

IN THE PROFESSIONAL CONDUCT COMMITTEE OF THE SRI LANKA MEDICAL COUNCIL

PPC NO 525/2024

BETWEEN:

**Mr.Chathuna Kumara Indunil
No.4/1/1, High Level Road,
Panagoda.**

[Complainant]

AND:

**Dr.Suhashini Sriskantha Ratnatunga
Consultant Psychiatrist
No 7/1, Sri Saranankara Road,
Dehiwala.**

[Respondent]

Date of the Decision: 30th November 2024

DECISION

1. This inquiry has been initiated based on the complaint received by SLMC by one Mr. Chathuna Kumara Indunil on the 11th of January 2024 against consultant psychiatrist Dr. Suhashini Sriskantha Ratnatunga regarding a mental health assessment report submitted by her as Ordered by the Magistrate's Court of Homagama in relation to his wife, Ms. Catherine Verador. The mental health assessment report had been ordered by the Magistrate in connection with a Custody Order of the child of Mr. Indunil and Ms. Verador.
2. In his affidavit, Mr. Indunil alleged that,
 - a) Dr. Ratnatunga had gone beyond her scope and had commented on the parental ability of Ms. Verador.
 - b) Dr. Ratnatunga's report had incorrectly mentioned the name of Ms. Verador as Madubashini Bandara in the interpretation paragraph
 - c) Dr. Ratnatunga's report had been dated incorrectly
 - d) Dr. Ratnatunga's report raised doubts regarding the thoroughness and accuracy of the evaluation

3. An explanation was called from Dr. Ratnatunga following the receipt of the above complaint, and in such explanation, Dr. Ratnatunga maintained that she had been nominated by the Director of the Department of Psychiatry to conduct the assessment of Ms. Verador. She states that she had obtained previous clinical information about the patient and it was revealed that the patient did not have a history of mental illness, but due to repeated quarrels with her husband, she had been treated for depression for two weeks and later defaulted since she had improved. Dr. Ratnatunga admitted in the explanation, that she had mistakenly inserted an incorrect name and had dated the report incorrectly, but that, subject to that typing error, the contents of the report are accurate and had been formulated in her professional capacity after following proper protocols and established medical practices.
4. After receipt of the explanation from Dr. Ratnatunga, the Preliminary Proceedings Committee (PPC) inquired into the matter on the 18th of April 2024.

In addition to the allegations made out in the complaint, Mr. Indunil further alleged before the PPC, that Dr. Ratnatunga had been biased and partial towards his wife by providing an opinion on her parental ability.

Dr. Ratnatunga reiterated her stance provided in her explanation before the PPC and produced before the PPC a corrected report which she had taken steps to forward to the Magistrate's Court Homagama. Dr. Ratnatunga further admitted that she should have been more careful in the preparation of the report and wording the recommendation in respect of previous mental illnesses, and was advised by the Committee to exercise precaution in the future.

Based on the fact presented before it, the PPC came to a finding that there was prima facie evidence of negligence with regard to the report submitted by Dr. Ratnatunga due to the errors in the date and name and the fact that more than a year had lapsed before a correction of the report was filed in the Homagama Magistrate's Court. The PPC further noted that it could not assess whether Dr. Ratnatunga had exceeded her limits by commenting on the parental ability of Ms. Verador.

5. By the powers vested in the Professional Conduct Committee by Regulation 12(1) of the Medical Disciplinary (Procedure) Regulations 1990, this case is now before us to assess if an inquiry should be held into the matters alleged in the complaint.
6. We have first perused the initial complaint and affidavit submitted by Mr. Indunil to the Sri Lanka Medical Council (SLMC). The procedure to be followed in the initiation and conducting of disciplinary inquiries by the SLMC has been set out in the Medical Disciplinary (Procedure) Regulations 1990 (hereinafter referred to as 'the Regulations').
7. Attention is drawn to Regulation 2(3) of the Regulations. it states as follows:

