively affect her blood pressure. Dr Tham's excessive drug prescription for Goh carried the risks of addiction and rebound anxiety which could worsen control of her blood pressure upon cessation. It bears noting that the withdrawal of benzodiazepines after long-term use can have near fatal effects for patients suffering from pre-existing poorly controlled hypertension.

17 For completeness, we highlight that in classifying the level of harm arising from Dr Tham's misconduct as between Moderate and Severe, we recognise that there is *no direct* evidence of *actual* harm caused to the patients. We note that this has not prevented the Court of Three Judges in *Wee Teong Boo* to find that the level of harm should be calibrated as severe where there is basis to infer that an errant doctor's improper prescription of addictive medication might have contributed to his patients' dependency on such medication:

> "49 … the Agreed Facts did not contain any statement to the effect that P4, P5, P9, P10 and P15 suffered from drug dependency issues at the material time. In his Letter of Explanation, Dr Wee also did not make mention of these patients being dependent on codeine or benzodiazepines. This appears to be why both the

[16] MOH Clinical Practice Guidelines at [6.1].
[17] Lexotan and Alprazolam (Xanax): see Schedule 1 to the Notice of Inquiry at page 86.
[18] See **Annex D** at column (3) for further details.

> SMC and Dr Wee classified P4, P5, P9, P10 and P15 as patients who did not suffer from drug dependency issues. Nevertheless, we stress that a sentencing tribunal or court is entitled to draw inferences based on the material facts before it – as observed in *Chng Yew Chin v Public Prosecutor* [2006] 4 SLR(R) 124 at [44], judges should address the facts before them and duly make logical inferences. In our view, *even if there was no direct evidence as to whether P4, P5, P9, P10 and P15 had suffered from drug dependency issues, and whether Dr Wee had been aware of such issues, the facts of the present appeal amply supported the drawing of such inferences.*
>
> 69 … we note that the SMC's position before the DT was that the harm caused by Dr Wee's misconduct was moderate, and that the SMC did not appeal against the DT's assessment of the harm caused. Had this point arisen for our determination, however, we observe that it may well have been the case that we would have found a finding of *severe harm* to be warranted, *on the basis that Dr Wee's conduct may have intensified his patients' addictions*, and possibly caused P4, P5, P9, P10 and P15 to *develop dependency issues* if they had not suffered from these issues before.…"
>
> [emphasis added]

Starting point sentences

18 Given that Dr Tham's improper prescription charges and failure to make referral charges involve High Culpability and Moderate to Severe Harm, we are broadly agreeable to SMC's recommendation of sentences ranging from 27 to 33 months' suspension for each charge.

Inadequate medical records

19 At this juncture, we will digress to make some observations on Dr Tham's charges for failing to keep adequate medical records before returning to the issue of what is an appropriate sentence to impose *holistically* for his improper prescription charges and failure to make referral charges.

20 Having examined the records relating to Dr Tham's inadequate medical record charges,[19] we agree with the SMC that these records are largely illegible and "*wholly*

[19] Photocopies of these records are in the ABOD at Tabs 6B & 6C (pp. 259 – 369).

bereft of the requisite details". Dr Tham had failed to properly document his patients' medical history and medical condition, his findings, and diagnoses, as well as his reasons for prescribing benzodiazepines and hypnotics to his patients. Dr Tham's failure to keep adequate medical records for a substantial period of about two years involving nine patients over a total of 228 consultations[20] raises serious questions such as (a) what had been discussed during the consultations, and (b) whether Dr Tham was able to monitor the effects of the medications he had prescribed to his patients: *SMC v Dr Tan Kok Jin* [2019] SMCDT 3 at [48].

21 We stress that proper medical record-keeping is essential to professional medical practice, especially for patients who are prescribed hypnotics: *In the Matter of Dr ABF* [2010] SMCDC 3 at [17]; *In the Matter of Dr Wong Choo Wai* [2011] SMCDC 9 at [24] and [25]. Properly kept medical records are needed (a) to ensure that the care of patients can be safely taken over by another doctor should the need arise, (b) to enable effective reviews of cases to be conducted, and (c) to ensure that remedial or preventive measures for a patient can be developed where needed: *SMC v Mohd Syamsul Alam bin Ismail* [2019] 4 SLR 1375 ("***Mohd Syamsul***") at [12] and [13]; *Yong Thiam Look Peter v SMC* [2017] 4 SLR 66 at [10].

22 The precedents show that the sentencing norm for a charge of failure to keep inadequate medical records is three to four months' suspension: see e.g., *Mohd Syamsul*; *Dr Tan Kok Jin*. We agree with the SMC that Dr Tham should receive three months' suspension *on each of his inadequate medical records charges*.

Sentence imposed

[20] The number of consultations is derived by adding the information in [5] above.

23 We now come to the issue of what is the appropriate aggregate sentence to impose on Dr Tham for all his charges. The SMC has recommended a sentence of 36 months' suspension. We disagree with this recommendation.

24 We are of the view that a striking off order would be more appropriate as Dr Tham's breaches are so egregious that they render him unfit to remain as a member of the medical profession. Let us elaborate.

(a) Given the statutory cap in s 53(2)(*b*) of the MRA, the maximum suspension period that we can impose is limited to only 36 months. It has been held that where an errant doctor faces multiple charges, each of which attracts a substantial term of suspension, it would be appropriate to consider if the doctor's overall misconduct warrants an order striking him or her off instead: *Wee Teong Boo* at [64].

