SINGAPORE MEDICAL COUNCIL DISCIPLINARY TRIBUNAL INQUIRY FOR DR GOH MIN YIH PETER ON 17 SEPTEMBER 2013, 22 TO 24 OCTOBER 2013 AND 18 FEBRUARY 2014

Disciplinary Tribunal:
Dr Yap Lip Kee - Chairman
Dr Tham Tat Yean
Dr Wong Sen Chow
Mr Daniel Koh - Lay Member

Legal Assessor:
Mr Andy Chiok
(M/s Michael Khoo & Partners)

Counsel for the SMC:
Ms Chang Man Phing
Mr Alvis Liu
Ms Jocelyn Ngiam
(M/s Wong Partnership LLP)

Counsel for the Respondent:
Dr Myint Soe
Mr S Govindaraju (Pupil)
(M/s MyintSoe & Selvaraj)

DECISION OF THE DISCIPLINARY TRIBUNAL

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

1. These proceedings arose out of a letter of complaint dated 8 December 2010 by the Ministry of Health (the "MOH") in respect of the Respondent, Dr Goh Min Yih Peter (the "Respondent").

2. In gist, the MOH's Complaint alleged that:

   (a) the Respondent was featured in an advertisement in The Straits Times which "*has created an impression that Dr Goh is qualified to perform blepharoplasty despite the contrary*", and

   (b) that "*Dr Goh might have performed blepharoplasty on patients even though he was not qualified to perform the procedure*".

3. When the Respondent learnt of the complaint made against him on 31 May 2011, he volunteered an explanation to the Complaints Committee. On 6 July 2011, the Complaints Committee wrote to the Respondent, inviting him to provide a written explanation as well as asking him various queries. The Respondent then provided an exculpatory statement dated 19 July 2011 to the Complaints Committee. The Complaint was then referred by the Complaints Committee to this Disciplinary Tribunal (the "DT") for a formal inquiry.

4. The Respondent faces 2 charges in this inquiry:

First Charge:

That you DR GOH MIN YIH PETER, a registered medical practitioner under the Medical Registration Act (Cap. 174), are charged that whilst practising at Advance Surgical Group Pte Ltd (previously known as Aesthetic Surgical Group) ("ASG"), you did, in an advertisement published in the Straits Times on 25 August 2009 ("the Advertisement"), a copy of which is annexed hereto as Annex A, publish or cause to be published statements that gave a false and/or misleading impression that you were qualified to perform blepharoplasty, even though you were not qualified to do so.

Particulars

(a) In the Advertisement, you were featured as a speaker on "SCARLESS Laser EyeBag Removal" for a seminar conducted by ASG.

(b) The Advertisement stated, inter alia,

"Get your ANSWERS from our EXPERIENCED Professionals/Experts on Effective, No Downtime Procedure with Instant Results."

(c) "SCARLESS Laser EyeBag Removal" is a blepharoplasty procedure.

(d) Under the Guidelines on Aesthetic Practices for Doctors which took effect from 1 November 2008, only plastic surgeons or ophthalmologists trained in oculoplasty are allowed to perform blepharoplasty.

(e) You are not a plastic surgeon or an ophthalmologist trained in oculoplasty.

(f) You had thereby given a false and/or misleading impression that you were qualified to perform blepharoplasty

and that in relation to the facts alleged, you have been guilty of professional misconduct under section 53(1)(d) of the Medical Registration Act (Cap. 174) (2004 Ed.).

Second Charge

That you, DR GOH MIN YIH PETER, a registered medical practitioner under the Medical Registration Act (Cap. 174), are charged that whilst practising at Advance Surgical Group Pte Ltd (previously known as Aesthetic Surgical Group) ("ASG"), from August 2009 to September 2009, you performed "SCARLESS Laser EyeBag Removal", a blepharoplasty procedure, on the patients set out in Annex B, even though you were not qualified to do so.

Particulars

(a) Under the Guidelines on Aesthetic Practices for Doctors which took effect from 1 November 2008, only plastic surgeons or ophthalmologists trained in oculoplasty are allowed to perform blepharoplasty.

