

***Singapore Medical Council v Wee Teong Boo* [2023] SGHC 180**
Applying the *Wong Meng Hang* sentencing framework for professional misconduct in the medical context

I. Executive Summary

The case of *Singapore Medical Council v Wee Teong Boo* [2023] SGHC 180 revolved around deciding the appropriate sentence for the respondent, Dr Wee Teong Boo (“**Dr Wee**”). Dr Wee had pleaded guilty to 20 charges of professional misconduct under section 53(1)(d) of the Medical Registration Act (Cap 174, 2014 Rev Ed) (“**MRA**”). The disciplinary tribunal (“**DT**”) ordered that Dr Wee be suspended from the Register of Medical Practitioners for 20 months, but the Singapore Medical Council (“**SMC**”) appealed against the sentence to the Court of Three Judges (“**HC**”), on the basis that it was manifestly inadequate.

In determining the appropriate sentence, the HC considered the sentencing framework set out in *Wong Meng Hang v Singapore Medical Council and other matters* [2019] 3 SLR 526 (“**Wong Meng Hang**”), which involved evaluating both the culpability of the offender and the extent of harm caused. The HC held that in determining the appropriate sentence for professional misconduct, a disciplinary tribunal must consider not only the individual charges, but should also assess the effect of the misconduct on the standing of the profession.

Further, as the statutory cap in section 53(2)(b) of the MRA limits the overall period of suspension that may be imposed by a disciplinary tribunal to three years, where an errant doctor has committed *multiple* counts of professional misconduct, it may be that a term of suspension would not adequately reflect the seriousness of the doctor’s misconduct. Thus, while not every errant doctor will be struck off in every instance where a disciplinary tribunal would have liked to impose a suspension that exceeds three years, the HC stressed that a disciplinary tribunal should “remain alive” to the possibility of striking the errant doctor off.

In this case, the HC held that Dr Wee’s misconduct was so serious as to render him unfit to remain as a member of the medical profession. As such, the HC ordered that Dr Wee be struck off from the Register of Medical Practitioners with immediate effect.

II. Material Facts

Dr Wee had been registered as a medical practitioner since 1977, and at the material time, he was carrying on his own practice at Wee’s Clinic & Surgery.

On 28 October 2016, the SMC received a complaint from the Ministry of Health about the manner in which Dr Wee prescribed benzodiazepines and codeine-containing cough mixtures. Subsequently, the SMC informed Dr Wee on 25 April 2018 that an investigation had been launched, and invited Dr Wee to submit a written explanation addressing, among other things, the clinical basis for his prescriptions of the benzodiazepines and codeine-containing cough mixtures. SMC then followed up with its investigations.

In 2021, the SMC ultimately decided to proceed with 20 charges of professional misconduct under section 53(1)(d) of the MRA. Seven of these charges related to Dr Wee’s inappropriate prescription of codeine-containing cough mixtures to seven patients, while three charges related to his inappropriate prescription of benzodiazepines to another three patients (the “**Inappropriate Prescription charges**”). The remaining ten charges pertained to his failure to keep adequate medical records in respect of these patients (the “**Inadequate Records charges**”).

Regarding the Inappropriate Prescription charges, Dr Wee prescribed the medicines to his patients at frequencies and/or in quantities that breached the Ministry of Health’s letter dated 9 October 2000 on the Sale and Supply of Cough Mixtures Containing Codeine (the “**Codeine Guidelines**”), and the

Ministry of Health’s Administrative Guidelines on the Prescribing of Benzodiazepines and Other Hypnotics dated 14 October 2008 (the “**Benzodiazepines Guidelines**”). The Codeine Guidelines provide that codeine-containing cough mixtures are not to be sold to the same patient within four days, while the Benzodiazepines Guidelines provide that benzodiazepines are not to be prescribed for a cumulative period longer than eight weeks.

Dr Wee pleaded guilty to the charges and was convicted accordingly. Dr Wee also consented to five charges being taken into consideration for the purposes of sentencing; these charges related to his failure to keep adequate medical records for another five patients (the “**TIC charges**”).

In its decision, the DT applied the sentencing framework in *Wong Meng Hang*, holding that Dr Wee’s culpability was medium and the harm caused was moderate, thus, ordering that Dr Wee be suspended from the Register of Medical Practitioners for 20 months.¹ SMC appealed against the sentence imposed by the DT, on the basis that it was manifestly inadequate. In his submissions for the appeal, Dr Wee continually justified that he had prescribed codeine-containing cough mixtures to the relevant patients as they were suffering from genuine conditions.

III. Issues on appeal

To determine whether the sentence imposed was manifestly inadequate, the HC considered the following issues:

- (a) Did the DT err in characterising Dr Wee’s culpability for the Inappropriate Prescription charges as medium rather than high?
- (b) If so, what was the appropriate sanction to be imposed on Dr Wee?