(b) In this case, Dr Tham's improper prescription charges and failure to make referral charges attract a sentence of 24 to 36 months' suspension *each*: see [18] above. The SMC had submitted that Dr Tham deserved an aggregate sentence of 69 months' suspension after considering the totality principle: see [8] above. However, because of the statutory cap, the SMC recommended that 36 months' suspension be imposed. This is about half of the appropriate sentence.

(c) In our view, an aggregate sentence of 36 months' suspension would fail to adequately reflect the full gravity of Dr Tham's breaches of the applicable medical standards. Neither does it underscore the serious risks that Dr Tham's misconduct had posed to the health and safety of his patients. He had acted in callous disregard of his professional duties as well as the health of his patients by deliberately and improperly prescribing and selling controlled medicines over extended periods of time. Dr Tham's misconduct involves a flagrant abuse

of the privileges accompanying registration as a medical practitioner: *Wong Meng Hang* at [67(a)] and [67(c)].

(d) In *Wee Teong Boo*, the errant doctor was struck off for (i) having improperly prescribed medication to his patients and (ii) failing to keep adequate medical records. In our view, Dr Tham's misconduct is no less serious than those in *Wee Teong Boo*. See **Annex E** for the analysis.

(e) Finally, we are of the view that the ignominy and stigma of being struck off can be a more effective punishment than suspension, especially against those who do not intend to continue with their medical practice.

Penalty Order

Considerations for ordering penalty

25 Apart from imposing a striking off order, we have also considered whether it is appropriate to impose a penalty order as well. In this regard, we note that there are typically two situations where a penalty order may be considered.

(a) The first is where an errant doctor has profited from his misconduct. In such a case, a penalty order seeks to disgorge the doctor's ill-gotten gains ("**First Basis**"): *Sentencing Guidelines for Singapore Medical Disciplinary Tribunals* (June 2020 edn) ("***Sentencing Guidelines***") at [21(a)]; *Sentencing Principles in Singapore* (Academy Publishing, 2019) at [26.002] and [26.024] – [26.028]; *Public Prosecutor v Su Jiqing Joel* [2021] 3 SLR 1232 at [37] and [38].

(b) The second situation is where the errant doctor is either not on the register of medical practitioners or does not practise in Singapore. In such a situation, the retributive/punitive purpose of a suspension order will have no direct effect or impact on the doctor. A penalty order will ensure that the doctor receives a punishment that has sufficient bite ("**Second Basis**"): *Mohd Syamsul* at [21] and [22]; *Sentencing Guidelines* at [21(b)].

26 In our view, *both* bases for imposing a penalty order are engaged in the present case.

(a) **First Basis**. As stated earlier, Dr Tham has failed to provide any sound medical reason for having prescribed such a huge quantity of benzodiazepines and hypnotics (totalling some 13,310 pills) to his patients in a period of about two years. The quantities and frequency in which Dr Tham had prescribed these drugs are not necessary to their treatment. In the circumstances, there can only

be one irresistible inference for Dr Tham's excessive prescription – they were for monetary gain.

(b) **Second Basis**. *Additionally*, we are of the view that a striking off order alone will be an ineffective punishment in this case. This is because Dr Tham, who is in his late eighties, had informed us that he will be retiring from medical practice after the hearing: see [9] above. A penalty order is needed to signal to errant doctors such as Dr Tham that they will not be allowed to escape punishment by simply retiring from medical practice.

Quantification of penalty

27 Having determined that a penalty order is appropriate, the next question is what ought to be the quantum. On this question, we note the following:

(a) The maximum penalty that may be ordered is $100,000: s 53(2)(*e*) of the MRA.

(b) We wish to make the following observations whether penalty orders have been imposed on the First Basis.

(i) For the improper prescription of medications, courts have previously imposed penalties of between $3,000 to $10,000 in addition to suspension: *In the Matter of Dr Heng Boon Wah Joseph* [2016] SMCDT 8 at [14]; *In the Matter of Dr Chew Yew Meng Victor* [2017] SMCDT 3 at [31]. Prior to December 2010, the maximum penalty is only $10,000. This should be borne in mind when considering the sentencing precedents involving professional misconduct committed before 2010.

(ii) Where the improper prescription relates to *benzodiazepines and hypnotics*, tribunals have imposed penalty orders in excess of $10,000. These precedents are set out in **Annex F**. We note that tribunals have not hesitated to make penalty orders for the purpose of disgorgement even when it is difficult (if not impossible) to quantify the full extent of the profits made. In these precedents, the tribunals did not appear to have heard any evidence regarding the profits made by the errant doctors.

(c) The leading case where a penalty order has been imposed on the Second Basis is *Mohd Syamsul.*

(i) In that case, the errant doctor was found liable on two charges of professional misconduct in respect of the management of the patient. The first charge alleged that the doctor had failed to undertake an adequate clinical evaluation of the patient and failed to provide competent, compassionate, and appropriate care to the patient. The second charge alleged that the doctor had failed to keep clear and accurate records with sufficient detail as would enable another doctor reading the records to take over the management of the patient. The tribunal sentenced the doctor to three months' suspension and a penalty of $40,000. On appeal, the suspension period was enhanced to two years and six months, while the penalty order was affirmed. In affirming the penalty order, the Court of Three Judges held that the penalty "sends a signal to errant doctors who are able to practise overseas that they cannot simply avoid the punishment for their misconduct by practising elsewhere and waiting out the period of suspension": *Mohd Syamsul* at [20] and [22].