2(3) No complaint or report against a practitioner of the nature referred to in paragraph (1) shall be entertained unless such complaint or report:- (a) is preferred by means of a written statement addressed to the Registrar setting out the facts or the matters alleged against the practitioner, and (b) in a case where such complaint or report alleges infamous conduct in any professional respect or negligence or incapacity relating to professional duties, is supported by an affidavit or affidavits as to the facts or matters alleged in such complaint or report.
8. We have analyzed the complaint submitted by Mr. Indunil in order to ascertain if it complies with the requirements of a complaint under Regulation 2(3), as only a valid complaint and affidavit can trigger the jurisdiction of the SLMC to initiate disciplinary proceedings. A complaint under this Regulation is not merely a cover letter, but a written statement that clearly sets out all matters that are alleged against a practitioner.
9. It is observed that the matters alleged in the complaint of Mr. Indunil are limited to the fact that there has been an 'error' and biased mental health report made by 'a psychiatrist at the National Hospital in Colombo' as she had gone beyond her capacity by commenting on the suitability of taking care of a child when diagnosing 'a certain individual'.
10. A practitioner against whom the complaint is being made has not been identified by Mr. Indunil in his complaint, and the facts alleged are limited to the fact that an 'error' and biased report had been submitted by a psychiatrist and such psychiatrist had commented on the parental capacity of a certain individual of taking care of a child.

11. It is pertinent and obvious that the facts and matters alleged against the practitioner have not been adequately set out by Mr. Indunil in his complaint. He has failed to provide a complete account of what transpired, what the court case instituted was in relation to and had failed to identify by name any parties concerned. The very purpose of forwarding a complaint in accordance with Regulation 2(3) is to trigger an inquiry against a practitioner. A complaint through which nothing about the practitioner or the complained incident can be assessed from, is therefore counterproductive and defective.
12. Upon perusal of the founding affidavit submitted with the complaint, it is noted that the complainant identifies the psychiatrist concerned as one Dr. Subashi Ranathunga. In the affidavit produced, a detailed account is provided of the incident. Attention is once again drawn to Regulation 2(3) which states that the complaint should be supported by an affidavit as to the facts or matters alleged in such complaint. Therefore, the purpose of the affidavit is to confirm the accuracy of the facts alleged in the complaint. Mr. Indunil has elaborated on facts that were never mentioned in the complaint in his affidavit. He further identifies by name a psychiatrist and the individual on behalf of whom the report was given, which he has failed to do in his complaint.
13. Further, we have identified the following technical defects in the affidavit submitted by Mr. Indunil:
- The said affidavit is dated 7th December 2023, however, in the jurat clause, it is stated that the said affidavit had been effected on the 30th of November 2023. There are therefore doubts raised on what the correct date of the affidavit is. Attention is drawn to the case of *Thiyarasa v. Arunodayam* [1987] 2 SLR 184, which held that, unlike a notarially executed deed, **an affidavit is sworn evidence and the wrong date** may not vitiate a deed but **it will affect the validity of an affidavit**.
 - The jurat clause does not certify that the Affirmant has affirmed to the contents set out in the affidavit. It only sets out that the contents were duly read over to the affirmant and that he had placed his signature in the presence of the Justice of Peace/Attorney-at-Law. Attention is drawn to the case of *Inaya v. Lanka Orix Leasing Company Ltd* [1999] 3 SLR 197, where Jayasinghe J. upheld the decision of the learned trial judge to refuse the application on the grounds that the jurat in the affidavit was defective in that

the appellants had only placed their signatures in the presence of the justice of peace and **there was no oath or affirmation.**

- The affidavit has been signed before an Attorney-at-Law, but the seal affixed is of one K.A. Suwarnalatha Perera, Justice of Peace.