(b) The "SCARLESS Laser EyeBag Removal" is a blepharoplasty procedure.

(c) You are not a plastic surgeon or an ophthalmologist trained in oculoplasty.

and that in relation to the facts alleged, you have been guilty of professional misconduct under section 53(1)(d) of the Medical Registration Act (Cap. 174) (2004 Ed.).

5. The Respondent contested both charges.

Undisputed facts

6. The following facts are undisputed:

(a) The Respondent is a General Surgeon and practiced with Advance Surgical Group Pte Ltd at the material time.

(b) The Respondent is not a plastic surgeon or an Opththalmologist trained in oculoplastic surgery.

(c) As part of his work at Advance Surgical Group Pte Ltd, the Respondent gave talks to the public from time to time, following the advertisements by Advance Surgical Group Pte Ltd. An example of such an advertisement is set out at Annex A of the Notice of Inquiry.

(d) The Respondent carried out Scarless Laser Eyebag Removal procedures on the 22 patients named in Annex B from August 2009 to September 2009. He disputes that this procedure is a blepharoplasty procedure.

(e) The Respondent ceased carrying out Scarless Laser Eyebag Removal procedures when the Ministry of Health sent a letter to the Advance Surgical Group Pte Ltd on 8 September 2009.

The First Charge

7. The Respondent raised objections on legal grounds in respect of the First Charge, contending that the charge is defective. We sought the advice of the Legal Assessor in respect of the objections taken. It was brought to our attention that the law requires that a charge must be clear as to the nature of the misconduct alleged, so as to enable a respondent to prepare his defence to it.

8. We find that the First Charge is defective because the wordings of various portions of the charge are so vague that the Respondent would not be able to know with certainty the case that he has to meet. These portions relate to how the Respondent, through the advertisement "*publish or cause to be published*" statements that gave a "*false and/or misleading*" impression.

9. The framing of the charge is vague because there can be different acts of misconduct alleged of the Respondent based on the present wordings. For example, is the Respondent charged with the publication of the statements in the advertisement or for causing the publication of the statements? To us, these are 2 different acts, perhaps depending on the extent of the participation of the Respondent in the advertisement. If so, what was the extent of his involvement? This was not stated in the charge. Further, is the charge against the Respondent one of conveying a false, a misleading or, a false and misleading impression? We cannot pinpoint with certainty the elements of the charge against the Respondent, and in this respect, we accept the Respondent's counsel's submission that the charge is vague, and hence defective.

10. We were advised of our power to amend the charge but we decline to do so. It is our view that on the evidence adduced at the inquiry, we cannot say with any degree of certainty that the Respondent was responsible for the contents of the advertisement. Although there is some evidence that the advertisement was calculated to mislead the public, the evidence shows that the Respondent only checked his credentials that were stated in the advertisement, but did not

provide the input for the other contents of the advertisement. From the evidence, it appears that the idea of the advertisement, and the contents of it originated from the main person having the management of Advance Surgical Group Pte Ltd i.e. Dr GSH. In fairness to Dr GSH, we did not have the benefit of his version of the facts because he was not called as a witness in this inquiry.

11. This is not to say that a registered medical practitioner cannot be liable for the contents of a publication that did not originate from him. Given the right set of circumstances, there can be liability. However, in the present case, with the limited role of the Respondent for the contents of the advertisement (apart from the aspect of his credentials), we do not think that he could be held to be largely responsible for the contents of the advertisement. We therefore cannot see how, on the evidence, the First Charge can succeed even if it was not defective in the first place.