(ii) A penalty order ordered on the Second Basis is *intended to compensate for the dilution of the punishment* where an errant doctor (1) intends to cease practice in any event or (2) can practice elsewhere. In the circumstances, we are of the view that the quantum of the penalty to be ordered ought to reflect the severity of the sentence – whether it is a lengthy suspension order or striking off order – which the errant doctor is likely to avoid.

28 In our view, a penalty order of $20,000 would serve the twin objectives of disgorgement and retribution.

(a) **First Basis.** We are mindful that the quantum of our penalty order is higher than most of the precedents in **Annex F**. This is because in these precedents, there is little or no evidence on the amount of medication improperly prescribed. In Dr Tham's case however, there is clear evidence that during a period of about two years, he had prescribed some 13,310 pills to his patients. Dr Tham would have made a significant profit given (i) the huge quantity of pills sold, (ii) the numerous occasions that he had prescribed these pills (see [5] above), and (iii) Dr Tham's disclosure during oral mitigation that he had charged up to $100 for the prescription of drugs per consultation.

(b) **Second Basis**. We have already determined that a striking off order ought to be imposed on Dr Tham to reflect the severity of his misconduct. A penalty order of $20,000 will compensate for the dilution of the punitive effect of such a punishment that can arise given Dr Tham's intention to wind up his practice after the hearing: see the considerations in [27(c)(ii)] above.

Conclusion

29 Accordingly, we make the following orders:

(a) That Dr Tham's name be removed from the Register of Medical Practitioners at the end of 40 days from the date of this judgment. This is in line with the considerations highlighted by SMC Counsel in his oral submissions;

(b) That Dr Tham pay a penalty of $20,000;

(c) That Dr Tham be censured;

(d) That Dr Tham to provide a written undertaking to the SMC that he would not engage in the conduct complained of or any similar conduct in the future; and

(e) That Dr Tham pays the costs and expenses of and incidental to the proceedings, including the costs of the counsel for the SMC.

30 At this juncture, we digress to make a few observations regarding [29(e)] and the quality of the SMC's submissions in this case.

(a) *First*, we find that these submissions – which runs into 120 pages – are unnecessarily long. It appears that very little attempt had been made (i) to distil the key arguments/facts and (ii) to organise them in a reader-friendly manner. For instance, many of the arguments/facts from pages 33 to 104 of the submissions are repeated. As a result, we took an unduly long time to review and understand the SMC's submissions. Time, effort and costs had been unnecessarily expended. All these could have been avoided.

(b) *Second*, we find that it is because the SMC's sentencing analysis had been cluttered that caused them to seek only a 36-month suspension – and thus miss

the wood for the trees on the key issue in this case – i.e., what is an appropriate sentence that would sufficiently reflect the full gravity of Dr Tham's egregious misconduct.

31 Finally, we order that the Grounds of Decision be published with the necessary redaction of identities and personal particulars of persons involved.

32 The hearing is hereby concluded.

Prof K Satkunanantham	Dr Swah Teck Sin	Mr Kow Keng Siong
Chairman	Member	Judicial Service Officer

Mr Edmund Kronenburg, Ms Angelia Thng, Ms Esther Lim, and Mr Samuel Lim
(M/s Braddell Brothers LLP)
for the Singapore Medical Council; and

Dr Tham Ngiap Boo (in person)

ANNEX A

SUMMARY OF CHARGES

Charge	Patient	Standard breached	Breach period
1	P1	Inadequate medical records	24.10.14 – 01.09.16
2		Failure to make referral	
3		Improper prescription	
4	P2	Inadequate medical records	29.11.14 – 10.08.16
5		Failure to make referral	
6		Improper prescription	
7	P3	Inadequate medical records	17.10.14 – 14.09.16
8	P4	Inadequate medical records	31.10.14 – 05.09.16
9		Failure to make referral	
10		Improper prescription	
11	P5	Inadequate medical records	02.04.15 – 16.08.16
12		Failure to make referral	
13		Improper prescription	
14	P6	Inadequate medical records	17.11.14 – 25.08.16
15		Failure to make referral	
16		Improper prescription	
17	P7	Inadequate medical records	15.09.14 – 16.09.16
18		Failure to make referral	
19		Improper prescription	
20	P8	Inadequate medical records	05.11.14 – 31.08.16
21		Failure to make referral	
22		Improper prescription	
23	P9	Inadequate medical records	31.10.14 – 16.08.16
24		Failure to make referral	
25		Improper prescription	

ANNEX B

APPLICABLE SMC AND MOH GUIDELINES

(1) Inadequate medical records

2002 ECEG	
Guideline 4.1.2[21]	"Medical records kept by doctors shall be clear, accurate, legible and shall be made at the time that a consultation takes place, or not long afterwards. Medical records shall be of sufficient detail so that any other doctor reading them would be able to take over the management of a case. All clinical details, investigation results, discussion of treatment options, informed consents and treatment by drugs or procedures should be documented." ***Note**. The relevant provision in the 2016 edition of the Singapore Medical Council Ethical Code and Ethical Guidelines ("**2016 ECEG**") is Guideline B3(1) to B3(3). This edition came into force on 1 January 2017.*[22]
MOH Administrative Guidelines	
Paragraph (a)[23]	"All information relating to a particular patient must be consolidated as one medical record relating only to that patient. Such information must be legibly documented."
Paragraph (c)[24]	"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; (ii) Comprehensive physical examination findings, including evidence of misuse of benzodiazepines or other drugs; and (iii) Withdrawal symptoms to benzodiazepines/other hypnotics previously experienced by the patient, if any."
Paragraph (d)[25]	"The following information must be documented in the medical records of every patient each time he/she is prescribed benzodiazepines/other hypnotics either initially or as repeat prescriptions: (i) The prescribed type/name of benzodiazepine/hypnotic, its dosage and duration of use; (ii) Indication(s) and/or justification(s) for prescribing benzodiazepines/other hypnotics; and

