SINGAPORE MEDICAL COUNCIL DISCIPLINARY INQUIRY AGAINST DR AAY (PATIENT'S COMPLAINT) HELD ON 18-20 FEBRUARY, 31 OCTOBER AND 2-4 NOVEMBER 2009

Disciplinary Committee:
Dr Yap Lip Kee - Chairman
A/Prof Siow Jin Keat
Dr Yii Hee Seng
Mr Mark Goh

Legal Assessor:
Mr Thean Lip Ping (M/s Khattar Wong & Partners LLP)

Prosecution Counsel:
Mr Tan Chee Meng S.C.
Ms Josephine Choo
Mr Loke Hsi-Yen
(M/s WongPartnership LLP)

Defence Counsel:
Mr Lek Siang Pheng
Mr Melvin See
Mr Benjamin Yam
(M/s Rodyk & Davidson LLP)

VERDICT (AS DELIVERED FIRST)

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

1. The decision of the Committee is as follow:

   (a) On the first charge, the Committee finds that the charge has been proven beyond reasonable doubt and the Committee finds the Respondent, Dr AAY guilty of the charge.

   (b) On the second charge, the Committee is not satisfied that the Prosecution has proved its case beyond a reasonable doubt.

2. Accordingly the Committee acquits the Respondent, Dr AAY of the second charge.

3. The Committee will give its Grounds of Decision in writing shortly.

SENTENCE

4. The Disciplinary Committee is of the opinion that it would be appropriate to make the following order pursuant to Section 45(2) of the Medical Registration Act:

   (a) that you, Dr AAY be fined the sum of $10, 000;

(b) that you be censured;

(c) that you give a written undertaking to the Medical Council that you will not engage in the conduct complained of or any similar conduct; and

(d) that you pay 50% of the costs and expenses of and incidental to these proceedings, including the costs of the solicitor to the Council and the Legal Assessor.

5. The hearing is hereby concluded.

Dated this 4th November 2009.

GROUNDS OF DECISION OF THE DISCIPLINARY COMMITTEE

1. Before the Disciplinary Committee (the "Committee"), two charges were brought against Dr AAY (the "Respondent") and they are as follows:

(a) The first charge is that, whilst practising at the Clinic A, he did, during the period from around October 2005 to December 2005, when one Ms P (NRIC No. SXXXXXXX/X) ("the Patient") was under his management, practised under a name, title or description which falsely represented or otherwise implied to the Patient that he was a fully trained and accredited specialist or alternatively, he held himself out as a person having the qualification or experience of a specialist, in the practice of plastic surgery. The particulars relied on in respect of this charge are:

(i) That he orally represented to the Patient that he was a fully trained and accredited specialist plastic surgeon, which was untrue; and/or

(ii) That he caused to be published the following statements concerning himself and/or his practice on the website of Clinic A (website redacted), which statements when read with the said oral representations were misleading, or created a misleading impression, as to his accreditation, qualification or experience:

> "I was also sent on a scholarship to the US and trained at Johns Hopkins University. My postgraduate surgical training brought me to Edinburgh and Glasgow, where I was admitted to both Royal Colleges of Surgeons…… To complete

> my path to Cosmetic Surgery, I revisited the UK to complete a one year Fellowship in Cambridge. In the medical profession, academia and career are synergistic, so we work, do research and learn, all at the same time."

and that in relation to the facts alleged, he has breached his duty of care and has been guilty of professional misconduct under section 45(1)(d) of the Medical Registration Act.

(b) The second charge is that, whilst practising at the Clinic A, during the period from around 22 December 2005 to March 2006, Dr AAY failed to provide the Patient with competent treatment and care in carrying out a liposuction procedure and in the post-operative treatment of the Patient. The particulars relied on in support of this charge are:

(i) That the incision sites, which he made over visible aspects of the Patient's thighs, were unconventional and not in accordance with acceptable liposuction procedure;

(ii) That the 18 incisions which he made were excessive;

(iii) That he caused widespread deformity throughout the aspirated areas resulting in uneven concavities on both of the Patient's thighs; and/or

(iv) That postoperatively, there were seromas following the liposuction procedure, which were not properly treated;

and that in relation to the facts alleged, he has breached his duty of care and been guilty of professional misconduct under section 45(1)(d) of the Medical Registration Act.