12. For the above reasons, we order that the inquiry in respect of the First Charge be discontinued.

The Second Charge

13. We now turn to the Second Charge.

14. It is undisputed that the relevant portion of the Guidelines on Aesthetic Practices for Doctors (Updated in October 2008) (the "October 2008 Guidelines") states:

Type of treatment and procedure	**Minimum level of Competence required***	**Appropriate premises at which procedure can be done**	**Requisite no. of procedures performed****
Invasive			
Blepharoplasty (including double eyelid)	Plastic Surgeon / Opththalmologist trained in oculoplastic surgery	OT / Clinic	20
*Minimum level of competence means competence necessary to carry to the procedure and manage the anticipated serious complications. **Doctor must at least fulfil the requisite number for the preceding 2 years (i.e. from 1 October 2006 to 30 September 2008)			

15. The Respondent's case is:

(a) The Scarless Laser Eyebag Removal procedure that he performed was not a "blepharoplasty" procedure within the October 2008 Guidelines.

(b) At the material time in August to September 2009, there was ambiguity whether the Scarless Laser Eyebag Removal procedure was blepharoplasty. A comparison of the versions of the Guidelines in July 2008 and October 2008 is a basis for this point.

(c) The Respondent honestly believed that the Scarless Laser Eyebag Removal procedure that he performed was not blepharoplasty. This was supported by his clinical notes and his colleagues. There was no intention by him to perform blepharoplasty.

(d) The October 2008 Guidelines is not law.

Whether Scarless Laser Eyebag Removal procedure is blepharoplasty?

16. In his Closing Submissions, the Respondent contended that there is "no generally accepted definition/description of blepharoplasty or "invasive" blepharoplasty.[1]" His argument is that there is reasonable doubt whether what he had performed was in fact blepharoplasty.

17. From the Respondent's own account, the Scarless Laser Eyebag Removal performed by the Respondent is a procedure where fat pads are removed from the lower eyelids. The incision to gain access to the fat pads is made using laser or electrical needle cautery. The incision is made in the lower conjunctiva (the inside of the eyelid). It is undisputed that this is the transconjunctival approach.

[1] See paragraph 168 of the Respondent's Closing Submissions.

18. In contrast, in the transcutaneous approach, the incision is made on the outside of the eyelid. In his letter dated 19 July 2011 to the Complaints Committee, the Respondent compared[2] the transconjunctival and transcutaneous approaches. The transconjunctival approach (which was the procedure performed by the Respondent) was labelled as "Transconjunctival Eyebag Fat Removal" while the transcutaneous approach was called the "Formal Blepharoplasty Transcutaneous Technique". The Respondent's case is that because the Scarless Laser Eyebag Removal procedure performed by him adopted the transconjunctival approach, it was not blepharoplasty (which uses the transcutaneous approach).

19. The Respondent's case is also that because of the element of "plasty" in "blepharoplasty", there must be some form of surgical reconstruction work, which was absent in the Scarless Laser Eyebag Removal procedure that he performed.

20. On the other hand, the SMC relied on the evidence of DrPE, the Head of Oculoplastic Service in Singapore National Eye Centre, that the Scarless Laser Eyebag Removal is a blepharoplasty procedure since it was "*performed to reduce eyebag or tear through deformities that typically develop in middle age*". Further, "*in the context of aesthetic practice, the definition of blepharoplasty is "a surgical procedure performed on upper or lower eyelid with an aim of improving the appearance of eyelid or periocular area*".

21. The medical literature shows that whether the transconjunctival approach or transcutaneous approach is adopted for removal of fat pads from the eyelids, the procedure is blepharoplasty:

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[2] The comparison appears at pages 25 and 26 of the AB1.

(a) In the Basic and Clinical Science Course, Section 7: Orbit, Eyelids, and Lacrimal System published by the American Academy of Ophthalmology (2009-2010)[3], it is stated:

> **1.** "**Lower blepharoplasty**
> 2. Lower eyelid blepharoplasty, almost always performed for cosmetic purposes, is most often accomplished through a transconjunctival incision. …"

(b) In *Principles and Practice of Ophthalmology*, Albert & Jakobiec, at page 3476[4],