[21] SMC Bundle of Documents at Vol 2 at page 946.
[22] SMC Bundle of Documents at Vol 2 at page 989.
[23] SMC Bundle of Documents at Vol 2 at page 1034.
[24] SMC Bundle of Documents at Vol 2 at page 1034.
[25] SMC Bundle of Documents at Vol 2 at page 1034.

	(iii) 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)."
Paragraph (g)[26]	"Medical practitioners should **routinely** warn patients about rebound insomnia with the use of benzodiazepines and document such warning accordingly."

(2) Improper prescription

2002 ECEG	
Guideline 4.1.3[27]	"… A doctor shall prescribe, dispense or supply medicines only on clear medical grounds and in reasonable quantities as appropriate to the patient's needs. …" ***Note**. The relevant provision in the 2016 ECEG is Guideline B5(2) and B5(8).*[28]
MOH Administrative Guidelines	
Paragraph (i)[29]	"The concurrent prescribing of two or more benzodiazepines should be avoided."
Paragraph (n)[30]	"The following categories of patients should not be further prescribed with benzodiazepines/other hypnotics and must be referred to the appropriate specialist for further management: (i) Patients who require or have been prescribed benzodiazepines/other hypnotics beyond a cumulative period of 8 weeks;"
MOH Clinical Practice Guidelines	
Section 5.1.1[31]	"Benzodiazepine use should be limited to short-term relief (between 2 to 4 weeks) at the lowest dose and should be taken intermittently (e.g., 1 night in 2 or 3 nights)."

(3) Failure to make referral

2002 ECEG	
Guideline 4.1.1.6[32]	"A doctor should practise within the limits of his own competence in managing a patient. Where he believes that this is exceeded, he shall

[26] SMC Bundle of Documents at Vol 2 at page 1034.
[27] SMC Bundle of Documents at Vol 2 at page 946.
[28] SMC Bundle of Documents at Vol 2 at page 992.
[29] SMC Bundle of Documents at Vol 2 at page 1034.
[30] SMC Bundle of Documents at Vol 2 at page 1035.
[31] SMC Bundle of Documents at Vol 2 at page 1167.
[32] SMC Bundle of Documents at Vol 2 at page 946.

	offer to refer the patient to another doctor with the necessary expertise. A doctor shall not persist in unsupervised practice of a branch of medicine without having the appropriate knowledge and skill or having the required experience. …" ***Note**. The relevant provision in the 2016 ECEG is Guideline A3(1) and A3(4).*[33]
MOH Administrative Guidelines	
Paragraph (n)[34]	"The following categories of patients should not be further prescribed with benzodiazepines/other hypnotics and must be referred to the appropriate specialist for further management: (i) Patients who require or have been prescribed benzodiazepines/other hypnotics beyond a cumulative period of 8 weeks;"

[33] SMC Bundle of Documents at Vol 2 at page 983.
[34] SMC Bundle of Documents at Vol 2 at page 1035.

ANNEX C

APPLICABLE SENTENCING PRINCIPLES

1 In *Wong Meng Hang*, the Court of Three Judges provided the following guidance on the sentencing of professional misconduct cases:

Step 1A: Assess the seriousness of the misconduct base on the following Harm factors (non-exhaustive): *Wong Meng Hang* at [30]	
1	*Actual harm* – The more direct the connection between the specific type of harm that has been occasioned and the misconduct in question, the weightier a consideration this will be. Examples – - Bodily injury, emotional or psychological distress; - Serious economic harm; - Increased predisposition to certain illnesses; - Loss of chance of recuperation or survival; - At the most severe end of the spectrum, death.
2	*Potential* harm that could have resulted from dangerous acts of misconduct, even if it did not actually materialise on the given facts. Potential harm should only be taken into account if there was a *sufficient likelihood* of the harm arising; it is not appropriate to consider every remote possibility of harm for the purposes of sentencing.

Step 1B: Assess the seriousness of the misconduct base on the following Culpability factors (non-exhaustive) *Wong Meng Hang* at [30]	
1	The extent and manner of the offender's involvement in causing the harm.
2	The extent to which the offender's conduct departed from standards reasonably expected of a medical practitioner.
3	The offender's state of mind when during the misconduct.
4	All of the circumstances surrounding the misconduct.
Note.	
Harm may be caused in a variety of ways, usually ranging in severity from negligent or careless acts, to grossly negligent acts, to knowing incompetence and recklessness. In some situations, it may even include intentional acts.	

Step 2: Identify the the appropriate starting point sentence: *Wong Meng Hang* at [33] and [36] **(Tariffs for – Claim trial cases – First offender)**			
Harm / **Culpability**	**Slight**	**Moderate**	**Severe**
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

Step 3: Make adjustments to the starting point sentence to take into account the offender-specific aggravating and mitigating factors which include the following: *Wong Meng Hang* at [43]			
Aggravating factors		**Mitigating factors**	
1	Prior instances of professional misconduct, especially where such antecedents bear similarities to the conduct underlying the charge in the case at hand.	1	Guilty plea.
		2	A long unblemished track record.
		3	Good professional standing.
		4	Undue delay in the SMC of the proceedings.

