

The Changing Face of Medical Litigation in Singapore

By Dr Joanna Lin



Dr Joanna Lin (MBBS 1987) is an oncologist practising in Mount Elizabeth Medical Centre. She is also the medico-legal advisor for the Medical Protection Society in Singapore.

"..... we should have an increasing awareness of our patients' needs and fears, to elevate the art of communication, and to reconcile our patients' expectations with our own"

Dr. Tim Hegan, International Operations Manager for the Medical Protection Society, was in Singapore recently to review the medico-legal situation here. He participated in several public and private discussions to get first-hand knowledge of our problems. During his visit, he conducted an interview with the Straits Times. (*Editor's Note: See side story.*)

THE SIZE OF THE PROBLEM

The Medical Protection Society has noted an alarming trend in recent years with regards the incidence of medical litigation in Singapore and the value of the claims. As an unwanted side-effect of that, we see our colleagues' names and sometimes their pictures in the press with increasing frequency. The average size of a medical negligence claim has almost doubled over the last three years and the number of active claims has increased threefold.

WHY IS THIS HAPPENING?

People who live in Singapore have come to expect the best from their society, be it their leaders, their legal profession and the medical profession. Globalization, the presentation of Singapore as regional medical hub and importation of foreign

talent have made Singapore a truly international society, including trends in medical litigation. Our society has advanced rapidly from a third world nation to a first world one in the space of one generation. Medical science has had so many published advances recently such that the public has come to expect medical treatment to be flawless.

WHAT CAN WE DO ABOUT IT?

We can become more (street) wise in dealing with our patients. This does not mean alienating them. In contrast, it means that we should have an increasing awareness of our patients' needs and fears, to elevate the art of communication, and to reconcile our patients' expectations with our own, which may be surprisingly quite disparate. In many instances, patients complain because of a lack of communication and a perception of a lack of empathy.

We can work with patients to help them realise that their expectations of healthcare must be tempered with realism, and that occasionally medical treatment does not have the desired effect.

THE ROLE OF THE MEDICAL ASSOCIATIONS

The SMA Ethics Committee receives

many inquiries and complaints that are dealt with informally with the aggrieved party and the involved physician. The majority of these cases are settled amicably due to the committee's hard work and sympathetic attitude. We have also been fortunate to witness the setting up of the SMA Centre for Medical Ethics and Professionalism (CMEP) last year whose founding director is Dr. T Thirumorthy. The centre is working hard to promote good medical ethics and runs courses and seminars on a regular basis to educate healthcare workers, such as the ongoing series on Bioethics and Law being conducted at Tan Tock Seng Hospital. The other objectives of the CMEP are to promote public awareness of current medical and ethical issues in healthcare, and to provide mediation services and conflict resolution.

The Singapore Medical Council is also hard at work with the Ethics Code review. The chairman of the committee is Dr. Tan Chi Chiu. They are updating the ethics code to make it more relevant to practice today, and to include issues of the day, for instance those involving medicine and the new internet technology. The ethics code will also carry a set of general guidelines on basic ethical principles.

THE ROLE OF THE MEDIA

The main aim of meeting the press was to point out the trend of increasing litigation which would impact on patient care, cost of medical care and the doctor-patient relationship. Another important point that we felt needed to be emphasized was the media's

The following are excerpts from Dr Tim Hegan's interview with the Straits Times on 24 April 2001:

1. "The fund set aside to protect doctors facing lawsuits has reached a record high of \$4 million in the face of increasing legal action from patients."
2. "Lawsuits have increased in recent years – from just five new cases in 1990 to 16 in 1998, 27 in 1999 and 40 new ones last year these figures have to be taken in perspective as the society's membership has also risen over the years."
3. "Some suits here are settled before they go to court but can still cost the person making the claim about \$50,000. Those who initiate suits will have to cough up about \$150,000 as initial legal fees. Of the remaining notifications, only 3 per cent make it to court; the rest are settled out of court."

treatment of doctors when lawsuits had been filed. As many have pointed out and the press themselves have heard, the initial reporting is often a headliner, sometimes with pictures. When the verdict is out, it is often in the middle of the home news with the space allotted dramatically smaller. We have therefore tried to emphasize fair reporting without bias, and to get the facts right. This should include the withholding of names of doctors and definitely their photographs before the case has been decided. Often this “trial by media” gives the false impression of “guilty” even before the litigation process has been completed.