> "Lower eyelid blepharoplasty may be accomplished via a transcutaneous or transconjunctival approach. The advantages of the transconjunctival approach include the absence of a visible scar, a reduced incidence of injury to the orbital septum, and direct surgical access to the lower eyelid fat pads. The transcutaneous lower eyelid blepharoplasty allows direct access to address orbicularis hypertrophy or skin access at the time of fat excision. Both techniques allow direct access to the midface, as well as allow fat transposition over the inferior orbit rim as desired to reduce the nasojugal fold. …" (underlining added)

(c) In the article "*Lower Eyelid Blepharoplasty: Analysis of Indications and the Treatment of 100 Patients*" Samieh et al, the authors started by stating:

> "Traditionally, lower lid blepharoplasty has been confined to a choice of skin or skin-muscle flap transcutaneous blepharoplasty. In the past decade, in particular, various new techniques and technologies have emerged, altering our ability to treat the lower

[3] This is at Tab-1 of the SMC's Bundle of Medical Literature.

[4] This is produced at page 45 of AB1.

> eyelids. These techniques include transconjunctival blepharoplasty, a variety of canthopexy procedures, fat-conserving or fat-replacing methods, wedge excision, and laser resurfacing techniques, and they allow a more individualized approach based on variations in anatomical features and patients goals." (underlining added)

(d) In the same article, the authors also referred to "*transconjunctival lower lid blepharoplasty*.[5]" This supports the fact that while blepharoplasty may be carried out by either the transconjunctival or transcutaneous approaches, both are forms of blepharoplasty, albeit the distinction lies in the manner by which it is carried out.

(e) In the article "Lower-lid blepharoplasty"[6], Bassichis, it is stated:

> "The indications for lower-lid blepharoplasty include rejuvenation of the aesthetic appearance of the eyes, a less-tired look, minimized lower-lid redundancy, and/or to correct eyelid asymmetries. Although the medical literature overflows with approaches to aesthetically alter the lower lid, there are 3 basic surgical approaches to address varying degrees of fullness of the lower lid: namely, (1) the trans-cutaneous skin clap, (2) the transcutaneous skin-muscle flap, and (3) transconjunctival procedures. Each of these approaches involves removal of various amounts of skin, muscle, and fat to improve the appearance of the lower lid and, therefore, each has slightly different indications.
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> …
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> In patients with minimal or no excess fat and no laxity in the orbicularis oculi muscle, a transcutaneous skin flap may be the

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[5] See the last paragraph at page 1302 of this article at page 30 of AB1.

[6] This article is at Tab 3 of the SMC's Bundle of Medical Literature.

> favoured option. This is the most conservative approach, and it yields the most limited results of the techniques presented here.
> …
> For the patient who presents with changes related primarily to pseudoherniated lower lid fat but who retains adequate skin elasticity, the transconjunctival blepharoplasty may be a better option. …" (underlining added)

(f) We would add that while procedures may deploy different methods of achieving the same end, for example deploying a laser as opposed to a scalpel to make the incision, the use of different methods does not alter the nature of the underlying procedure.

The expert witnesses

22. Apart from the medical literature presented during the inquiry, we are also impressed by the testimony of Dr PE who testified that both the transconjunctival and transcutaneous approaches are not new methods, but that both had evolved as different methods of blepharoplasty. Counsel for the Respondent did not show any evidence of a medical nature to alter or contradict her views.

23. The Respondent called Dr DE1 (a plastic surgeon) and Dr DE2 (a general surgeon) as expert witnesses. After hearing their testimonies, we are not convinced that there was ambiguity whether Scarless Laser Eyebag Removal procedure is blepharoplasty. Notably, after being taken through the medical literature, both experts agreed that the said procedure is blepharoplasty. There was no convincing medical literature that was tendered by the Respondent or his experts that showed otherwise.

24. To us, the essential hallmarks of a blepharoplasty procedure are (1) the removal of various amounts of skin, muscle, and/or fat (2) to improve the appearance of the lower lid. These elements are present in the Scarless Laser

Eyebag Removal procedure, as described by the Respondent to the Complaints Committee. That procedure is a blepharoplasty procedure.