A. *Did the DT err in characterising Dr Wee’s culpability for the Inappropriate Prescription charges as medium rather than high?*

Before determining culpability, the HC first referred to the sentencing framework previously set out in *Wong Meng Hang*. There are four steps to this framework. *First*, the disciplinary tribunal or court evaluates the seriousness of the offence with reference to the parameters of harm and culpability. *Second*, the court identifies the applicable indicative sentencing range based on the following matrix. This matrix served only as a guide and can be departed from where appropriate to do so:

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

Third, the court identifies the appropriate starting point within the indicative sentencing range. Finally, the court considers if the starting point should be adjusted due to offender-specific aggravating or mitigating factors. As seen in the harm-culpability matrix, serious cases of professional misconduct may 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. The HC highlighted certain factors to consider in this regard:

¹ *SMC v Dr Wee Teong Boo* [2022] SMCDT 1.

- When the misconduct in question involves a flagrant abuse of the privileges accompanying registration as a medical practitioner;
- Where the practitioner's misconduct has caused grave harm;
- Where a 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; and
- Where the errant doctor has shown a persistent lack of insight into the seriousness and consequences of his misconduct despite the presence of any of the above factors.

The HC also considered how culpability should be determined. Culpability refers to the degree of blameworthiness disclosed by the offender's misconduct. The HC raised the following non-exhaustive factors as set out in the Sentencing Guidelines in assessing a doctor's culpability:

- the doctor's state of mind;
- the extent of premeditation and planning involved, including the lengths the doctor went to cover up his/her misconduct;
- whether the doctor was motivated by financial gain, and the extent of profits gained;
- the extent of departure from the standard of care or conduct reasonably expected of a medical practitioner;
- the extent and manner of the doctor's involvement in causing the harm;
- whether the treatment was an appropriate management option, and within the doctor's area of competence;
- the extent to which the doctor failed to take prompt action when patient safety or dignity was compromised;
- the urgency of the situation;
- the duration of the offending behaviour; and
- the extent to which the doctor abused his/her position of trust and confidence.

The HC noted that it was undisputed that the duration and frequency of Dr Wee's misconduct were significant; thus, his culpability was at least in the medium range. The question was whether the totality of Dr Wee's conduct justified the finding that his culpability for the Inappropriate Prescription charges was *high*. The HC held that Dr Wee's culpability was *high* (rather than medium), because he had no clinical basis or satisfactory explanation for his prescriptions. He had in fact known that his patients were dependent on codeine-containing cough mixtures and benzodiazepines, and had knowingly perpetuated their addictions.

(i) Dr Wee had no clinical basis for his prescriptions

For the first set of patients,² Dr Wee expressly acknowledged in his Letter of Explanation (where he explained the clinical basis for his prescriptions for his prescriptions of codeine-containing cough mixtures and benzodiazepines) that these patients suffered from dependency issues, and had tried to manage them to help remain "socially stable". However, the HC noted that it was plain that these patients were dependent on codeine-containing cough mixtures, and they had drug dependency issues. Furthermore, he had prescribed them codeine-containing cough mixtures for the "sole purpose of fuelling their addictions", and not on account of any underlying medical condition that they suffered from.

The HC rejected Dr Wee's argument that he planned to manage his patients' drug dependency issues by prescribing them diluted codeine-containing cough mixtures, and to turn them away from drug suppliers. The HC noted that Dr Wee did not provide any evidence that his approach was clinically sound or that the patients would otherwise have turned to illicit suppliers. Further, there was no evidence that he had tried to reduce the concentration of the codeine-containing cough mixtures that

² They were identified as P1, P2, P3, P11 and P13.

he prescribed over time. In short, he was abusing his registration as a medical practitioner as a licence to sell such drugs to his patients without any proper clinical basis. Dr Wee had essentially decided to perpetuate his patients' dependency issues by providing them with a ready and steady supply of codeine-containing cough mixtures. Dr Wee's conduct constituted a flagrant abuse of his privileges as a medical practitioner, and his culpability in respect of these patients could not be anything short of high.

For the second set of patients,³ the HC held that Dr Wee did not have any clear clinical basis for his prescriptions to these patients either, and that he must have been aware that his prescriptions were perpetuating his patients' drug dependency issues. These patients had all obtained prescriptions from Dr Wee frequently over an extended period. The frequency and duration of the prescriptions strongly suggested that these patients were dependent on such medications, or had become dependent on them as a result of Dr Wee's prescriptions. Indeed, the HC did not see how it could have escaped Dr Wee that all of them were likely suffering from dependency issues, and further that his prescription were perpetuating such issues.

The HC rejected Dr Wee's submission that his prescriptions were justified by genuine medical conditions presented by the patients, as it did not account for why he had prescribed codeine-containing cough mixtures and benzodiazepines at the frequency and for the duration that he did. Further, even if Dr Wee had been, as he claimed, unaware of the requirements under the Codeine Guidelines, which provide that codeine-containing cough mixtures are not to be sold to the same patient within four days, until July 2017, it did not explain why he had *persisted* in prescribing such medication even though his patients showed no improvement. In any event, he could not be excused for being unaware of the requirements of the Codeine Guidelines given his seniority as a medical practitioner. The HC noted that after a few weeks, a responsible and competent doctor would have stopped the prescriptions of codeine-containing cough mixtures and instead referred the patient to a specialist to determine the underlying cause(s) of the cough.

