

Plenary

MedicoLegal

The Changing Legal Healthcare Landscape
– What Must the Doctor Prepare?

Ms Kuah Boon Theng & Ms Cheryl Guan
Chaired by Dr Swah Teck Sin



@Hyatt_Wifi “Visitors”

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Music

PATIENTS. AT THE HEART OF ALL WE DO.*



The Changing Legal Healthcare Landscape What Must The Doctor Prepare?



A Fireside

Chat with Ms Kuah Boon Theng & Ms Cheryl Guan



Kuah Boon Theng SC, Managing Director, Legal Clinic LLC

Boon Theng is the Managing Director of Legal Clinic LLC. Appointed Senior Counsel in January 2018, she has more than 25 years' experience in litigation and is a domain specialist in medical ethics and healthcare law. She holds a Masters' Degree in Medical Ethics and Law from the University of London (King's College Centre for Medical Law and Ethics). She is an adjunct lecturer in medical law and ethics with various tertiary institutions in Singapore and has been recognized for her volunteer work on the NCCS Hospital Medifund Committee and also as Honorary Legal Advisor to the Singapore Medical Association. She is currently also Honorary Legal Advisor to the Academy of Medicine Singapore.



Ms Cheryl Guan, Divisional Director, Financial Lines
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Cheryl is qualified in Singapore and England and Wales and practised law for about 10 years prior to joining JLT. At JLT, she was heavily involved in the crafting of the policy wording for the MOHH MMI scheme, and established the scheme's claims function from scratch and served as the Claims Director until August 2019. Cheryl will next be pursuing a Masters of Public Health at Harvard University in September 2019.



5th SingHealth Family Medicine Symposium 2019

The Changing Legal Healthcare Landscape: What must the doctor prepare?

Ms Kuah Boon Theng S.C.
Legal Clinic



Overview

1. Key medico-legal events and cases in the past year
2. Current state of affairs
3. The ongoing review by the MOH Workgroup
4. How the medical profession can prepare to face future medico-legal challenges



Timeline of Key Medico-Legal Events in 2018-2019

Jun / Jul 2018	<ul style="list-style-type: none">• SingHealth data breach: ~1.5 million patients' data is leaked online following a cyber attack
Nov 2018	<ul style="list-style-type: none">• C3J issues its decision in <i>Wong Meng Hang v SMC</i>
Jan 2019	<ul style="list-style-type: none">• Sentencing Guidelines Committee is formed to develop new sentencing guidelines for SMC DT decisions• DT fines Dr Lim Lian Arn \$100,000 for failing to take informed consent in a case involving a H&L injection• HIV-positive status of 14,200 people leaked online
Mar 2019	<ul style="list-style-type: none">• DT fines Dr Soo Shuenn Chiang \$50,000 for breaching patient confidentiality• MOH Workgroup set up to review informed consent practices and the SMC complaints/disciplinary process
Jul 2019	<ul style="list-style-type: none">• C3J sends the <i>Soo Shuenn Chiang</i> case back to the DT, for the SMC's expert to provide further expert opinion• C3J reverses the DT decision in <i>Lim Lian Arn</i>, criticising the decision to convict Dr Lim when there was no professional misconduct



Wong Meng Hang v SMC [2018] SGHC 253

- This arose from the liposuction death case. Patient's death was caused by the negligence of Dr Wong and his colleague Dr Zhu. Both pleaded guilty to professional misconduct and were sentenced by the SMC DT
- Dr Wong appealed against his 18 month suspension, arguing that it should be 6 months. The prosecution argued that he should have been suspended for 2/3 years
- C3J eventually ordered that Dr Wong be struck off the register for serious professional misconduct. In his Judgment, CJ said that it was difficult to conceive of a worse case of medical misconduct than how Dr Wong had treated his patient
- Dr Zhu had her suspension increased from 6 to 18 months
- C3J then directed that the case be reported to the Public Prosecutor, so that the doctors may be investigated for any relevant criminal



Wong Meng Hang v SMC [2018] SGHC253

- In arriving at its decision to enhance the sentences meted out to both doctors, C3J established a **4-step approach** to sentencing in SMC disciplinary cases and a **harm-culpability matrix** for sentencing

“We highlight the importance of sentencing considerations such as general deterrence and the need to uphold public confidence in the medical profession, which might in certain cases be sufficiently compelling to override any personal mitigating circumstances that may be found to exist. We also lay down the relevant principles that should guide courts and tribunals when considering whether an order striking the errant doctor off the register may be the appropriate punishment. Further, we make some observations on the relevance of dishonesty in this context.”