25. Turning to the Respondent's argument that there was "plasty" element in the Scarless Laser Eyebag Removal procedure such that he did not think that it qualifies as a blepharoplasty, our view is that this thinking is contrary to the medical literature which clearly treats the transconjunctival approach as blepharoplasty, even though there may be no element of reconstruction. It is also noteworthy that the reasonableness of this argument for the benefit of the Respondent was not put to Dr PE when she was cross-examined.

The comparison between the July 2008 and the October 2008 Guidelines

26. The Respondent contended that there was confusion about the definition of blepharoplasty. He relied on the argument that "Double Eyelid Surgery was excluded in the July 2008 Guidelines, but specifically included in the October 2008 Guidelines.[7]" The point made is that because there was confusion, it was reasonable that the Respondent had doubts whether the Scarless Laser Eyebag Removal procedure was blepharoplasty when he undertook the procedures.

27. While there was a recategorisation of double-eyelid as part of blepharoplasty in the October 2008 Guidelines, we do not think that this shows that there was confusion about what blepharoplasty entails for the purpose of the present case. In the first place, this inquiry is not concerned with the double eyelid procedure, so there should be no confusion on the Respondent's part that arises from this. Secondly, apart from the inclusion of double eyelid procedure under blepharoplasty, under both the July 2008 and the October 2008 Guidelines, blepharoplasty is a procedure which has to be performed only by a plastic surgeon or an Ophthalmologist trained in oculoplastic surgery. Finally, in both Guidelines, the double eyelid procedure had to be carried out by a plastic

[7] This argument was stated at paragraph 61 of the Respondent's Closing Submissions.

surgeon or an Ophthalmologist trained in oculoplastic surgery so that should not mislead the Respondent.

28. The Respondent criticised the October 2008 Guidelines for not setting out a definition of blepharoplasty. We do not think that the lack of a definition in the Guidelines entitles a medical practitioner to ascribe any definition that he may deem appropriate. In the first place, our view is that the medical literature is clear that the transconjunctival procedure is blepharoplasty. If a medical practitioner like the Respondent wanted to carry out a particular procedure and is unsure whether that procedure is regulated by the Guidelines, the onus is on him to seek clarification from the SMC as the regulating authority. The alternative would be to risk running afoul of the Guidelines.

29. In any case, by August 2009, the Respondent should not concern himself with the July 2008 Guidelines since it had been superceded by the October 2008 Guidelines. The October 2008 Guidelines had been in operation for almost a year by August 2009. Indeed, there is no evidence that when he decided to carry out the Scarless Laser Eyebag Removal procedure in August 2009, the Respondent had referred to either the July or October 2008 Guidelines. He only referred to them in September 2009 when he received a letter from the MOH.

<u>The belief of the Respondent when he performed the procedures</u>

30. The Respondent claimed that he did not know that the Scarless Laser Eyebag Removal procedure was blepharoplasty. This was the case because he did some research on the internet on Scarless Laser Eyebag Removal and did not find any link to blepharoplasty.

31. On the research that he conducted, the Respondent testified:

"Prosecution: Just tell me did you do any research or study on this procedure <u>to make sure scarless did not fall within blepharoplasty</u>?

Respondent: I googled it. I pubmed searched it. I asked some of my friends, including GPs doing it at that time. That was the extent of the research I did.

Prosecution: What did you google?

Respondent: Scarless Eyebag Removal."

(underlining added)

32. We do not think it is reasonable that the Respondent used "Scarless Eyebag Removal" as keywords for his search, if the intention was to ascertain that the said procedure is not blepharoplasty. Since the Respondent's evidence is that he wanted to know whether the procedure was blepharoplasty, it would have been reasonably prudent of him to investigate the nature and details of blepharoplasty and compare it with the Scarless Eyebag Removal that he was going to perform.

