SINGAPORE MEDICAL COUNCIL
DISCIPLINARY COMMITTEE INQUIRY FOR
DR AMALDASS S/O NARAYANA DASS
HELD ON 22 AUGUST 2012, 30 OCTOBER 2013,
20 JANUARY 2014 AND 20 MAY 2014

Disciplinary Committee:
Prof John Wong - Chairman
Dr Wong Sin Yew
A/Prof Agnes Ng
Mr Sajjad Ahmad Akhtar - Lay Member

Legal Assessor:
Mr Chia Chor Leong
(M/s CitiLegal LLC)

Counsel for SMC:
Mr Tan Chee Meng SC
Ms Chang Man Phing
Ms Emily Su
(M/s WongPartnership LLP)

Counsel for the Respondent:
Mr Niru Pillai
Ms Priya Pillay
Ms Beverly Ng
(M/s Global Law Alliance LLC)

GROUNDS OF DECISION OF THE DISCIPLINARY COMMITTEE

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

INTRODUCTION

1. These proceedings arose out of a complaint made on 1 April 2010 by one PW ("**PW**" or "**the Patient**") against the Respondent, Dr Amaldass s/o Narayana Dass.

2. Pursuant to the said complaint, the Singapore Medical Council ("**SMC**") originally preferred two charges against the Respondent ("**the Original Charges**"), as set out in a Notice of Inquiry dated 15 May 2012.

3. Preliminary objections were raised by the Respondent in respect of the Original Charges, but these objections were dismissed by this Disciplinary Committee ("**the DC**") on 22 August 2012.

4. Subsequently, the SMC withdrew the first of the Original Charges and amended the second, and served on the Respondent an amended Notice of Inquiry dated 23 October 2013 ("**the Amended NOI**") setting out the amended charge.

THE AMENDED CHARGE

5. The amended (and the only) charge against the Respondent ("**the Amended Charge**") is set out in the Amended NOI, and reads as follows:

"*That you, DR AMALDASS S/O NARAYANA DASS, are charged that you, whilst practicing at Advanced Aesthetics & Surgery Pte Ltd located at 1 Grange Road, #06-06 Orchard Building, Singapore 239693 ("Advanced Aesthetics"), did some time on or about 5 February 2008 perform an open rhinoplasty ("the Procedure") on your patient, one PW (NRIC No. SXXXXXXX) ("the Patient"), and that you failed to discharge your duty of care in the conduct of the pre-operative, intra-operative and post-operative management of the said Patient.*

Particulars

a. The Patient attended a consultation with you at Advanced Aesthetics some time on or about 1 February 2008 (the "Consultation");

Pre-operative mismanagement

b. The Patient informed you that he had previously undergone approximately 5 nasal reconstructions and showed you photographs and some actual nose implants from previous procedures;

c. Despite the complexity involved in carrying out the Procedure on the Patient, who had previously undergone approximately 5 nasal reconstruction procedures, you failed to adequately explain the risk and complications attaching to the Procedure before offering to perform the Procedure on the Patient;

Intra-operative mismanagement

d. You failed to ensure that the Patient was effectively sedated before commencing performance of the Procedure;

e. You failed to halt the Procedure and/or provide appropriate pain relief despite the Patient indicating that he was not properly sedated;

f. You left a vestibular dressing (3 ply gauze measuring 5cm which was folded over and rolled-up) in the Patient's nasal cavity without informing him of its presence. You intended that the gauze remain in the Patient's nasal cavity for at least 5 post-operative days;

g. You left remnants of a knotted thread in the Patient's glabella region;

Post-operative mismanagement

h. You performed a second open rhinoplasty on 16 February 2008, but failed to remove the implant despite overwhelming evidence of infection. Instead, you replaced the infected implant with a similar implant;

and that in relation to the facts alleged you are guilty of professional misconduct under section 45(1)(d) of the Medical Registration Act (Cap. 174)."

THE GUILTY PLEA

6. At the hearing of the Inquiry on 30 October 2013, the Respondent pleaded guilty to the Amended Charge (this plea of guilt being hereinafter referred to as the "**Guilty Plea**").