14. The above factors considered together has the effect of deeming the affidavit so produced to be defective. As per Jayasinghe J. in *Inaya v. Lanka Orix Leasing Company Ltd*, ‘...technicalities should not be allowed to stand in the way of justice, but, however, the **basic requirements of law must be fulfilled**’.
15. In addition to the above, we also observe that while the affidavit carries two dates, the complaint has not been dated. The Regulations explicitly set out that the contents of the complaint have to be verified by an affidavit, implying that the complaint is to be formulated first, and the contents of the same is to be verified by way of an affidavit, which is formulated secondly. We note that while the affidavit of Mr. Indunil was received by the SLMC on the 18th of December 2023, the complaint has been received on the 11th of January 2024, making it evidently clear that the requirements set out in the Regulations have not been fulfilled. The importance of following the process set out in the submission of affidavits, duly identifying its function as a document confirming the facts set out in the main complaint/petition was highlighted by Ekanayake Acting CJ in the case of *Roylin Fernando v. Gamini Fernando and Others* [2016] 1 SLR 1.
16. It is also noted that the practitioner against whom the complaint has been levelled against, one Dr. Subashi Ranathunga, is not a name registered with the SLMC.
17. We reiterate that, what triggers a PPC inquiry is a complaint setting out the facts alleged against a practitioner and a founding affidavit confirming the facts set out in the complaint. It is this that gives the PPC jurisdiction to probe into the fact alleged. If there is a fatal defect in the affidavit and the complaint as is seen in the current case before us, the entire proceedings of the PPC will be a nullity due to jurisdictional defect. This will also imply that the final finding of the PPC, i.e., that there is a prima facie case against Dr. Suhashini Ratnatunga, will thereby become null and void.

18. Therefore, we are of the considered opinion that the PPC proceedings instituted against Dr. Ratnatunga is *void ab initio*, due to the jurisdictional defect.
19. Without prejudice to the above finding, we now peruse the court records obtained in relation to the court case to which the report in question was submitted. It is observed that on the 14th of March 2023, the Hon. Magistrate had made an Order to the effect that temporary custody of the child of Mr. Indunil was to be handed over to the child's biological mother, Ms. Verador on the basis that the child was being breastfed by the mother. On the 30th of March 2023, the Court had ordered a mental health assessment report of Ms. Verador. This report had been submitted on the 8th of August 2023.
20. In the interim of the proceedings, Mr. Indunil had filed action in the Court of Appeal in order to obtain a writ of certiorari quashing the decision of the Hon. Magistrate of Homagama, granting custody of the child to Ms. Verador. The basis put forth for quashing the Order was the lack of jurisdiction of the Magistrate to issue Order in relation to Child Custody. Accordingly, by Order dated 20th September 2023, the Court of Appeal quashed the decision of the Magistrate Court of Homagama and directed that custody should be decided by the District Court of Homagama.
21. It is observed that Mr. Indunil, has not, on any occasion, challenged or made mention of the report submitted by Dr. Ratnatunga. Upon submission of the report to the Court on the 8th of August, 2023, Mr. Indunil had ample opportunity to object to such submission, which right Mr. Indunil had chosen not to exercise, thereby implicitly accepting its contents as valid.
22. *H.W.R. Wade & C.F. Forsyth*¹ expresses the view that; "The court normally insists that the objection shall be taken **as soon as the party prejudiced knows the facts which entitle him to object**. If, after he or his advisers know of the disqualification, they let the proceedings continue without protest, **they are held to have waived their objection and the determination cannot be challenged.**"
23. Attention is also drawn to the Supreme Court case *SC/HC/CA/LA No. 134/2016*, decided on 7th September 2018 where Priyantha Jayawardena PC, J., held that, 'I am of the opinion

¹ Administrative Law 9th Ed, Page 464

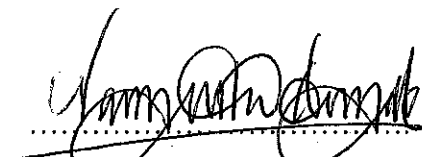
that if a particular matter which was within the knowledge of a party was not raised before a court, it should not be entertained later in an appeal, unless it is a pure question of law’.