33. We are of this view because with his experience and seniority as a general surgeon, the Respondent ought to have some working knowledge of blepharoplasty, contrary to his claims that he did not. Even if he did not have that working knowledge as he professed, since the Respondent was practising with a group practice specialising with aesthetic medical procedures, he ought to be familiar with the October 2008 guidelines that regulate aesthetic medical procedures. It appears that he was not when he performed the procedures. It was only "*… in September 2009, when [the Respondent] personally reviewed the MOH guidelines on "Aesthetic Practices for Doctors", [he] realised the ambiguity and possible misinterpretations of what could constitute a "Blepharoplasty" ….*"[8]

[8] This was the Respondent's own account at paragraph 10(c) of his letter dated 19 July 2011 to the Complaints Committee.

34. We would add that the Respondent's own expert witnesses testified that they would have gone to the textbooks and medical literature to look up the details of blepharoplasty. We are of the view that at that time, the Respondent did not take sufficient care to conduct his research.

35. Apart from that, there is evidence that the Respondent was wrongly assured that the Scarless Laser Eyebag Removal procedure would not breach the Guidelines:

    (a) The Respondent formed the view that the Scarless Laser Eyebag Removal procedure was not blepharoplasty, since there was no "plasty" reconstruction element in the said procedure. This was based on his own thinking and interpretation, unsupported by research.

    (b) This mistaken view was "reinforced"[9] by the Respondent's colleagues.

    (c) It was further fortified by the Respondent's own observation that "many General Practitioners and GP Aesthetic doctors were openly doing this procedure at that time and even advertising on their clinic facades.[10]"

    (d) The Respondent was assured by Dr GSH that the Scarless Laser Eyebag Removal was not blepharoplasty. Dr GSH purportedly showed him websites that the procedure in question was not banned by the guidelines[11].

36. It is noteworthy that the Respondent's own colleagues, (apart from Dr GSH) being plastic surgeons, had purportedly reinforced his incorrect view that the Scarless Laser Eyebag Removal procedure was not blepharoplasty. They were

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[9] See paragraph 5 of the letter dated 31 May 2011 to the Complaints Committee by the Respondent.

[10] This is also contained at paragraph 5 of the letter dated 31 May 2011 to the Complaints Committee by the Respondent.

[11] See paragraph 88 of the Respondent's Closing Submissions.

not called as witnesses to support this aspect of his evidence. We are surprised at this when the Respondent's evidence was that he had closely observed[12] them performing the Scarless Laser Eyebag Removal procedure, and there would have been plenty of opportunity for a discussion on whether the procedure is blepharoplasty.

37. It is also doubtful whether the Respondent's colleagues would have treated the Scarless Laser Eyebag Removal procedure as not blepharoplasty. We note that in certain portions of the records supplied by Advance Surgical Group Pte Ltd, the procedure carried by the Respondent was recorded as "Transconjunctival Blepharoplasty"[13].

38. It is also unclear as to what websites were referred to by Dr GSH to the Respondent, which purportedly showed that the Scarless Laser Eyebag Removal procedure was not blepharoplasty, and no such evidence was adduced by the Respondent during the inquiry.

39. We do not think that the Respondent had taken reasonable steps to ascertain the nature of the Scarless Laser Eyebag Removal procedure that he was to perform. Given his standing and seniority, we would have expected him to be more careful and to exercise more care to ensure that the October 2008 Guidelines would not be breached. This is all the more so when the Respondent was aware that the procedure is an aesthetic one and the patients were participants to the "fishing hook[14]" talks provided by him. The October 2008 Guidelines should have been the Respondent's first port-of-call if there was doubt, and if he had any doubt, he should have sought a clarification from the MOH / SMC. This he failed to do.

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[12] See paragraph 7 of the Respondent's Closing Submissions. This was also stated by the Respondent at paragraph 10(b) of his letter dated 19 July 2011 to the Complaints Committee.

[13] For an example of such a record see page 131 of AB1.

[14] The Respondent had testified that the purpose of the talks was marketing, akin to setting a "fishing hook" for patients.