There is also the deep concern that media attention has a tendency to inflame the situation by possibly stimulating other members of the lay public to think that suing for medical mishaps is a way to obtain easy money. Many complaints are resolved even before reaching the legal process. Of those that go down a formal legal route, half are dropped by the patient, but not before causing undue stress to the practitioner concerned.

Ultimately, as a direct result of increasing medical litigation and the accompanying unwanted media intrusion, the doctor-patient relationship suffers, sometimes permanently. As the previous article by Garfield in the March edition of SMA News pointed out, the whole attitude of doctors to their patients may change. They investigate more thoroughly which ultimately leads to increasing healthcare costs. In addition many patients are viewed with suspicion and resentment.

As previously commented on in a previous issue of SMA News, the doctor cannot be a doctor in an environment where he is subject to intense scrutiny by the media and the public, and where he worries about litigation in his every decision. This is an unhealthy situation, and can only be resolved slowly. The public must realize that doctors always try to do their best. However, the human body is not a machine but a living organism which cannot always be predicted in its response to various

stimuli be it drugs or surgical procedures. Different individuals respond differently to the same treatment. Therefore sometimes doing ones best does not always result in a favorable outcome. A simple example is a patient who has an idiosyncratic reaction or allergy to an antibiotic that results in anaphylaxis and death.

The public must trust that the medical profession can police itself. Doctors who err will be subject to governance by their colleagues and peers, and that is the function of the Singapore Medical Council.

The Medical Protection Society, who is currently responsible for providing professional indemnity for approximately 70% of medical practitioners in Singapore, has noted the increasing pressures on its members and has taken several steps to deal with the ever changing situation. They appointed a local medico-legal adviser last year, and increased the number of law firms available for members to call upon for legal advice and representation at various disciplinary and legal arenas. MPS has recently appointed a panel of senior local physicians from various subspecialties to form an advisory panel. They had their first inaugural meeting in April. The main functions of the panel are to liaise with members who need to discuss a particular medico-legal or ethical problem, and to keep MPS informed about local issues and the needs of our members. Participation in medico-legal courses and seminars has always been a priority, and much of our advice stems from a need to aid patient communication. “Say it right” never had a truer meaning. The Society is also doing its part to make our members’ fears about increasing litigation known to our healthcare governors and to discuss with them how to deal with this increasingly unpleasant situation.

THE ROLE OF INDIVIDUAL DOCTORS AND SPECIALTY GROUPS

As practicing physicians, we need to improve the levels of communication with our patients. We have regular

CME meetings to maintain general competence and to keep up to date. If we feel that a particular clinical problem is out of our expertise, we should refer the patient on. We should always try to cultivate good relationships with our patients. In the event of an adverse event, a quick and honest explanation may be all that is required to avoid a complaint. An apology for an adverse event is not an admission of guilt.

Specialty groups should be motivated to organize lectures, give handouts or guidelines as to what should be the practice guidelines, and what information should be told to patients.

The issue of informed consent is a contentious one. Opinions vary widely amongst our colleagues as to what is appropriate and what is not appropriate for patients to be told. Goalposts are changing constantly with increasing pressure on doctors to divulge more information on risks than they feel appropriate. Doctors often feel that too much information and the patient will run away from a procedure they need, too little and they may be accused of obtaining inadequate consent. In the eyes of the law the trend is definitely towards more information being given and doctors need to be aware of this and prepare accordingly. For example, leaflets on “common complications” should be developed by the profession for patients to read before consenting.

THE NEED FOR REFORM?

At present, complaints and litigation are the only ways for patients to seek redress. However, the current adversarial system has resulted in a situation where defensive medicine is commonly practiced, and there is a loss of the trust between patient and doctor. We should explore alternatives to such a system, such as alternative dispute resolution processes such as arbitration, mediation. The Medico-Legal Society is holding their Annual Seminar on this very subject in October of this year entitled: Reforming Medical Negligence: Alternative Approaches to Affirming the Physician Patient Relationship. We should enthusiastically support these discussions and others like them. ■