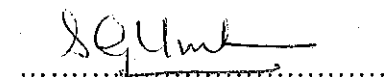
24. It is noted that though Mr. Indunil has taken steps to challenge the Custody Order of the Magistrate before the Court of Appeal, he had not challenged the report submitted by Dr. Ratnatunga, despite being privy to the said report so submitted (the matter was argued in the Court of Appeal on the 20th of September 2023).
25. The concept of estoppel is an evidential rule preventing a person from denying or contradicting something previously asserted which that person has encouraged or permitted another party to accept².
26. **Section 115 of the Evidence Ordinance (Chapter 14)** incorporates the doctrine of estoppel as follows; ‘when one person has by his declaration, act or **omission** intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be **allowed in any suit or proceeding** between himself and such person or his representative to deny the truth of that thing’.
27. There are several methods by which estoppel can, one of which is estoppel by acquiescence. An acquiescence is not a question of fact but a legal inference of a fact found. It must be intentional conduct with knowledge. In the current case, by failing to object to the submission of the medical report by Dr. Ratnatunga and failing to raise such concern in the Court of Appeal, Mr. Indunil has effectively acquiesced to its credibility. Therefore, under the concept of estoppel, he is now precluded from contesting the same report in a separate forum i.e., the SLMC, as there is estoppel by acquiescence.
28. We now consider the very basis of the complaint made by Mr. Indunil, i.e., that he had doubts regarding the veracity and accuracy of the report presented to court by Dr. Ratnatunga, as she had commented on the parental ability of the child and had failed to carry out a comprehensive assessment of the mental health of Ms. Verador. It is noted that Mr. Indunil had the opportunity to challenge such report when submitted to Court by objecting to its submission and by adducing contradictory medical evidence setting out the

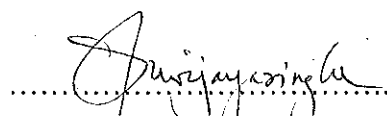
² [https://uk.practicallaw.thomsonreuters.com/5-201-8307?transitionType=Default&contextData=\(sc.Default\)](https://uk.practicallaw.thomsonreuters.com/5-201-8307?transitionType=Default&contextData=(sc.Default))

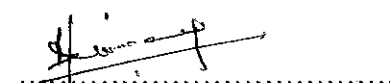
defects in her assessment, which he had chosen not to do. Even in his complaint directed to the SLMC, Mr. Indunil failed to submit any basis to substantiate his claim that Dr. Ratnatunga had gone beyond her capacity in commenting on the parenting ability of the child.

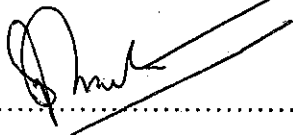
29. On the contrary, Dr. Ratnatunga had submitted to the PPC, a letter from the Deputy Director General of the National Hospital of Sri Lanka, stating that Dr. Ratnatunga had followed all protocols and proceedings when assessing the patient, and by Professor Raveen Hanwella, Chair and Senior Professor of Psychiatry of the Faculty of Medicine, Colombo stating that commenting on the parental ability of the patient is a practice generally expected by courts even if not explicitly stipulated.
30. Therefore, we opine that the complaint directed to SLMC by Mr. Indunil simply amounts to a complaint regarding the dissatisfaction with the report submitted by Dr. Ratnatunga. We strongly hold that such dissatisfaction does not constitute a valid basis for the institution of disciplinary proceedings against a practitioner for professional misconduct.
31. Therefore, having given due consideration to all facts elucidated above, by the powers vested in the Professional Conduct Committee by Regulation 12(1) of the Regulations, we hold that an inquiry should not be held into the matters alleged in the complaint levelled against Dr. Ratnatunga.
32. We hereby direct the Registrar, SLMC to inform the complainant and the practitioner of the above decision in writing, in accordance with Regulation 12(2) of the Medical Disciplinary (Procedure) Regulations 1990.


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Prof. Vajira H.W. Dissanayake.


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Prof. Surangi G. Yasawardena


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Dr. Sunil Wijayasinghe

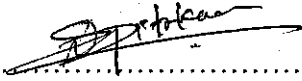

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Dr. D.S. Samaraweera



Dr. Janaka Rajapakse



Dr. Gamini Nawarathne



Dr. Chandika Epitakaduwa



Dr. Chandana Dharmarathne



Dr. Haritha Aluthge

Professional Conduct Committee of Sri Lanka Medical Council

18/01/2025