2 Serious cases of professional misconduct can warrant an order *striking off* the errant doctor from the Register of Medical Practitioners. In deciding whether a doctor should be struck off, the ultimate question is *whether the misconduct in question was so serious that it rendered the doctor unfit to remain as a member of the medical profession.* Situations where a striking off order should be considered include the following: See *Wong Meng Hang* at [66] and [67]; *Wee Teong Boo* at [64].

(a) When the misconduct in question involves a flagrant abuse of the privileges accompanying registration as a medical practitioner.

(b) Where the errant doctor's misconduct has caused grave harm.

(c) Where the errant doctor deliberately and improperly prescribes and sells controlled medicines over extended periods of time, thereby acting in callous disregard of his/her professional duties as well as the health of his/her patients or the general public.

(d) Where any of the above factors exists, a further consideration which might suggest striking off is warranted is where the errant doctor has shown a persistent lack of insight into the seriousness and consequences of his misconduct.

(e) Where an errant doctor faces multiple charges, each of which attracts a substantial term of suspension, it would be appropriate to consider if the doctor's overall misconduct warrants an order striking him or her off instead. Given that the statutory cap in s 53(2)(*b*) of the MRA limits the *overall* period of suspension that may be imposed to 36 months, it may well be the case that where an errant doctor has committed multiple counts of professional misconduct, a term of suspension would not adequately reflect the seriousness of the doctor's misconduct and may let his additional offending go unpunished.

ANNEX D

DETAILS OF IMPROPER PRESCRIPTION

(1) **Patient (D.O.B.)**	(2) **Pre-existing medical issues present?**	(3) **Possible significant effects of improper prescription (apart from dependance and addiction)**	(4) **No. of pills (Period)**	(5) **Pill/day**
P1 (30.11.61) **[Most serious]**	Patient had a long history of **insomnia and anxiety** and had a long history of treatment by a psychiatrist prior to first consultation.	Patient was given concurrent prescription of *three* different types of benzodiazepines[35] and hypnotics for more than 20 months.[36] This placed the patient at risk of **potentially lethal drug-drug interactions** and may have caused her to become more vulnerable to major harm. Patient prescribed with *Alprazolam* which has a **high risk of abuse**.	6,726 (1 year, 8 months, and 13 days)	9.98
P4 (07.08.46)	NIL	Patient was a vulnerable patient (**68 years old** at the time of her first consultation).	1,680 (1 year, 8 months, and 10 days)	2.49
P2 (01.01.27)	Patient had **hypertension, diabetes** and was prone to **anxiety** which would negatively affect her blood pressure.	Patient was a vulnerable patient (**87 years old** at the time of her first consultation). Long-term use of benzodiazepines risks addiction and rebound anxiety could **worsen the control of the patient's blood pressure** upon cessation. The withdrawal of benzodiazepines after long-term use **can have near fatal effects** for patients suffering from pre-existing poorly controlled hypertension.	1,560 (1 year, 6 months, and 17 days)	2.31

[35] Lexotan and Alprazolam (Xanax): see Schedule 1 to the Notice of Inquiry at page 86.
[36] Zopiclone and Stilnox: see Schedule 1 to the Notice of Inquiry at page 86.

(1) **Patient** **(D.O.B.)**	(2) **Pre-existing medical issues present?**	(3) **Possible significant effects of improper prescription (apart from dependance and addiction)**	(4) **No. of pills** **(Period)**	(5) **Pill/day**
P7 (14.03.50)	NIL	Patient was a vulnerable patient (**64 years old** at the time of her first consultation). Patient was given concurrent prescription of benzodiazepines and hypnotics. This placed the patient at risk of **potentially lethal drug-drug interactions** and may have caused her to become more vulnerable to major harm.	1,406 (1 year, 10 months, and 6 days)	1.92
P6 (20.10.39)	NIL	Patient was a vulnerable patient (**75 years old** at the time of her first consultation).	690 (1 year, 7 months, and 13 days)	1.07
P8 (12.07.47)	Patient had a long history of **epilepsy.**	Patient was a vulnerable patient (**67 years old** at the time of her first consultation).	690 (1 year and 8 months)	1.04
P5 (08.09.59)	NIL	NIL	558 (11 months)	0.94
P9 (15.07.37) **[Least serious]**	NIL	Patient was a vulnerable patient (**77 years old** at the time of his first consultation). Patient was given concurrent prescription of benzodiazepines and hypnotics. This placed the patient at risk of **potentially lethal drug-drug interactions** and may have caused him to become more vulnerable to major harm.	265 1 year, 7 months, and 21 days	0.44

ANNEX E

COMPARISON OF THE MISCONDUCT IN DR THAM'S CASE AND *WEE TEONG BOO*

	Factors	Dr Tham's case	*Wee Teong Boo*
1	**No. of charges**	25 charges Proceeded – 25	25 charges Proceeded – 20 Taken into consideration – 5
2	**Nature of plea**	Guilty	
3	**No. of patients**	9	10
4	**Duration of offence**	About 2 years	About 7 years
5	**Nature of breaches**		
	(a) Inadequate medical records	218 occasions[37]	At least 142 occasions[38]
	(b) Improper prescription	323 occasions[39]	At least 310 occasions[40]
6	**Level of harm**	Moderate to Severe	Moderate (by disciplinary tribunal) Severe (by Court of Three Judges)[41]

[37] See Judgement at [4].
[38] This number is derived by adding all the occasions stated in *Wee Teong Boo* at [19]. Relevant information from the TIC charges is not available.
[39] See Judgement at [5].
[40] This number is derived by adding all the occasions stated in *Wee Teong Boo* at [19] in relation to (1) the prescription of a codeine-containing cough mixture within four days of the last prescription of the same, and (2) multiple psychoactive drugs. The numbers do not include the TIC charges and the prescription of benzodiazepines beyond a cumulative period of eight weeks because the information is not available.
[41] *Wee Teong Boo* at [69].

