DMC/DC/F.14/Comp.2507/2/2023/ 16th May, 2023

**O R D E R**

The Delhi Medical Council through its Disciplinary Committee examined a representation form Police Station, Greater Kailash, New Delhi, seeking medical opinion on a complaint of Mr. Adam Berman, r/o-1734, Waller Street, San Fracisco CA 94117, USA, alleging medical negligence and professional misconduct on the part of Dr. Shivani Sachdev Gour, Dr. Vishal Dutt Gour and ISIS Hospital (A unit of SCI Healthcare), A-1, Kailash Colony,Ground Floor, New Delhi-110048.

The Order of the Disciplinary Committee dated 02nd May, 2023 is reproduced herein-below :-

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The Disciplinary Committee perused the representation from police, copy of complaint of Mr. Adam Berman, joint written statement of Dr. Vishal Dutt Gour, Dr. Shivani Sachdev Gour and SCI Healthcare and other document on record.

The following were heard :-

1. Mr. Adam Berman Complainant
2. Dr. Shivani Sachdev Gour Director, ISIS Hospital
3. Dr. Vishal Dutt Gour Urologist & Director, SCI Healthcare

The complainantMr. Adam Berman participated in the proceedings of the Disciplinary Committee through video conferencing.

It is noted that as per the police representation/complaint, it is averred that the complainant Mr. Adam Berman was unmarried, childless adult and is a citizen of USA. It is alleged that Dr. Shivani Sachdev Gour, Dr. Vishal Dutt Gour and ISIS Hospital are running a well organized racket and are cheating the prospective parents by making fraudulent promises to deliver genetically related children without having any intention to fulfill the same. They are also compelling and forcing young girls to become surrogates with promise for compensation which are never fulfilled. He was also induced and persuaded by the Dr. Shivani Sachdev Gour, Dr. Vishal Dutt Gour and ISIS Hospital to purchase their services since the complainant wanted to conceive a baby through surrogacy in India. In May, 2012, he came to touch with Dr. Shivani Sachdev Gour and Dr. Vishal Dutt Gour and decided in use their services for undertaking surrogacy services in order to conceive a child by way of placement of embryos obtained by inseminating an anonymous donor’s egg with his sperm into the uterus of a surrogate mother through IVF process. He was provided certain details of prospective egg donors (anonymous) and he chose a young dentist as egg donor in his cases. Dr. Shivani Sachdev Gour, Dr. Vishal Dutt Gour and ISIS Hospital suggested him to use Andrology Institute of America, a USA based cryoshipment firm to ship his sperm to the clinic of Dr. Shivani Sachdev Gour, Dr. Vishal Dutt Gour, Surrogacy Centre India (SCI) and ISIS Hospital IVF and Multispecialty Centre at Kailash Colony. Around January, 10, 2013, he was informed by the alleged that they have found one Nita Dodra d/o Mr. Barati Dodra r/o, 102/8, Garhi, East of Kailash, age 22 years as surrogate who is ready and willing to conceive, carry and give birth to the child of the complainant without any force, pressure or influence. He was informed that an amount of 15 lacs approximately would be charged for their services of surrogacy. On 14th January, 2013, he executed Gestational Surrogacy Agreement with Ms. Nita Dodra and also executed a declaration of intent with the surrogate. He obtained the services of Dr. Shivani Sachdev Gour, Dr. Vishal Dutt Gour and ISIS Hospital but they never executed any written contract with him. He was informed that 18 embryos have been created using his sperm with eggs of anonymous donor and on 07th February, 2013, the embryo transfer was carried out into the uterus of the surrogate. After this, the representatives of Dr. Shivani Sachdev Gour, Dr. Vishal Dutt Gour and ISIS Hospital were in constant touch and provided timely reports and status about the pregnancy of his surrogate. On 11th October, 2013, he was informed via mail that his surrogate has given birth to a baby boy at Eden Hospital. On 14th October, 2013, at the time of discharge from Eden Hospital, the surrogate handed over the custody of the child to him and executed No Objection Document and other necessary certificates regarding delivery of the child to him and handed over of physical custody of the child. He named his child as Emilio Henry Berman and applied for US passport on 17th October, 2013. But on 23rd October, 2013, he learnt from the US Embassy and Bode Technology, a US based laboratory that the DNA of the child Emilio do not match with his DNA and his sperm has not been used to conceive the said child. However, in above circumstances, if he refuses the custody of the child, then the child may have been sent to an orphanage or abandoned him, so, on humanitarian grounds and the feeling developed for the child as father, he decided to take the child Emilio to USA with him. He on 29th October, 2013 applied for a US passport for Emilio but it was rejected by the US State Department. He had to stay in India to take care of the child till the time he was legally permitted to take the child to USA on 15th March, 2014. He was also offered a free baby in nine months by Dr. Shivani Sachdev Gour, Dr. Vishal Dutt Gour and ISIS Hospital who would be genetically related to him in exchange for confidentiality agreement that he would not disclose the illegal acts and leave India. On refusal, he was also threatened. Dr. Shivani Sachdev Gour, Dr. Vishal Dutt Gour and ISIS Hospital did not co-operate with him to find out how the mistake happened and did not provide other information as desired by him and even refused to ship the sperm and the remaining six embryos to USA for further DNA testing. He was not allowed to meet surrogate, as she was wrongfully confined, however, he managed to meet and speak to her once. She revealed that : (a) she was unmarried and was forced by Dr. Shivani Sachdev Gour, Dr. Vishal Dutt Gour and ISIS Hospital to become surrogate on basis of false promises, where as he was told that surrogate was married with two children and had accepted for surrogacy on her free will, (b) surrogate was paid at least one lac less amount of what was charged from the complainant i.e. 36 lack, (c) he was charged for the services to the surrogate but the services during her pregnancy and at the time of conceiving were not provided, (d) He was assured that the surrogate will be compensated well, nutritious meals and hygienic accommodation will be provided but nothing was provided and she was forced to undergo C-Section which was not required. As such, he paid Rs.80,000/-to the surrogate till March, 2014 when she disappeared from the house where she was living. He in all had to spent Rs.20,37,000/- for the whole process whereas Dr. Shivani Sachdev Gour, Dr. Vishal Dutt Gour and ISIS Hospital did not provide him the genetically related baby, as promised and refused to refund the amount when requested.