40. We are also of the view that it was misguided of the Respondent to rely on the fact that there were other practitioners carrying out the procedure in breach of the October 2008 Guidelines to justify his conclusion that the procedure was not regulated. Guidelines issued by the regulating authorities are often necessary to address a proliferation of undesired practices by medical practitioners, often driven by profit. The medical profession must be on its guard against attempts by practitioners to subvert the regime of regulation. It is clear to us that one method that may be deployed to frustrate regulation is to attach labels to a regulated procedure or calling it by another name. While changing the nomenclature may serve to confuse, it does not transform a regulated procedure into an unregulated one. It is therefore unsurprising that there would be many advertisements or websites of practitioners advocating "eyebag removal procedures" when in reality what was being carried out was blepharoplasty. As a senior general surgeon, this should have been operative in the Respondent's mind but it was not.

41. We would add that the argument that there were many practitioners indulging in an illicit practice does not legitimise such a practice. It may well be mitigating, but it does not take away the liability of any medical practitioner for doing so.

42. On the evidence, we find that the Respondent had disregarded or downplayed his obligation to consider whether he was qualified to perform the procedure to comply with Dr GSH's demands that he perform the procedure. Dr GSH assigned the 22 patients on whom the Respondent performed the procedure[15]. There is evidence that at that time, the working environment was such that the Respondent "would have to agree to whatever was told to him by Dr GSH"[16] and that the Respondent was doing Dr GSH's bidding[17]. Being a medical practitioner of such seniority, the Respondent ought to have ensured that what

[15] This is stated at paragraph 118 of the Respondent's Closing Submissions.

[16] This was stated when the Respondent addressed Dr ST's evidence at paragraph 66 of the Respondent's Closing Submissions.

[17] See the evidence of the Respondent reproduced at paragraph 91 of the SMC's Closing Submissions.

he was tasked to do by Dr GSH was not in breach of the October 2008 Guidelines.

The nature of the Guidelines

43. We now turn to the nature of the October 2008 Guidelines. The Respondent stated that the nature of the Guidelines is not law. The point being made is that if there is any misinterpretation of the Guidelines, then it is a mistake not of the law (which is not a defence), but a mistake of fact (which is a defence).

44. We note the obligation of every registered practitioner to observe the SMC's pronouncement on professional matters and professional ethics. While Regulation 26 of the Medical Registration Regulations 2010 was referred to by the SMC in its Submissions, at the material time in 2009, the operative provision was Regulation 17 which reads:

> "Professional conduct and ethics
> 17. Every registered medical practitioner shall observe the Medical Council's pronouncements on professional matters and professional ethics issued from time to time."

45. We are of the view that the October 2008 Guidelines seek to strike a balance between the regulation of aesthetic practices on one hand, and the carrying out of such practices by medical practitioners on the other. It was drafted by the SMC in consultation with the College of Family Physicians and the Academy of Medicine, Singapore. With regard to the procedure of blepharoplasty, it falls within the category of invasive procedures where such procedures have to be carried out by more qualified practitioners. The objective of such Guidelines is the protection of the public from being subject to medical treatment by practitioners without the requisite training, and is an important objective. The seriousness of medical practitioners adhering to the Guidelines is underlined by the warning that a breach of it may result in disciplinary actions by the SMC.

46. We do not think that a misinterpretation of the requirements in Guidelines is a mistake of fact that affords a medical practitioner a defence. While this may be the case where there was ambiguity as to the meaning or intent of a Guideline, in the present case we do not think that that was anything ambiguous about the meaning of blepharoplasty. The medical literature is clear that the procedure carried out by the Respondent was blepharoplasty. This was something that could have been ascertained by the Respondent without too much difficulty.

Was there professional misconduct?

47. We note the Respondent's argument that by paragraph 25 of the October 2008 Guidelines, a breach of it would only bring disrepute to the medical profession, and thus could not amount to professional misconduct.