	Factors	Dr Tham's case	*Wee Teong Boo*
7	**Level of culpability**	High	High (see decision at [63]
8	**Sentence**	Struck off	

ANNEX F

SOME PRECEDENTS WHERE PENALTY HAS BEEN ORDERED

	Case	Charges	Period	Penalty
1	*In the Matter of Dr Ng Chee Keong* [2011] SMCDC 10	Total – 11 charges PG – All charges for failing to exercise due care to such an extent as to amount to professional misconduct in inappropriately prescribing benzodiazepines and/or codeine-containing medication to 11 patients. Amount of medication improperly prescribed is **not clear** from the decision.	Not clear from decision	$10,000
2	*In the Matter of Dr Tang Yen Ho Andrew* [2013] SMCDC 2	Total – 34 charges Claimed trial – 17 charges for failing to exercise due care in the management of 17 patients by inappropriately prescribing Dormicum, Nitrazepam, Diazepam, Zoplicone, Erimin and codeine containing cough mixture (Dhasedyl). Another 17 charges were for failing to properly document in the same patients' medical records sufficient clinical details. Amount of medication improperly prescribed is **not clear** from the decision.	Not clear from decision	$10,000
3	*In the Matter of Dr Chew Yew Meng Victor* [2017] SMCDT 3	Total – 4 charges PG – 3 charges for intentional and deliberate departure from medical standards in – (a) failing to provide appropriate care and management by inappropriately prescribing benzodiazepines (Dormicum, Diazepam, and Dhasedyl) to a patient on 22 occasions, (b) failing to keep adequate medical records, (c) failing to refer the same patient to a psychiatrist or specialist. Amount of medication improperly prescribed is **not clear** from the decision. It is also not clear from the decision what was the remaining and how it was dealt with.	4 years	$12,000

	Case	Charges	Period	Penalty
4	*In the Matter of Dr Heng Boon Wah Joseph* [2016] SMCDT 8	Total – 78 charges All the charges were for intentional and deliberate departure from the medical standards in failing to provide appropriate care and management by inappropriately prescribing benzodiazepines and hypnotics to 78 patients PG – 47 TIC – 31 Amount of medication improperly prescribed is **not clear** from the decision.	3 months	$15,000
5	*SMC v Dr Chia Kiat Swan* [2019] SMCDT 1	Total – 12 charges PG – 8 charges consisting of – (a) 4 charges of improper prescription, (b) 3 charges of failure to keep adequate medical records, (c) 1 charge of failing to refer a patient to a psychiatrist or medical specialist. TIC – 4 It is not stated in the decision whether the charges are based on the intentional and deliberate breach limb, or the serious negligence limb, of professional misconduct. Amount of medication improperly prescribed is **not clear** from the decision. The SMC and the Defence submitted that a penalty of $15,000 be ordered.	Between about six years to about 11.5 years	$15,000
6	*SMC v Dr Tang Yen Ho* [2019] SMCDT 8	Total – 30 charges The charges involved 10 patients. For each patient, there were the same three charges, namely – (a) The inappropriate prescription of cough mixtures containing codeine to the patient; (b) The failure to exercise competent and due care in his management of the medical condition(s) of the patient; and (c) The failure to keep proper medical records. Amount of medication improperly prescribed is not clear from the decision.	Between 1 month to 19 months	$25,000

	Case	Charges	Period	Penalty
		Errant doctor did not attend the hearing. Tribunal convicted the doctor after hearing evidence from the Prosecution. Doctor is a **repeat offender** – see (2) above.		
7	*SMC v Mohd Syamsul Alam bin Ismail* [2019] 4 SLR 1375	Total – 2 charges The first charge relates to the errant doctor's failure to undertake an adequate clinical evaluation of the patient and to provide competent, compassionate and appropriate care to the patient. The second charge relates to the errant doctor's failure to keep clear and accurate records with sufficient detail as would enable another doctor reading the records to take over the management of the patient. The errant doctor was able to (and did) practice in Malaysia after the 2.5 years' suspension order.	N.A.	$40,000

RESTRICTED \ SENSITIVE HIGH

IN THE REPUBLIC OF SINGAPORE

SINGAPORE MEDICAL COUNCIL DISCIPLINARY TRIBUNAL

[2023] SMCDT 4

Between

Singapore Medical Council

... Appellant

And

Dr Tham Ngiap Boo

... Respondent

RESPONSE TO FRESH MATTERS RAISED IN FURTHER ARGUMENTS AND ORIGINATING APPLICATION

Administrative Law – Singapore Medical Counsel filed an application to review and set aside penalty ordered by disciplinary tribunal – Fresh matters raised in application and Singapore Medical Council's correspondence to the disciplinary tribunal on why the penalty order should be set aside