SMC Sentencing Guidelines Committee

- Following this decision, a **Sentencing Guidelines Committee** was appointed by the SMC in consultation with MOH and the Ministry of Law. Chaired by the Honourable Judge of Appeal Judith Prakash, the Committee will work towards developing guidelines for sentencing that will ensure greater consistency and fairness in the sentences meted out to doctors.
- Such guidelines will also improve transparency and rigour in the disciplinary process
- The Committee will complete its work by the end of this year



Dr Lim Lian Arn's Case

- Dr Lim pleaded guilty to a charge of professional misconduct for failing to obtain informed consent for a H&L injection
- When it came to sentencing, the prosecution indicated that they would seek a 5 month suspension. Dr Lim counter proposed a maximum fine of \$100,000
- DT ordered Dr Lim to pay the \$100,000 fine. This led to an outcry by the profession and an online petition for MOH to clarify the requirements for informed consent
- In the aftermath of the DT's decision, the **MOH Workgroup** was appointed to review and make recommendations on informed consent practices and also to review the SMC complaints and disciplinary process

- After it was asked by MOH to review the appropriateness of the



SMC v Lim Lian Arn [2019] SGHC 172

Decision of Court of 3 Judges

- The Court held that this was a one-off failing committed in the course of a routine procedure, with no material harm to the patient that could fairly be said to have been caused by Dr Lim
- A mere breach of the ECEG does not automatically mean that there was professional misconduct, unless there is a serious disregard or persistent failure to meet the ECEG standards
- Cases referred to the DT must satisfy the criteria of “professional misconduct” as set out in the *Low Cze Hong* case:
 - a. **Intentional, deliberate departure** from standards observed or approved by members of good repute and competency; or
 - b. **Such serious negligence** that it objectively portrays an abuse



SMC v Lim Lian Arn [2019] SGHC 172

Informed Consent

- “[It] has been suggested that doctors are likely to overwhelm patients with a deluge of information on unlikely risks in order to protect themselves legally. With respect, it is a mistake to describe this as defensive medicine. The reason for this is simple: giving too much information will not avoid legal liability.”

Underpinning the ethical obligation to obtain informed consent is the recognition that the patient has a right to participate in decisions about his or her treatment and medical management.”



SMC v Lim Lian Arn [2019] SGHC 172

Informed Consent

- *“If a patient consults a medical practitioner with a routine complaint that can be addressed by two or three relatively uncomplicated and equally valid treatment options, the information to be disclosed is that which the patient would need in order to be able to make a decision from among those options. This would then require consideration of the nature and likelihood of any adverse side effects or complications.”*



Upheavals in Patient Privacy and Confidentiality

- Following the SingHealth Data Breach, the Personal Data Protection Commission (PDPC) fined IHiS/SingHealth for breaching data protection obligations under the PDPA
- In the ***Soo Shuenn Chiang*** decision, the DT fined Dr Soo \$50,000 for breaching patient confidentiality, in the interests of “general deterrence”
 - DT said that Dr Soo should have verified the identity of the caller claiming to be the patient’s husband, before giving him a memo containing confidential patient information
 - The decision sparked an outcry within the medical profession
 - By the time the matter was to be heard by C3J, further investigations had shown that the request for the memo was indeed made on behalf of the patient’s husband
 - SMC then had to amend its appeal to include an appeal against the conviction. C3J has remitted the case back to the DT for the



Current State of Affairs

Confusion over Informed Consent obligations

- Level of understanding of the legal and ethical requirements on obtaining informed consent **varies greatly** (even after Dr Lim Lian Arn's conviction has been overturned by the C3J)
- Confusion and lack of clarity in interpretation has led to widely ranging practices, with many doctors resorting to defensive practices to protect themselves/increased cost of treatment
- See Wong et al, ***A descriptive study of the effect of a disciplinary proceeding decision on medical practitioners' practice behaviour in the context of providing a hydrocortisone and lianocaine injection*** Singapore Med J



Current State of Affairs

Common Misconceptions about Informed Consent

1. Doctors are now required to explain every conceivable risk and complication to the every patient (*they are not*)
1. Doctors' duty to obtain formal informed consent extends to cover all treatment, even minor procedures like injections or prescribing drugs (*that was never the requirement*)
1. Doctors must now “interrogate” the patient to find out what information he/she considers to be material and relevant (*Court specifically stated that this was not the case*)
1. Doctors should steer clear of trying to guide the patient into making a decision— when asked “what do you recommend?”.