7. The facts relating to the Amended Charge and which are admitted by the Respondent ("**Admitted Facts**") are set out in an Agreed Statement of Facts dated 29 October 2013 ("**ASOF**").

8. Pursuant to the Guilty Plea and the Respondent's admission of the Admitted Facts, the Respondent was duly convicted of the Amended Charge.

THE ADMITTED FACTS

9. The Admitted Facts set out in the ASOF are as follows:

(a) The Respondent was a general practitioner practising at Advanced Aesthetics & Surgery Pte Ltd ("**the Clinic**") at the material time in February 2008;

(b) The Respondent was not a registered specialist under section 22 of the Medical Registration Act (Cap 174) at the material time;

(c) On or about 1 February 2008, the Patient attended a consultation with the Respondent at the Clinic ("**the Consultation**");

(d) In the course of the Consultation, the Patient informed the Respondent that he had previously undergone approximately 5 nasal reconstructions and showed him photographs and some actual nose implants from previous procedures;

(e) The Patient signed the Consent Form, but the Respondent did not adequately explain the risk and complications attaching to the open rhinoplasty ("**the Procedure**") before offering to perform the Procedure on the Patient;

(f) On or about 5 February 2008, the Respondent performed the Procedure on the Patient;

(g) The Patient was not effectively sedated before the Respondent commenced performance of the Procedure;

(h) The Patient indicated that he was not properly sedated, but the Respondent did not halt the Procedure and/or provide appropriate pain relief;

(i) In the course of the Procedure, the Respondent left a vestibular dressing (3 ply gauze measuring 5cm which was folded over and rolled-up) in the Patient's nasal cavity without informing him of its presence. The Respondent intended that the gauze remain in the Patient's nasal cavity for at least 5 post-operative days;

(j) The Respondent left remnants of a knotted thread in the Patient's glabella region after the Procedure;

(k) The Respondent performed a second open rhinoplasty on 16 February 2008, but did not remove the implant despite overwhelming evidence of infection. Instead, the Respondent replaced the infected implant with a similar implant;

(l) The Respondent did not refer the Patient to a more experienced medical practitioner.

THE AMENDED MITIGATION PLEA

10. On 9 December 2013, the Respondent tendered an Amended Plea in Mitigation (the "**Amended Mitigation Plea**").

11. The DC has duly considered the Respondent's Amended Mitigation Plea and the submissions made by the respective parties on sentencing, including the sentencing precedents cited by them.

DC'S DECISION ON SENTENCE

12. In ***Low Cze Hong v. Singapore Medical Council*** [2008] 3 SLR(R) 612, V K Rajah JA said (at [88]):

> *"[88] The medical profession is a historically venerated institution. Its hallowed status is founded upon a bedrock of unequivocal trust and a presumption of unremitting professional competence. The basic premise underpinning the doctor and patient relationship is that all medical practitioners will infallibly discharge their duties in the time-honoured and immaculate traditions of this singularly noble profession. … From time to time, professional lapses and incompetence surface. Needless to say, such errant conduct must be painstakingly policed and effectively deterred if the medical profession is to continue to rightfully occupy its unique position in society. All it needs is a few recalcitrant practitioners to diminish the stature and standing of a revered and respected institution. …"*

13. Doctors must therefore maintain, and they are held to, the highest and noblest standards of professional competence and ethical conduct. It is the expectation, and indeed presumption, that doctors will relentlessly, uncompromisingly and unfailingly defend, uphold and adhere to these standards that form the foundation of the public's trust and confidence in the medical profession. It is this expectation and presumption that underpin the high and enviable esteem in which the medical profession is held by the public.

14. In our present case, the Respondent had failed to uphold those standards of professional competence which are expected of him. He failed to discharge his duty of care to his patient, and he failed to do so to such an extent or in such a manner that it constitutes professional misconduct.