Singapore Medical Council
v
Dr Tham Ngiap Boo

[2023] SMCDT 4

Disciplinary Tribunal – DT Inquiry No. 4 of 2023
Prof K Satku (Chairman), Dr Swah Teck Sin, Mr Kow Keng Siong (Judicial Service Officer)

7 December 2023

Introduction

1 This arises from an application filed by the Singapore Medical Council ("**SMC**") on 24 November 2023 ("**Application**") pursuant to s 55(1) of the Medical Registration Act 1997 ("**MRA**"). In the Application, the SMC had invited the Court of Three Judges ("**Court**") to review and set aside a penalty order of $20,000 that we had imposed in *Singapore Medical Council v Dr Tham Ngiap Boo* [2023] SMCDT 4 ("**Ground of Decision**"). According to the SMC, the penalty order is manifestly excessive and/or wrong in principle. Specifically, the SMC is of the view that the tribunal had erred in the following respects:

(a) Imposing a penalty order *in addition to* a striking off order.

(b) Finding that a penalty order in addition to a striking off order is in accordance with the SMC's Sentencing Guidelines for Singapore Medical Disciplinary Tribunals dated 15 July 2020 ("**SMC Sentencing Guidelines**").

(c) Making findings regarding the factors for quantifying the penalty to be ordered on Dr Tham Ngiap Boo ("**Dr Tham**"), including the appropriate weight to be placed on such factors.

2 Prior to the Application, the SMC had in fact written to the tribunal on 14 November 2023 to state why it is of the view that the penalty order is manifestly excessive and/or wrong in principle ("**Letter**").

3 Given that the SMC had filed the Application, we wish to respond to the Application and the Letter. We will confine our response only to matters that have not previously been raised for our consideration at Dr Tham's disciplinary hearing.

Imposing a penalty order in addition to a striking off order

4 In the Letter at [6(a)], the SMC took the following views:

(a) The tribunal has no basis for imposing both a penalty order and a striking off order.

(b) Such a combination of orders is "unprecedented" and "has never been done by any other disciplinary tribunal".

(c) A striking off order is the most severe punishment for an errant doctor. This is why other tribunals did not impose a penalty order in addition to a striking off order.

5 We disagree with the SMC's views. Our responses are as follows.

(a) Regarding [4(a)] above, s 53(1) of the MRA *expressly* provides that where a registered medical practitioner is found by a disciplinary tribunal to have been guilty of professional misconduct, "the Disciplinary Tribunal may exercise *one or more* of the powers referred to in subsection (2)" (emphasis added). On a *plain reading* of the provision, a disciplinary tribunal is clearly entitled to impose a penalty order (pursuant to s 53(2)(b)) in addition to a striking off order (pursuant to s 53(2)(a)).

(b) As for [4(b)] above, *Chia Yang Pong v Singapore Medical Council* [2004] 3 SLR(R) 151 is a *precedent* where a penalty order *in addition to* a striking off order *were imposed* on an errant doctor. In that case, the applicable provisions were s 45(1) and (2) of the Medical Registration Act (Cap 174, 1998 Rev Ed). Save for the maximum prescribed penalty that may be imposed, these provisions are materially the same as s 53 of the MRA. In upholding the legality of the combination orders imposed on the errant doctor, the Court of Three Judges adopted the same analysis as in [5(a)] above.

(c) The view in [4(c)] above stems from an erroneous understanding of the *purposes* of a penalty order and a striking off order – which are in fact *different*.

(i) A penalty order seeks to *disgorge* an errant doctor's ill-gotten gains from his professional misconduct. When considering a penalty order, the question to be answered is this – What is the extent *of the doctor's gains*?

(ii) On the other hand, a striking off order seeks to *disqualify* an errant doctor from practicing because he is unfit to remain as a member of the medical profession. The "ultimate question" when considering a striking off order is this – Is the doctor's misconduct *so serious* that it renders him *unfit* to be a member of the medical profession: *Wong Meng Hang v Singapore Medical Council* [2019] 3 SLR 526 ("***Wong Meng Hang***") at [66]? Regardless of whether a striking off order is imposed as a standalone sanction, or in addition to a penalty order, this question remains the same.

SMC Sentencing Guidelines

6 We now turn to the SMC's views that the tribunal had erred in finding that a penalty order in addition to a striking off order is in accordance with the SMC's Sentencing Guidelines. The basis for this view can be found in the Letter at [6(b)] where the SMC stated the following:

> The DT failed to address in its GD as to why Dr Tham's misconduct is considered so exceptional that it warrants imposing both types of orders on him. The DT merely cited the Sentencing Guidelines (at [21]) which states that there are *"typically two situations where a penalty order may be considered (a) The first is where an errant doctor has profited from his misconduct … (b) The second situation is where the errant doctor is either not on the register of medical practitioners or does not practise in Singapore …"* (GD at [25]). However, the DT failed to mention that the abovementioned situations in the Sentencing

Guidelines were stated in the specific context of ordering a financial penalty on top of a suspension. See Sentencing Guidelines (at [21]): ***"[f]ines may also be appropriate as an additional sentence, e.g., on top of a suspension order, in the following scenarios …"***

[emphasis in original text]

7 We disagree with the above comments. Our responses are as follows:

(a) Regarding the first sentence of the paragraph above, we *have explained* in the Grounds of Decision why it is appropriate to impose a penalty order (see [25], [26] and [28] of the decision) *in addition to* a striking off order (see [24] of the decision) on Dr Tham.