Further, it is noted as per the police representation that during the course of investigation, the version of the SCI Healthcare was also taken. As per their version, this is a cryoshipped case. Cryoshipped case is a case where the sperm/embryos are sent from abroad to Indian Clinic under a certificate from the foreign clinic that the sperm/embryo which has been sent belongs to a particular person. The Indian Clinic uses the same believing that certificate to be true. In the same way Adam Berman’s sperm was cryoshipped to SCI Healthcare and SCI Healthcare used the same. SCI Healthcare used the same sperm samples believing the same to be of the complainant. Thus, there can be a possibility of some mistake or negligence at the part of foreign clinic also. As per them, SCI Healthcare used the sperm sent by Andrology Institute of America, a USA based cryoshipment firm and fertilized with the donor’s eggs to create embryos. Then the embryos were transplanted into the surrogate. They feel that no negligence has taken place at SCI Healthcare. It was also stated that sperm sample received was used in the fertilization. Embryos were created and the treatment was done. Residual frozen samples were with the hospital and will be handed over to the authorized person if required for further investigation. Further, it was also informed that no egg from the donor was frozen for future purpose. They also provided copy of the receipt from Andrology Instituted of America, a USA based cryoshipment firm, who shipped his sperm to the hospital of Dr. Shivani Sachdev Gour, Dr. Vishal Dutt Gour. In view of the above, it is requested that kindly examine the complaint and opine whether any case of medical negligence is made out or any other action is required in the matter.

The complainant Mr. Adam Berman stated he was unmarried, childless adult and is a citizen of USA. It is alleged that Dr. Shivani Sachdev Gour, Dr. Vishal Dutt Gour and ISIS Hospital are running a well organized racket and are cheating the prospective parents by making fraudulent promises to deliver genetically related children without having any intention to fulfill the same. They are also compelling and forcing young girls to become surrogates with promise for compensation which are never fulfilled. He was also induced and persuaded by the Dr. Shivani Sachdev Gour, Dr. Vishal Dutt Gour and ISIS Hospital to purchase their services since the complainant wanted to conceive a baby through surrogacy in India. 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Around January, 10, 2013, he was informed by the alleged that they have found one Nita Dodra d/o Mr. Barati Dodra r/o, 102/8, Garhi, East of Kailash, age 22 years as surrogate who is ready and willing to conceive, carry and give birth to the child of the complainant without any force, pressure or influence. He was informed that an amount of 15 lacs approximately would be charged for their services of surrogacy. On 14th January, 2013, he executed Gestational Surrogacy Agreement with Ms. Nita Dodra and also executed a declaration of intent with the surrogate. He obtained the services of Dr. Shivani Sachdev Gour, Dr. Vishal Dutt Gour and ISIS Hospital but they never executed any written contract with him. He was informed that 18 embryos have been created using his sperm with eggs of anonymous donor and on 07th February, 2013, the embryo transfer was carried out into the uterus of the surrogate. 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Dr. Shivani Sachdev Gour, Dr. Vishal Dutt Gour and ISIS Hospital did not co-operate with him to find out how the mistake happened and did not provide other information as desired by him and even refused to ship the sperm and the remaining six embryos to USA for further DNA testing. He was not allowed to meet surrogate, as she was wrongfully confined, however, he managed to meet and speak to her once. 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He in all had to spent Rs.20,37,000/- for the whole process whereas Dr. Shivani Sachdev Gour, Dr. Vishal Dutt Gour and ISIS Hospital did not provide him the genetically related baby, as promised and refused to refund the amount when requested.