15. Not only that, the Respondent failed to discharge his duty of care at each of the pre-operative stage, the intra-operative stage, as well as the post-operative stage of the surgical procedure carried out by him on the Patient. It is one thing when a doctor failed to discharge his duty of care to his patient in relation to a particular aspect, or at a particular stage, of a surgical procedure. It is quite a different, and more reprehensible, thing when the doctor failed to discharge that duty of care at ***all*** of the aforesaid three stages of the procedure. In our view, the very extent of the Respondent's misconduct will certainly undermine public confidence and trust in the medical profession.

16. The Respondent submitted that there was only one procedure, namely the rhinoplasty, and that "breaking down" this procedure into the pre-operative stage, the intra-operative stage and the post-operative stage "*can be misleading as in the paradox of Zeno's arrow*", because in reality the "*chain of causation is one*". The Respondent is of course alluding to the "Arrow Paradox" thought to have been devised by Zeno of Elea on the impossibility of motion. Without engaging in a philosophical discourse, it suffices for us to say, with respect, that we think the allusion to this paradox is misplaced. There is no paradox, and certainly not the kind of paradox contemplated by Zeno, in dividing the entire time period of the procedure into three segments (and not points as in Zeno's paradox) which are clearly distinct, separate and finite, and considering the extent or gravity of the Respondent's culpability by taking into account the fact that the Respondent committed distinct and separate acts of breaches of duty in each of these three segments of time.

17. What is even more damaging to public confidence and trust in the medical profession is the fact that what the Respondent had failed to uphold are the most basic and elementary of professional standards - when he failed to ensure that the patient was effectively sedated before commencing the procedure; when he continued to perform the procedure without proper pain relief despite the patient indicating that he was not properly sedated; when he left a dressing in the patient's nasal cavity without telling the patient about it; when he left remnants of a knotted thread in the patient's body after the procedure; and when he failed to remove an implant despite overwhelming evidence of infection.

18. The Respondent's counsel urged the DC to not judge the Respondent with "*the wisdom of hindsight*", and to take into account the fact that at the time of the offence, "*aesthetic practices were in undefined terrain*" in that the SMC Guidelines on Aesthetic Practices had not yet come into effect. The Respondent's counsel also appeared to caution us against the "*Charybdis of defensive medicine*".

19. However, one does not need the wisdom of hindsight, nor to look at the Guidelines on Aesthetic Practices, to judge the Respondent's misconduct. What the Respondent breached are the most basic and elementary standards of medical practice. These were breaches which ***no*** doctor of any reasonable (and basic) competence, whether engaged in aesthetic practices or otherwise, should have committed. The fact that they were committed at all by a ***doctor***, irrespective of his area of practice, will subject the medical profession to public ridicule. The observance of these basic and elementary standards of medical practice cannot by any stretch of imagination be equated with the mythical Charybdis, and if the observance of such standards is "defensive medicine", then every doctor should practise it.

20. The Respondent had caused pain and suffering to his patient, when he proceeded with the Procedure without the Patient being properly sedated. Indeed, the Respondent had endangered his patient when he failed to remove the implant in the face of overwhelming evidence of infection. The Respondent had thereby breached one of the most fundamental and cardinal tenets of the medical profession, which is to do no harm. By doing harm to his patient, he had violated, in particular, his patient's trust in him, and in general the public's trust in the medical profession.

21. In the Amended Mitigation Plea, the Respondent's counsel submitted that if the Patient had been seriously traumatized and distressed because he was not properly sedated during the first procedure on 5 February 2008, he would not have come back to the Respondent for the second procedure on 16 February 2008. The fact that he did is evidence that "*whilst the sedation was not adequate, the pain was manageable*". It did not deter the Patient, who had not lost confidence in the Respondent.

22. The DC is not only unable to accept this submission, but is repulsed by it. Having subjected his patient to the indubitable agony of enduring a surgical procedure without adequate sedation, it really does not lie in the Respondent's mouth to say, and indeed it is facetious and repugnant for him to say, that the pain suffered by the patient was "*manageable*".