2. At the conclusion of the hearing, the Committee found that the first charge had been proven beyond reasonable doubt and accordingly found Dr AAY guilty of the charge. As for the second charge, the Committee was not satisfied that, on the evidence, the charge had been made out and accordingly acquitted him of that charge.

3. After hearing a mitigation plea from counsel for the Respondent, and also submissions from both counsel on the costs and expenses to be borne by the Respondent, and taking into account all the relevant circumstances, the Committee made the following orders pursuant to section 45(2) of the Medical Registration Act:

(a) that the Respondent be censured;

(b) that the Respondent be fined the sum of S$10,000;

(c) that the Respondent gives a written undertaking to abstain in future from the conduct complained of or any similar conduct; and

(d) that the Respondent pays one half of the costs of these proceedings to SMC, including those of the solicitor of the SMC and the Legal Assessor.

4. The Committee now gives its reasons for its decision.

5. Before dealing with the evidence adduced in these proceedings, the Committee should at this stage deal with a question relating to the first charge. At the conclusion of the hearing of the evidence and before counsel began their closing submissions on the two charges, the Committee raised with counsel for both parties the question of whether the first charge can be maintained having regard to the charges that were brought against the Respondent in February 2009 and to which he pleaded guilty. One of the charges (being the first charge there) was as follows:

> that Dr AAY, a registered medical practitioner who is not a registered specialist under section 22 of the Medical Registration Act (Cap. 174), during the period from around June 2005 to July 2006, whilst practising at Clinic A, represented that he was a specialist and/or consultant, alternatively, held himself out as a person having the qualification or experience of a specialist and/or consultant in the practice of plastic surgery or cosmetic surgery,
>
> <u>Particulars</u>
>
> (a) He had, in his application form to the Singapore Medical Association dated 28 June 2005, stated “Private Specialist” as

his area of practice and further stated that his "specialty" was in cosmetic surgery;

(b) He had, in an email dated 27 August 2005, stated in response to a query by one D as follows: "Dear AAY, Thank you for your prompt reply. I did a check of the Medical Council of specialists, but I couldn't find your name on the roster for plastic surgery" replied: "Unlike other Singapore surgeons, my training/accreditation is almost entirely in UK/Europe", and

(c) He had, in an email dated on or around July 2006 in response to a query by one Ms C as follows: "Are you a very good plastic surgeon/doctor and skin DR? how many years in school training do you have? Where u are training? Do you do operation on may china girl face" replied: "The Clinic A has some of the best equipment and most experienced Plastic Surgeons in Singapore",

and that in relation to the facts alleged, he has contravened Section 65(1)(a) of the Medical Registration Act.

6. The current first charge (the "Current First Charge") now before the Committee is similar or substantially similar, in certain respects, to the first charge in the previous proceedings (the "Previous First Charge") brought against the Respondent before another Disciplinary Committee in February 2009. In view of this similarity, the Committee was concerned that principle of "double jeopardy" might well apply, and therefore requested counsel to address the Committee on that question first, which they did. In the course of their submissions, counsel referred us to the relevant passages of the judgments in the following cases:

Lee Wee Harry v Law Society of Singapore [1984] SLR 41;

Connelly v Director of Public Prosecution [1964] AC 1254; and

Gunalan s/o Govindarajoo v Public Prosecutor [2000] 3 SLR 430

7. Having heard and considered the submissions, and on the advice of the Legal Assessor, Mr L P. Thean, the Committee came to conclusion that the principle of "double jeopardy", or what the counsel call the doctrine of *autrefois convict* and *autrefois acquit*, does not apply. The Committee finds that the two charges, though similar in some respects, are not the same or substantially the same. The two charges embody two separate offences committed on two different occasions. The gravamen of the Previous First Charge is that the Respondent falsely represented himself as a specialist and/or consultant or held himself out as a person having the qualification or experience of a specialist and/or consultant in the practice of plastic surgery or cosmetic surgery and that these representations or holding out were made: (i) in the application form dated 28 June 2005 to the Singapore Medical Association; (ii) in his email dated 27 August 2005 in response to the query of one D; and (iii) in his email in July 2006 in response to a query by one Ms C. The Current First Charge was that, during the period from October to December 2005, the Respondent falsely misrepresented orally to the Patient that he was fully trained and accredited as a specialist in plastic surgery or held himself out as a person having the qualification or experience of a specialist in plastic surgery and this representation was elaborated or corroborated by the information given in the website of his clinic. The offence contained in the Previous First Charge and that contained in the Current First Charge are different and are not the same or substantially the same. Hence, the decision of the Committee is that the Current First Charge can be maintained against the Respondent.