He further requested that strict action be taken against Dr. Shivani Sachdev Gour, Dr. Vishal Dutt Gour and ISIS Hospital for their illegal and unethical actions.

Dr. Vishal Dutt Gour, Dr. Shivani Sachdev Gour and SCI Healthcare in their joint written statement averred that the complainant Mr. Adam Berman’s surrogacy case was a cryoshipped case. Cryoshipped case is where patient himself collects sample in other state and then himself ships sample to another states clinic through courier. The clinic then sends the sperm to the Indian clinic by using courier. This is the chain of custody. Cryoshipped case is a case where the sperm/embryos are sent from abroad to the Indian Clinic under a certificate from the foreign clinic that the sperm/embroyo which has been sent belongs to a particular person. The Indian Clinic uses the same believing that certificate to be true. In the same way the complainant’s sperm was cryoshipped to SCI Healthcare and SCI Healthcare used the same. Thus, there is a possibility of some mistake or negligence at any point this chain custody and it is impossible to make out where alleged negligence/mistake took place, as there cannot be any evidence regarding the same. Thus, the entire complaint of the complainant is based on surmises and conjectures and deserves outright dismissal. Using the said samples under certification which were sent from abroad, they started the surrogacy process, surrogacy agreement dated 14th January, 2013 was entered into and the baby was born on 11th January, 2013. After the birth of the child when the complainant was in the process of taking the child to his home country despite knowing that the DNA of the child has not matched with him, he through his own independent lawyer got drafted an agreement dated 03rd December, 2013 and requested them that he need the said agreement to be signed by the surrogate to process his exit from India and take the child to US. In clause D at page no.3 of the said agreement, the complainant has himself stated that his own material was used to impregnate surrogate mother (contrary to what he alleged later in the complainant). They have handed over copy of this agreement to the police. This agreement clearly shows that the complainant, after the birth of the child (despite knowing that the DNA of the child has not matched with him) and till taking the baby home had neither any grievance nor allegation against them. Needless to mention that the complainant has taken the baby to US, after completing the requisite formalities with the US embassy and concerned authorities. The said agreement dated 03rd December, 2013 was drafted by the complainant’s lawyer, signed by the complainant and at the complainant requests the said agreement was also signed by the surrogate. Thus, he cannot say that he has not read that agreement or is not aware of it. Infact he has hidden the same from everyone including the police. In so far other allegations are concerned, the complainant had requested his embryos to be shifted to another clinic and he was never refused for the same. On the contrary, he himself decided not to shift embryos. He had organized a conference call with a doctor in the US for shifting embryos and DNA test, but the US doctor on phone expressed inability to do that due to the possibility of mosaicism and not being able to do DNA testing. Thus, the allegations of refusal on their part to release the embryos on his request, is completely an afterthought, against all records. The complainant was allowed to meet the surrogate mother as and when he desired. The surrogate mother has cooperated with the complainant in each request for visiting places or for signatures. Surrogate home is for the pregnancy and postpartum period. There was no request from the complainant to surrogate mother to stay at surrogate home after his process was completed to take his baby home. The complainant is sending unknown people to surrogate mother accommodation for what purpose. His complaint is nothing but an afterthought. The allegation of cheating, any patient is totally denied. It is pertinent to mention that they have to their credit thousands of testimonials including from US of the people who were helped to become parents with their services. The allegation of non-payment to the surrogate is totally baseless as a proper record of entire payment being made to the surrogate is maintained. The complaint made by the complainant includes bundle of lies. The allegation of profile of the surrogate mother not being shared with him is nothing but a clear lie as can be clearly seen on face of the document i.e. email dated 23rd January, 2013 where by the said profile was duly shared with him. Likewise the other allegations are also baseless. The complainant throughout the period when he was in India after the birth of the child and even after learning the DNA mis-match, never made any complaint to any authority against SCI. It is only after reaching his home country and taking, the child along; he made an afterthought complaint to gain illegally from SCI. It would not be wrong if they say that he has adopted a blackmailing tactic by filing a false and frivolous complaint against them. In the facts and circumstances, as detailed above, they most humbly and fairly submit that no negligence at all and no professional misconduct of any kind has been committed by them, as alleged in the complaint, thus, they request the Delhi Medical Council that the complaint made by the complainant against them be rejected/dismissed.

On being asked by the Disciplinary Committee as to whether after the fertilization of eggs have taken, any of complainant’s sperm sample was retained, Dr. Shivani Sachdev Gour stated that almost all of the sperm sample were utilized, however, the vial which contained the semen sample was handed over to the police for FSL examination. Similarly, the unutilized embryos were also handed over to the police for FSL examination.