23. In the Amended Mitigation Plea, the Respondent's counsel made, *inter alia*, the following remarks:

(a) The Respondent's relationship with the Patient was a "*sad and ill-fated*" one, which led to the Respondent's appearance before the DC today. This was a relationship in which everything that could go wrong, did go wrong;

(b) The Patient was an "*experienced and worldly-wise*" man, who was "*obsessed*" with his looks. He had had at least five different surgeries on his nose carried out by different doctors, but he wanted the Respondent to perform yet another rhinoplasty on his nose. The Respondent's "*mistake*" was to do it and that was "*the path to downhill*";

(c) Relative to the Patient, the Respondent was a "*greenhorn*". If the Respondent had been a little more savvy, he might have realized that he should have avoided a patient like PW "*like the plague*". His choice of PW as a client "*represented poor patient selection*". Had the Respondent "*been more sophisticated or urbane and applied defensive medicine, he would definitely have turned PW away. PW would have taken his troubles elsewhere. Their ships would have passed in the night*", and the Respondent "*would not be here today*". It was "*ultimately a poor decision to agree to accept PW as a patient*";

(d) The Patient made this complaint before commencing legal proceedings against the Respondent. He then held it "*understandably but nonetheless cynically*" as a Sword of Damocles over the Respondent's head "*to extract a windfall settlement in the civil proceedings*";

(e) The Patient "*suffered no permanent harm. The procedure was aesthetic. He was not happy before the procedure. He was not happy after the procedure. It may well be that he is congenitally unhappy and will never be happy when he looks in the mirror. Some people are like that*";

(f) The Patient's "*endgame appears always to have been all about money. He lodged the complaint with the SMC. He then commenced civil proceedings against [the Respondent], using the SMC complaint as leverage*". The Patient "*proceeded with this complaint as a means to punish [the Respondent] for paying him S$250,000.00 less than what he wanted. That was [the Patient's] price! It was a cynical misuse of the disciplinary process*";

(g) The DC is urged to take into account "*a young doctor's zest in his practice which led to this charge and compare and contrast it with the manipulative shenanigans of [the Patient]*".

24. We are not at all impressed with these remarks, if they are made for the purpose of mitigation. The Respondent had committed professional misconduct in relation to his patient. He had done harm to his patient. His misconduct is reprehensible in and of itself, and this is not diminished by the patient's character, or by the patient's motives in making or pursuing this complaint, whatever that character or those motives might have been. The Respondent ought not to have committed the acts and omissions which constituted his professional misconduct, whatever the patient's character might have been, and the patient's motives in making and pursuing this complaint are entirely irrelevant. In our view, therefore, the Respondent does himself no credit by now blaming an "ill-fated relationship" for his troubles, or his "poor patient selection", or ruining his failure to turn the patient away, or complaining about the patient's motives in making a complaint against him for misconduct which, as it turned out, was completely justified. It seems to us that the Respondent's focus on the *patient* for his troubles is completely misguided and, indeed, detracts from the sincerity of his proclamations of remorse for his misconduct.

25. We have, however, taken into account the following, which we viewed favourably:

(a) The Respondent's involvement in social and volunteer group activities with the disabled, and his voluntary work teaching children at the Ramakrishna Mission;

(b) His provision of medical care for the monks at the Ramakrishna Mission, often providing medicine at his own expense.

26. We also took into account the fact that the Respondent is no longer practising (and he has undertaken that he will not again practise) aesthetic medicine, but instead is now practising emergency medicine at Khoo Teck Puat Hospital where, based on the many testimonials shown to us (and which we have taken into account), he appears to be doing good and valuable work.

27. The DC also takes into account the fact that the Respondent has pleaded guilty, although this mitigating factor is somewhat diluted by the fact that the Respondent pleaded guilty at a very late stage of the Inquiry against him.