8. The Committee now turns to the evidence adduced in respect of the two charges. The evidence on the first charge was mainly that of the Patient. Her evidence was essentially that at a Tatler Ball on or around October 2005, Dr AAY claimed that he had returned from his overseas medical training and he was a Plastic Surgeon and was "one of few in Singapore who had been personally trained by the inventor of tumescent technique, Dr B, in Country B." After this meeting, she went to the website to satisfy herself that he was a specialist Plastic Surgeon.

9. She consulted Dr AAYat his newly opened clinic on 9th December 2005 and there were discussions about the work of other plastic surgeons to whom Dr AAY compared himself.

10. After the consultation, she took pains to conduct her own research. In her discussions, she referred to high profile plastic surgeons such as Dr W and Dr H. She also consulted Dr JC.

11. Prices were compared between Dr AAY and Dr C and the choice of Dr AAY was due to prices and her preference for Dr B's Tumescent Microcannula Liposuction.

12. The Respondent denied what the Patient said. His evidence was that he never said to the Patient that he was a plastic surgeon or that he had the qualification and experience of a specialist qualified to do plastic surgery.

13. Dr AAY did not dispute that he had told the Patient of his overseas training and work experiences, that he was trained in "Cosmetic Surgery" and his Consultant appointment in "Cambridge".

14. He had in his testimony confirmed that he commented on the otoplasty procedure done by another plastic surgeon and he did not clarify that he was not a plastic surgeon when the Patient asked if he could carry out corrective procedures on the otoplasty.

15. Dr AAY relied on the evidence of Dr GC. Dr GC's evidence was found to be irrelevant and there were repeated assertions that he could not recall exactly what he said to the Patient.

16. The Committee finds the Patient's evidence credible and accepts her evidence that if the Respondent was not a specialist on plastic surgery or cosmetic surgery or a plastic surgeon, she would never had engaged him for the procedure of liposuction. As she said in her statement, if the Respondent had not represented to her that he was a plastic surgeon, she would not have gone to him, as she did not take a procedure like liposuction lightly.

17. Upon review of the evidence in its entirety, the Committee finds that the first charge had been proven beyond reasonable doubt, and accordingly found that the Respondent was guilty of the charge.

18. Turning to the second charge the Committee's finding on the evidence is as follows:

(a) The Prosecutor relied on the opinions of Prof. PE1, Dr PE2 and Dr PE3 to show that the results of the surgery indicated that harm was caused as a consequence of incompetent treatment.

(b) The experts Dr AAY himself relied upon were in agreement that the corrective procedure by Dr SS was "reasonable". Dr B recommended that the Patient would require both liposuction of residual fat followed by fat grafting. Dr C stated that the Patient definitely needed touch up.

(c) All doctors giving evidence agreed that the results were bad enough to require corrective surgery.

(d) The manner in which the surgery was carried out was not in accordance with the standards described by Dr B. The use of multiple incisions, while not using microcannulas, was not viewed as an acceptable practice.

(e) The evidence of Dr SKM, that sedation was used rather than general anaesthesia, was not credible. His opinions were at odds with the factual evidence he gave.

(f) From Dr B's evidence, we understand that under local anesthesia, the extent of liposuction will be limited by the response of a conscious patient to pain due to an over aggressive liposuction movement. Under systemic anesthesia, the patient was effectively unconscious and unable to respond to pain.

(g) The Committee finds that the Patient was operated under systemic anesthesia, and was effectively unconscious. This was an invitation to over aggressive liposuction.

19. The Committee concludes that the results were far from satisfactory and the manner Dr AAY carried out the procedure may amount to negligence. However, this did not amount to professional misconduct within the meaning of section 45(1)(d) of the

Medical Registration Act. Accordingly, the Committee acquitted the Respondent of that charge.

20. Turning to the order the Committee made under section 45(2) of the Medical Registration Act, the Committee took into consideration the order that was made by the Disciplinary Committee in dealing with the charges to which the Respondent pleaded guilty. The Committee also took into account the mitigation plea made his counsel. Having considered all these facts, the Committee made the order that was made and was of the opinion that that was a proper order.

DR YAP LIP KEE
CHAIRMAN
FOR AND ON BEHALF OF THE DISCIPLINARY COMMITTEE
(24 NOVEMBER 2009)