48. Notwithstanding the wording of paragraph 25, we are inclined to agree with the SMC that the Second Charge warranted a charge of professional misconduct. In the first place, this infraction was committed by the Respondent who is a senior medical practitioner. As stated above, the intention of the relevant Guidelines in this inquiry is the protection of the public from the danger of procedures being carried out by practitioners without the requisite training or qualification. While there is no evidence of harm caused to the 22 patients on which the Respondent operated upon, the fact remains that the Respondent had carried out blepharoplasty when he was not allowed to do so by the Guidelines. This could have potentially dangerous outcomes for his patients.

49. Further, the breaches committed by the Respondent were committed in the course of his work as a surgeon and in his professional capacity. This is unlike the situation where, say, a practitioner is found guilty of carrying out low evidence-based aesthetic treatments in breach of these Guidelines.

50. We therefore find that the Respondent is guilty of the Second Charge as framed, and invited his counsel to address us in mitigation.

Sentencing

51. On the matter of an appropriate sentence in respect of the Second Charge, Counsel for the Respondent urged that leniency be showed to him, and stated the following points in mitigation:

(a) The Respondent is a first offender with a clean record.

(b) The Respondent had contributed extensively to medical science, including humanitarian efforts.

(c) Numerous testimonials from his peers were tendered on his behalf.

(d) The Respondent's financial situation is weak, following his matrimonial woes.

(e) It was also highlighted that a sentence involving a period of the suspension of the Respondent's registration as a medical practitioner would also have an impact on the staff of his clinic.

52. On the other hand, counsel for the SMC urged that an appropriate sentence would include a period of suspension. It was pointed out that the procedure could potentially harm the patients involved and the Respondent had carried out a procedure that he was not qualified to perform.

53. It is our views that the following are relevant factors in respect of the sentencing of the Respondent:

(a) The precedents cited by both counsel were not directly relevant to the facts of the present case.

(b) The foremost consideration was that there was no evidence of harm to the patients. If there was evidence of harm to patients, a period of suspension must be incorporated as part of the punishment.

(c) The Respondent was a minority 20% shareholder of the Advance Surgical Group Pte Ltd (previously known as Aesthetic Surgical Group). It was not the Respondent's case, nor was it his evidence that he did the procedure without charge.

(d) Any punishment imposed must be reflective of the seriousness of the misconduct. In the present case, we are of the view that the misconduct is a serious one because of the potential harm and because there was a direct infringement of the Guidelines, which we had already expressed that there should be no ambiguity as to the meaning of blepharoplasty. The punishment must send a message to medical practitioners that Guidelines issued by regulators cannot be summarily ignored. A message must also be sent to medical practitioners who attempt to evade the spirit of Guidelines such as the October 2008 Guidelines by relabeling the regulated medical procedures.

(e) It is also relevant that the procedure was carried out by the Respondent not on a single occasion but on 22 occasions.

(f) The new regime of punishment under the Medical Registration Act 2010 is also a relevant factor. Fines under the previous legislation could only be imposed to a maximum of $10,000 which in our view is inadequate today. The maximum fine which can be imposed now is $100,000.

54. It is our decision that the appropriate sentence for the Respondent is:

(a) that the Respondent shall be fined a sum of **$15,000.00**;

(b) the Respondent shall be censured; and

(c) that the Respondent shall provide a written undertaking to the SMC that he will not engage in the conduct complained of, or any similar conduct.

Costs of the inquiry

55. We had discontinued the proceedings in respect of the First Charge. This would have an impact on the order for costs because it will be unfair if the Respondent bears costs in respect of the First Charge. At the same time, we do not think that the time and effort taken for the both charges should be apportioned equally.

56. We are of the view that more time was taken to adduce the evidence in respect of the Second Charge. In particular, the issue whether the Scarless Laser Eyebag Removal procedure was a blepharoplasty procedure took up much of the time spent in this inquiry. All of the expert witnesses were called, and the medical literature was provided as evidence on this issue.

57. For the above reasons, we are of the view that the Respondent should bear 70% of the costs of these proceedings, including the cost of the Legal Assessor.

58. We also order that the grounds and outcome of this inquiry be published.

59. The hearing is hereby concluded.

Dated this 18th day of February 2014.