She further added that during their association with Andrology Institute of America, they might have handed ten to twenty cases of cryoshipped semen samples and further, there has never been any mix up of such nature of semen samples.

Dr. Vishal Dutt Gour confirmed that the surrogate in the present case at the time of engaging surrogacy was a 22 years old who had a two years child. The surrogate at that time was separated from her husband.

In view of the above, the Disciplinary Committee makes the following observations :-

1. It is noted that the complainant Mr. Adam Berman entered into an arrangement with doctors of ISIS Hospital (A unit of SCI Healthcare) for availing the surrogacy facility, so that he might have a child of his own. The complainant cryoshipped his semen sample by availing the services of Andrology Institute of America. Ostensibly, the said semen sample was used by the doctors of ISIS Hospital to fertilize the eggs donated by a donor ‘X’ and thereafter, surrogate ‘Y’ was impregnated with the same. The surrogate, after the completion of gestation period, on 11th October, 2013, delivered a male baby boy. As the complainant is a USA citizen, in order to take the child to USA, the child was subjected to a paternity test. The paternity report-immigration, reported by the Chromosomal Labs, Phoenix, USA vide report(Case No. P113-52090 dated 22-10-2013 and supplement report dated 28.10.2013) concluded that the complainant was not the biological father of the child; hence, the present complaint was filed against Dr. Shivani Sachdev Gour, Dr. Vishal Dutt Gour and ISIS Hospital for medical negligence.
2. It has been brought to the notice of the Disciplinary Committee by the complainant that the Andrology Instituteof America did not retain any specimen of the complainant’s semen, after having cryoshipped the same to ISIS Hospital/SCI Healthcare (as is borne out from the e-mail dated 26.12.2013 addressed to the complainant by Prof. Dr. Panayiotis Zavos, Director & Chief of Andrology, Adrology Institute of America, Lexington, KY 40523, USA). Similarly, in the forensic analysis of the semen sample, which the doctors of ISIS Hospital/SCI Healthcare claimed to be that of the complainant and which was subjected to forensic analysis (FSL Report No. 2018/B-4764 BIO No.1283/18 Dated 22-08-2021) at Forensic Science Laboratory, Govt. of NCT of Delhi, Sector-14, Rohini, Delhi-110085), it is observed that the semen sample could not be detected in exhibit ‘1’ (one sample empty plastic vial described to contain balance of cryoshipped sample of sperm of the complainant).

 Further, the report concluded that the DNA profiling (STR analysis) is sufficient to conclude that the source of exhibit ‘3’ (blood sample of complainant Adam Berman) is not the biological father of the source of exhibit ‘4’ (blood sample of child).

 In view of the above stated anomalous situation, it is not possible to conduct any test for the purposes of making a determination as to whether the mix-up in the complainant’s semen sample, happened at the time of the same being cryoshipped by Andrology Institute of America or the same, happened at ISIS Hospital.

1. The legal relationship between the doctors of ISIS Hospital/SCI Healthcare and Andrology Institute of America needs to be determined by the appropriate authorities to fasten criminal/civil liability or otherwise, for the bungling committed in regard to complainant’s semen sample and its resultant consequence.

Matter stands disposed.

 Sd/: Sd/:

(Dr. Maneesh Singhal), (Dr. Anil Kumar Yadav)

Chairman, Eminenet Publicman,

Disciplinary Committee Member,

 Disciplinary Committee

Sd/: Sd/:

(Dr. Satish Tyagi) (Dr. M. Gowri Devi),

Delhi Medical Association), Expert Member,

Member, Disciplinary Committee

Disciplinary Committee

The Order of the Disciplinary Committee dated 02nd May, 2023 was confirmed by the Delhi Medical Council in its meeting held on 11th May, 2023.

 By the Order & in the name of

 Delhi Medical Council

 (Dr. Girish Tyagi)

 Secretary

Copy to :-

1. Mr. Adam Berman, r/o-1734, Waller Street, San Fracisco CA 94117, USA-**through e-mail**.
2. Dr. Shivani Sachdev Gour, Through Medical Superintendent, ISIS Hospital (A unit of SCI Healthcare), S-21, Greater Kailash-I, New Delhi-110048.
3. Dr. Vishal Dutt Gour, Through Medical Superintendent, ISIS Hospital (A unit of SCI Healthcare), S-21, Greater Kailash-I, New Delhi-110048.
4. Medical Superintendent,ISIS Hospital (A unit of SCI Healthcare), S S-21, Greater Kailash-I, New Delhi-110048.
5. Station House Officer, Police Station, Greater Kailash, New Delhi-110048-w.r.t. FIR No.216/16, U/S 420/120B, IPC PS Greater Kailash-**for information**.

 (Dr. Girish Tyagi)

 Secretary