

**IN THE PROFESSIONAL CONDUCT COMMITTEE OF THE SRI LANKA MEDICAL COUNCIL**

**INQUIRY No - PPC 467 & PCC 45**

**BETWEEN:**

**Jagodage Don Nimal Chandrasiri  
No – 10, Mahindrarama Mawatha  
Kotte.**

**[ Complainant]**

**AND:**

**Dr. Himali Shamika Maryanne Cooray  
16, Cambridge Place, Colombo -07.**

**[ Respondent]**

**Appearance : Mr. Rasika Jayasingha, Attorney – at - Law for the complainant  
Mr. Sanath Wijewardena, Attorney – at – Law for the respondent**

**Decision : Saturday, 08<sup>th</sup> March 2025**

## **DECISION**

### **(A) Introduction**

01. The respondent practitioner is charged with;

#### **Count - 01**

*On or about 13<sup>th</sup> July 2018, while working as a dental surgeon at the private dental clinic known as "Family Dental Practice", situated at No. 500, R. A. De Mel Mawatha, Colombo 3, you have treated a patient named Mr. J.D.N. Chandrasiri and you have failed to prescribe the required treatment for the patient's complaint regarding the space between 2<sup>nd</sup> Premolar and 1<sup>st</sup> Molar tooth in the right upper jaw which constitutes the lack of responsibility and due diligence which amounts to negligence in performing your professional duties.*

#### **Count - 02**

*On the same date, at the same time, and at the same venue, with regard to the aforementioned patient, you have erroneously treated the patient by fixing and/or placing "two individual crowns" on the 1<sup>st</sup> and 2<sup>nd</sup> molar teeth in the right upper jaw, although the prescribed treatment was the said "bridge" for the patient, thereby you were negligent in performing the required treatment, as the patient specifically requested intervention in the right upper jaw between the 2<sup>nd</sup> premolar and 1<sup>st</sup> molar, which constitutes the lack of responsibility of due diligence, which amounts to Negligence in professional respect in performing your professional duties.*

#### **Count - 03**

*By committing said acts in charge 01 and 02 above, you have acted in a manner that amounts to Negligence in professional respect bringing disrepute to the Medical Profession.*

#### **Count - 04**

*By committing the acts in charges 01 and 02 above, you have acted in a manner that amounts to infamous conduct in the professional respect bringing disrepute to the medical profession.*

**Count - 05**

*By committing one or more of the above acts, you have acted in an unethical manner bringing the medical profession into disrepute and acted in violation of the "Guidelines on Ethical Conduct to Medical & Dental Practitioners registered with the Sri Lanka Medical Council" and "Sri Lanka Medical Council Instructions on Serious Professional Misconducts to Medical Practitioners and Dentists" published by the Sri Lanka Medical Council in terms of the Medical Ordinance and amendments thereto.*

02. This matter came up for reading out of the charges on 15.06.2024 in terms of regulation 15 (1) of the Medical Disciplinary (Procedure) Regulations 1990.
03. Upon reading out the charges, the respondent practitioner entered her plea by pleading not guilty to all the charges preferred against her in the charge sheet.
04. After entering the plea, counsel for the respondent practitioner raised preliminary objections in terms of regulation 15 (2) of the Medical Disciplinary (Procedure) Regulations 1990.
05. However, the first preliminary objection raised by counsel for the respondent medical practitioner was overruled by the Professional Conduct Committee [PCC]
06. The PCC directed counsel for the respondent to submit his remaining preliminary objections by way of written submissions.
07. Accordingly, counsel for the respondent practitioner raised further preliminary objections by way of written submissions filed in Sri Lanka Medical Council [SLMC] on 02.09.2024.
08. The Attorney - at - Law representing the SLMC filed his reply submissions. We interpose to mention that we have given our mind to the written submissions filed by both parties and the Judicial pronouncements referred to therein.
09. We have now been called upon to rule on the issues raised *in limine*

**(B) Preliminary Objection - 02 - Time lag / Delay**

01. The ground of complaint is the alleged delay in commencing the PPC and PCC proceedings. The date of the alleged incident is 13.07.2018.

02. This involves three questions for consideration;

- I. Whether there has been inordinate and inexcusable delay in prosecuting the matter on the part of the Attorney – at- Law representing the SLMC?
- II. Whether such delay would give rise to a substantial risk that it is not possible to have a fair inquiry on the subject matter of the complaint?
- III. Whether such delay has caused prejudice to the respondent practitioner or is likely to cause prejudice to the respondent practitioner?