28. The Respondent submitted that he could not admit liability earlier because the charges originally framed against him were neither reasonable nor fair. However, once the first charge was withdrawn and the second charge re-framed reasonably and fairly on 22 October 2013, the Respondent had admitted it unreservedly. To this submission, it suffices for us to observe that the first charge was withdrawn and the second charge was amended pursuant to representations made by the Respondent to the Prosecution and the subsequent negotiations between them. However, these representations were made by the Respondent (and the ensuing negotiations were initiated) only at a very late stage of the Inquiry against him.

29. Finally, based on the judgment of the Court in ***Low Cze Hong v. Singapore Medical Council*** [2008] 3 SLR(R) 612 (at [87] and [88]), we are of the view that we must send "a strong signal that the ethical duties of a doctor must be adhered to at a level that is commensurate with the high level of trust and esteem that society reposes in the medical profession", and we must show "a determined and uncompromising attitude to maintain the highest standards so as to protect the public and to preserve the reputation of the profession".

30. As regards costs, the Respondent submitted that the Prosecution should be awarded only 40% of their costs, for the following reasons:

(a) The first of the two Original Charges ("**The First Original Charge**") had been withdrawn by the Prosecution, and hence the Prosecution should not be awarded costs for it;

(b) Of the two Original Charges, the First Original Charge was the more serious one, as it alleged that the Respondent had dishonestly held himself out as a specialist. That being the case, it is reasonable to attribute 60% of the work done by the Prosecution to the First Original Charge. Therefore, since the First Original Charge had been withdrawn and the Prosecution should not be awarded costs for it, the Prosecution is not entitled to 60% of their costs;

(c) The second of the Original Charges ("**the Second Original Charge**") was "reduced" from one which alleged that the Respondent had "grossly mismanaged" the Patient, to the "lesser" Amended Charge which alleged that the Respondent had "failed to discharge [his] duty of care" to the Patient.

31. We are unable to agree with the Respondent's submissions:

(a) The First Original Charge was withdrawn as part of the plea bargain between the parties. There is nothing to suggest that it was withdrawn because the Prosecution believed that it would fail. Indeed, the correspondence cited by the Respondent to us suggests that the Prosecution was quite prepared to proceed with the First Original Charge if the negotiations had failed. There is certainly no basis on which we can make a finding that the First Original Charge would have failed if the Prosecution had proceeded with it;

(b) We are not satisfied that the First Original Charge can properly be said to be "more serious" (let alone "substantially more serious") than the Second Original Charge (or the Amended Charge);

(c) It has not been shown to us that the work relating to the one charge is so separate and distinct from the work relating to the other charge that costs can be clearly apportioned between them;

(d) Even if it can properly be said that First Original Charge is "more serious" or "substantially more serious" than the Second Original Charge (or the Amended Charge), it does not necessarily follow that the First Original Charge entailed more ***work*** than the Second Original Charge or the Amended Charge. It has not been shown to us that this is indeed the case, let alone that the work done by the Prosecution could or should be apportioned as to 60% for the First Original Charge and 40% for the Second Original Charge and the Amended Charge.

32. In the circumstances, we do not see any good or sufficient reason to deprive the Prosecution of their full costs.

33. On the Prosecution's part, they submitted that they should be awarded costs for two counsels. We do not agree. We do not think that this case is so complex, either in relation to factual issues or legal issues, as to justify the award of costs for two counsels.

34. Having considered all of the submissions tendered by the parties and having taken into account all of the circumstances of the case, the DC now determines that the appropriate sentence to be as follows, and so orders:

(a) That the registration of the Respondent in the Register of Medical Practitioners shall be suspended for a period of **4 months**;

(b) That the Respondent shall pay a fine of **S$5,000.00**;

(c) That the Respondent be censured;

(d) That the Respondent shall give a written undertaking to the Singapore Medical Council that he will not engage in the conduct complained of or any similar conduct; and

(e) That the Respondent shall pay the full costs and expenses of and incidental to these proceedings, including the full costs of the solicitor to the Singapore Medical Council (on the basis of one counsel) and the full costs of the Legal Assessor.

CONCLUSION

35. We hereby order that the Grounds of Decision herein be published.

36. The Inquiry is hereby concluded.

Dated this 20th day of May 2014