(b) As for the rest of the paragraph –

(i) The SMC seems to be under the impression that the tribunal had relied on the SMC Sentencing Guidelines as the legal basis for imposing a penalty order in addition to a striking off order. If so, then this impression is plainly erroneous. It is clear from the Grounds of Decision at [25] that the tribunal had referred to the SMC Sentencing Guidelines merely for the purpose of discussing when it would be appropriate to impose a penalty order. There is no need for the tribunal to turn to the SMC Sentencing Guidelines to provide the legal basis for imposing a penalty order in addition to a striking off order. This is because the tribunal is clearly entitled to do so under the MRA: see [5(a)] above.

(ii) The SMC accepts that a penalty order may be imposed in addition to a *suspension order*. (Indeed, the Court of Three Judges and disciplinary tribunals have imposed such a combination of orders in several cases: see the Grounds of Decision at [27].) Given this, it is puzzling why the SMC objects when a penalty order is imposed with a striking off order. After all, these two orders serve the same purpose – i.e., (1) to uphold the standing and reputation of the medical profession, (2) to prevent an erosion of public confidence in the trustworthiness and competence of its members, and (3) to protect the public: see e.g., *Wong Meng Hang* at [23]. There is no principled reason why a penalty order in addition to a suspension order is proper, but not when the penalty order is in addition to a striking off order.

Quantification

8 Finally, we come to the SMC's dissatisfaction with how the tribunal had quantified the penalty order. The bases for this dissatisfaction are as follows: the Letter at [5].

(a) Referring to [25(a)], [26(a)] and [28(a)] of the Grounds of Decision, the SMC took the view that "there is no actual evidence of the extent of Dr Tham's ill-gotten gains" (emphasis in original text). According to the SMC, the "fact that Dr Tham did not have proper medical grounds for his excessive prescriptions", or that he had admitted to making "*maybe at most $100 profit* specifically in relation to one prescription to one of his patients", "does not necessarily mean that he

must have *profited substantially from each and every prescription*" (italics and underscores in original text).

(b) Referring to [28(a)] and **Annex F** of the Grounds of Decision, the SMC noted that the $20,000 penalty imposed on Dr Tham is higher than most of the precedents. On this basis and given that there is little or no evidence of the amount of medication improperly prescribed in the precedents, the SMC took the view that the tribunal had erroneously assumed that Dr Tham must have sold more medicines as compared to the doctors in the precedents.

(c) In *Singapore Medical Council v Wee Teong Boo* [2023] 4 SLR 1328 ("***Wee Teong Boo***") at [34] and [60], the Court of 3 Judges ordered a striking off but did not order an additional financial penalty. This is even though the court did not accept Dr Wee's argument that he did not intend to profit from his misconduct.

9 We disagree with these views. Our responses are as follows.

(a) Our quantification of Dr Tham's penalty order is based on three key findings. *First*, there were *323 occasions* when excessive quantities of medications were prescribed to each of Dr Tham's patients: Grounds of Decision at [5] and [28(a)]. *Second*, Dr Tham did not have a clinical basis for his excessive prescriptions of the highly addictive benzodiazepines and hypnotics: Grounds of Decision at [12]. *Third*, Dr Tham had charged up to $100 on each occasion/consultation when he prescribed such medication. These findings – which are not disputed by the SMC – led to us to infer that Dr Tham had profited from *each*

occasion when he prescribed excessive medication. We have accepted that Dr Tham might have made less than $100 profit *for each occasion/consultation* where he prescribed excessive medication. That is why we did not quantify the penalty at $100/occasion. If we had done so, the penalty order would have come to *$32,000* (i.e., $100 x 323 occasions). Instead, we have *conservatively* quantified Dr Tham's penalty at $20,000. As stated in the Grounds of Decision at [28], we are of the view that this quantum of penalty will serve to *not only* disgorge Dr Tham's ill-gotten gains, but *also* compensate for the dilution of the punitive effect of a striking off order that can arise given his intention to wind up his practice after the hearing.

(b) In assessing whether Dr Tham's penalty order is excessive, the SMC had essentially compared the quantum of the penalty ordered in the present case with those ordered in past cases. This is clearly wrong in principle. It is settled law that *each case must be decided on its own facts*. As we have expressly highlighted in the Grounds of Decision at [28(a)], Dr Tham's penalty order is higher than most of the precedents in **Annex F** because "there is little or no evidence on the amount of medication improperly prescribed" *in these precedents*. (We paused to highlight that the absence of evidence did not stop the Court of Three Judges and Disciplinary Tribunals in these precedents in ordering significant penalty of between $10,000 to $40,000.) In contrast to these precedents, there is clear evidence of (i) the extent of excessive prescription and (ii) the profit made in the present case.

(c) Finally, we find the SMC's reliance on *Wee Teong Boo* to be misplaced. There is nothing in the judgement of that case to show that

(i) the extent of profit made by the errant doctor, (ii) the SMC had submitted for a penalty order, and (iii) the Court of Three Judges have rejected such a submission. The SMC's reliance on *Wee Teong Boo* would have been more persuasive if all these three elements were present in that case.

Conclusion

10 For completeness, we note that the SMC has requested that its costs and disbursements in connection with the Application be paid by Dr Tham: Application at [2(2)]. This request is made despite the fact that Dr Tham did not do anything to cause the tribunal to impose the penalty order. As this issue did not arise before us, we will not comment further on this.

Prof K Satkunanantham	Dr Swah Teck Sin	Mr Kow Keng Siong
Chairman	Member	Judicial Service Officer