Current State of Affairs

Emerging Culture of Defensive Medicine

- Defined as “departing from normal medical practice as a safeguard from litigation.”
 - **Positive Defensive Medicine:** Performing unnecessary tests and procedures.
 - **Negative Defensive Medicine:** Avoiding risky procedures on patients who could have benefitted from them.
- Ultimately, patient interests are not being served, and as the C3J observed, defensive practices do not in any event protect doctors



Current State of Affairs

Other Worrying Trends

- Disciplinary sentences are likely to become more severe in view of the sentencing matrix in ***Wong Meng Hang***
- High rates of physician burnout have been observed: See Lee et al. ***Empathy and burnout: a study on residents from a Singapore institution.*** *Singapore Med J* 2018; 59(1): 50-54



MOH Workgroup: What Can We Expect

- MOH Workgroup recognizes the urgent need to address the unhealthy perception by doctors that they have been set up to fail
- Profession may be well served by sensible guidelines that can be understood and are *workable*
- Professional bodies will see a bigger role in providing help and support to its members



MOH Workgroup: Upcoming Changes

- At the same time, the need to preserve and uphold the trust relationship between doctors and patients, must remain of utmost priority
- We need to do a better job of providing continuing education to doctors on:
 - How to take informed consent
 - How to balance the need to practice safely without overwhelming patients with “information dumps”; and
 - How not to be fearful or reluctant to provide proper guidance to patients



SMC Complaints and Disciplinary Process

- MOH Workgroup has worked very hard to examine the current system of receiving, investigating and deliberating on complaints, and the entire disciplinary tribunal process
- Essential reforms are long overdue, and must address critical shortcomings in the current process:
 - Inordinate delays
 - Structural problems in the way complaints are being dealt with (failure to screen for frivolous complaints, difficulties obtaining quality expert opinion, an appeal process that can be unruly etc.)
 - Lack of training, resulting in inconsistencies and errors
 - Insufficient oversight exercised by SMC members
 - Negative perception of the inquiry and prosecution process



Feedback and Engagement

- Over the last 4 months, the MOH Workgroup has had many engagement sessions with medical practitioners and other stakeholders
- There has been a lot of self-reflection, and the feedback garnered has been frank and illuminating
- Workgroup has been able to identify multiple choke points in the process, and parts of the process that are not working well



What Can We Expect?

- The Workgroup's recommendations will go far beyond "minor fixes". The recommendations will be wide-ranging and involve many aspects of the Complaints and Disciplinary Process
- In addition to legislative changes to transform the Complaints and Disciplinary process, the training of those involved in the process must become an absolutely important ongoing priority
- The SMC Ethical Code and Ethical Guidelines may not escape unscathed
- Additional resources will need to be made available to clear backlog and ensure that the new system works



What Can We Expect

- The longstanding dysfunction will need time to address and resolve
- The cooperation and understanding of medical professionals will be greatly needed and appreciated
- Continuing education and training must become the new norm
- Medical professionals with requisite skills, knowledge and good sense must step forward to serve in various capacities to ensure that the new system works well



How to prepare for future medico-legal challenges

- More training for doctors in soft skills, e.g.
 - Apology and disclosure of medical errors
 - Showing empathy even in difficult circumstances
 - Patient-centred communication
- More coordinated efforts in risk management
 - Intra- and inter- institutional cooperation
 - Sharing resources
 - Peer support groups
- Revisiting KPIs and their impact on healthcare standards
 - Administrative burdens reduce face-time with patients and reduce job satisfaction
 - Burnout can affect the bottom line



How to prepare for future medico-legal challenges

- Revamping the SMC complaints process
 - Not every wrongdoing should be regarded as “professional misconduct”
 - Alternatives to a DT inquiry include issuing a letter of advice or warning, or referring the matter to mediation
 - There should be options for “rehabilitation” of the doctor, and not just punishment



Thank You

Any Questions?

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