03. What is important to discern is that the alleged ground of complaint viz, time lag / delay cannot be tried in *limine*, that is, as a preliminary issue because it is not an issue of law. Only an issue of law and the factual position, from which that issue of law emanates is common ground, can be tried in *limine*<sup>1</sup>. Therefore, it would be injudicious to probe in to the alleged delay/time lag and to make a finding of fact on the alleged time lag/ delay.

04. Moreover, the Medical Disciplinary (Procedure) Regulations 1990, contain the disciplinary procedure of SLMC. There is no provision in the Medical Disciplinary (Procedure) Regulations 1990 to strike out disciplinary proceedings (which are *sui generis*<sup>2</sup>) on the ground of time lag/ delay. We must stress here that striking out proceedings is not contemplated by the Medical Disciplinary (Procedure) Regulations 1990. PCC has no jurisdiction or statutory power to entertain a striking out application of disciplinary proceedings.

05. Thus, we cannot uphold the ground of objection as it is misconceived in law.

### **(C) Preliminary Objection – 3 – Ambiguity of the charges**

01. It was submitted that in charge 3,4 and 5 the words averred viz, 'negligence', 'infamous conduct' and 'unethical manner' are vague and general and do not allege specific acts that may amount to erasure of name from the register or suspension.

02. As adverted to earlier, upon reading out the charges, the respondent practitioner entered her plea by pleading not guilty to all the charges preferred against her in the charge sheet. The charges were disclosed to the respondent on 10.11.2023 by serving the charge sheet accompanied by the

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<sup>1</sup> Pure Beverages Ltd v Shanil Fernando, 1997 (3) SLR 202, Ramani Karunanayake v Gille Wimalaratne, 2001 (3) SLR 56

<sup>2</sup> Neither civil actions nor criminal prosecutions

notice of inquiry. The respondent practitioner was well aware of the charges preferred against her not later than 28.11.2023, when she replied to the SLMC's notice of inquiry dated 10.11.2023. The charges were read over to the respondent on 15.06.2024. Therefore, respondent practitioner had adequate prior notice of the charges preferred against her. Our unease relates to this - if the charges are vague and ambiguous, ***for what was she pleading not guilty for?*** If the charges are vague and ambiguous, the respondent practitioner ought to have raised her objections to the charges without entering her plea. By entering the plea of not guilty upon reading out the charges, the respondent practitioner has vouched for the fact that she knew what the case she has to meet and that sufficient particulars have been given of the conduct alleged in the charges as framed. It is frivolous, vexatious, irrational and unjust now to claim that the charges are vague and ambiguous after entering the plea of not guilty to the charges preferred against her.

Anything more shadowy, anything more unsatisfactory, anything more unlikely to produce persuasion or conviction on the mind of the committee, we can scarcely imagine.

Without prejudice, it is important to bear in mind that the requirements of the law relating to criminal procedure as to indictments and charges do not apply in disciplinary proceedings<sup>3</sup>.

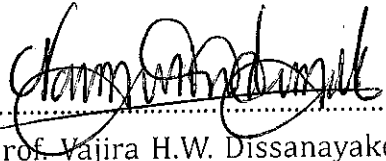
03. The respondent's preliminary objection is neither rational nor reasonable and lacks reasonable argument or expostulation. In these circumstances, we are of the opinion that the third preliminary objection is also without merit.

#### (D) Conclusion

Preliminary objections are overruled unanimously.

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<sup>3</sup> Ramamoorthy v Douglas Devananda and Others, 1999 (2) SLR 248 at page 258.



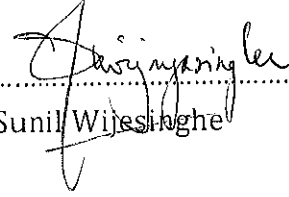
Prof. Vajira H.W. Dissanayake  
(President)



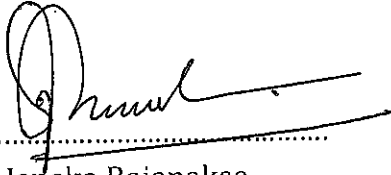
Prof. Surangi G. Yasawardene



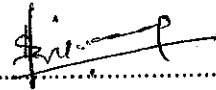
Prof. Manori Gamage



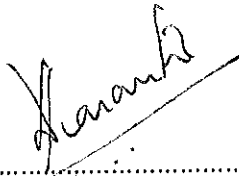
Dr. Sunil Wijesinghe



Dr. Janaka Rajapakse



Dr. D.S. Samaraweera



Dr. Chandana Dharmarathne

**Professional Conduct Committee of Sri Lanka Medical Council**

10/5/2025