As such, the HC held that Dr Wee's conduct evidenced a blatant and systemic disregard for his patients' well-being, which, amply justified a finding of high culpability.

(ii) The DT placed undue weight on mitigating factors

The HC held that the DT had incorrectly ascribed mitigating weight to the findings that Dr Wee had been convicted of serious negligence amounting to professional misconduct, rather than intentional and deliberate misconduct; and that Dr Wee had not been motivated by financial gain. Instead, the relevant query was whether, on the facts of the present case, Dr Wee's conduct was sufficiently egregious as to warrant a finding of high culpability.

The HC held that even though the charges proffered against him asserted serious negligence, Dr Wee had in fact known that he had no clinical basis for his prescriptions. Specifically, in relation to the first set of patients, he had not simply been careless or reckless, but had deliberately prescribed codeine-containing cough mixtures to sustain these patients' addictions. Indeed, Dr Wee's culpability was similar to that of an errant doctor who had been convicted of intentional and deliberate misconduct. The HC thus sanctioned him accordingly. As to Dr Wee's lack of a profit motive, the HC stated that the absence of an aggravating factor is neutral and not mitigating.

In conclusion, the HC held that Dr Wee's culpability for the Inappropriate Prescription charges could not be characterised as anything short of high. Aside from the fact that the duration and frequency of Dr Wee's misconduct were significant, the motivations behind Dr Wee's prescriptions betrayed an utter disregard for his patients' well-being and his duties as a medical practitioner.

³ They were identified as P4, P5, P9, P10 and P15.

B. *The Appropriate Sanction to be Imposed on Dr Wee*

Given that the DT's finding that the harm caused by the Inappropriate Prescription charges was *moderate*, and the court's finding that Dr Wee's culpability was *high*, under the *Wong Meng Hang* sentencing framework it followed that the indicative sentencing range was a suspension of two to three years for each of the Inappropriate Prescription charges.

However, the HC stressed that the sentencing ranges set out in *Wong Meng Hang* were only a guide and could be departed from where appropriate to do so. Particularly in cases where an errant doctor faced multiple charges, each of which attracted a substantial term of suspension, it would be appropriate for a sentencing tribunal or court to consider if the doctor's overall misconduct warrants an order striking him or her off instead. While it should not be the case that an errant doctor will be struck off in every instance where a disciplinary tribunal would desire to impose a suspension that exceeds three years, a disciplinary tribunal should nonetheless remain alive to the possibility of striking the errant doctor off, in place of imposing a term of suspension. The issue at hand was whether Dr Wee's misconduct warranted an order striking him off. The HC held in the affirmative.

First, Dr Wee flagrantly abused the privileges of being a registered medical practitioner. Instead of gatekeeping access to addictive medication as he was supposed to do, he effectively served as a supplier of such drugs. *Second*, Dr Wee demonstrated a systemic disregard for his patient's well-being. The present case involved the highest number of patients in all precedent cases decided post-*Wong Meng Hang*, and was one of the most egregious cases of professional misconduct to date involving the inappropriate prescription of codeine-containing cough mixtures and benzodiazepines. *Third*, his continued attempts to justify his prescriptions suggested a persistent lack of insight into the seriousness of his misconduct. As such, his misconduct in relation to the Inappropriate Prescription charges was so serious as to render him unfit to remain a member of the medical profession.

While it was observed in *Wong Meng Hang* that striking off should be considered where a doctor's misconduct has caused grave harm, an order striking an errant doctor off is not contingent on a finding of severe harm. Thus, the fact that the present case involved a moderate level of harm did not bar an order striking Dr Wee off.

The HC also observed that Dr Wee's personal mitigating circumstances did not militate against an order striking him off. The primacy of public interest considerations in disciplinary cases means that an offender's personal mitigating circumstances do not carry as much weight as they typically would in criminal cases. Given the seriousness of Dr Wee's misconduct, the interest in ensuring fairness on account of his personal circumstances was eclipsed by the overriding need to uphold the standing of the medical profession and considerations of general deterrence. Moreover, Dr Wee's mitigating circumstances also had to be balanced against the fact that he was a senior member of the profession at the time of his misconduct, which meant his patients would have reposed a higher degree of trust and confidence in him.

The question of whether a sentencing discount was warranted on account of the delay in prosecution did not arise for the HC's consideration, given the decision to strike Dr Wee off. Nevertheless, the HC stressed that such a discount is not automatic or routine. In every case in which there has been a delay, all the circumstances have to be scrutinised to determine whether the application of a discount is appropriate and will not trivialise or undermine the sanction being meted out.