

Meeting with SMC Following the Grounds of Decision of the Disciplinary Tribunal Inquiry for Dr Lim Lian Arn: CHAIRMAN'S REPORT

Report by Dr Lee Pheng Soon, issued 25 February 2019

Background

In a recent Singapore Medical Council (SMC) disciplinary case (SMC v LLA), an orthopaedic specialist was fined \$100,000 after pleading guilty to a charge of failing to obtain informed consent from a patient before administering a H&L injection to the wrist. This decision of the Disciplinary Tribunal (DT) has resulted in much discussion between individual doctors, within medical bodies, and even a petition to the Health Minister. Many of the concerns arose from the size of the fine (resulting from what was apparently a relatively small lapse before a common and minor procedure, which known complications were not permanent or debilitating, and where the harm which ensued was limited in nature and extent). There was uncertainty whether the decision of this DT indicated a direction towards the imposition of harsher penalties in similar cases, which would result in a more defensive approach to medical practice.

To better understand if this indeed represented a new trend important to all doctors, the SMA Council had a meeting with the SMC on 25 January 2019. After a frank and helpful exchange, the SMC agreed to the SMA's suggestion to speak to a wider audience (of representatives of the SMA, College of Family Physicians Singapore, Academy of Medicine, Singapore and SMA Centre for Medical Ethics and Professionalism [SMA CMEP]) on 31 January 2019, the exchange of which forms the bulk of this "Chairman's report", and is now shared for the interest of all SMA Members:

SMC's presentation

SMC's Director (Legal) began with a presentation entitled "Understanding the Facts and Implications of LLA's Case: What It Actually Means and What It Does Not".

In summary, he explained that the Patient had lodged a complaint with the SMC claiming that Doctor had failed to inform her about the risks and possible complications arising from an H&L injection in her left wrist joint before obtaining her consent to treatment; and also that Doctor's advice of physiotherapy was inappropriate.

In his written explanation to the Complaints Committee (CC), Doctor admitted that he did not document the discussion with Patient about the risks and possible complications, and in fact he could not recall whether he had informed Patient about the risks and possible complications of an H&L injection. As the investigations disclosed a prima facie case of professional misconduct, the CC referred the matter to a DT for a formal inquiry.

Here, Doctor was charged with a single count of professional misconduct under section 53(1)(d) of the Medical Registration Act for failing to obtain informed consent from Patient, in particular, failing to advise Patient of the risks and possible complications, before administering the H&L injection, in breach of Guideline 4.2.2 of the 2002 edition of the SMC Ethical Code and Ethical Guidelines (ECEG).

Doctor pleaded guilty to the charge. The SMC, based on previous decided DT and Court of 3 Judges cases involving

failure to obtain informed consent, sought a 5-month suspension, while Doctor requested that the DT impose the maximum fine of \$100,000 or alternatively, the minimum 3-month suspension.

The DT's Grounds of Decision (GD) noted:

- 1) A doctor's duty to obtain informed consent from his patient is a serious one. However, not every instance or conviction for a charge of failure to obtain informed consent must necessarily attract a sentence of suspension.
- 2) It was good clinical practice and medical record keeping to document in the case notes that the patient had been adequately informed and was agreeable to the H&L injection.
- 3) It was not universal practice to take a written consent from the patient for an H&L injection performed in consultation room setting, but that it was good clinical practice and medical record keeping to document in case notes that the patient had been adequately informed and was agreeable to the injection.

However, given that the complications experienced by the Patient were not permanent or debilitating, and as the harm which ensued was limited in nature and extent, the DT agreed with Doctor's Counsel that his culpability was on the low end. DT imposed a \$100,000 fine.

In the past few weeks, several questions including some misunderstandings have arisen about this case. Important examples are:

Q1 • Will doctors be disciplined if they fail to inform a patient of ALL the risks and possible complications associated with a procedure or treatment?

A • No. Doctor was charged because he did not inform Patient of ANY risks or possible complications associated with the H&L injection.

Q2 • Must doctors inform patients of ALL the risks and possible complications that were mentioned in the GD for this case prior to an H&L injection?

A • No. The risks and possible complications a doctor ought to inform a patient of, depends on the circumstances of the case. The risks and possible complications mentioned in the GD were what the DT found that the Doctor ought to have informed the Patient of on the facts of that case, and was not meant to be prescriptive for all H&L injections. The Doctor accepted that he should have informed the Patient of those risks and possible complications, and admitted that he had not. What a doctor needs to inform a patient about prior to a treatment or procedure continues to depend on the specific circumstances of the case, including the patient's particular situation.

Q3 • Does this case change a doctor's duty to advise and inform, as laid down in Hii Chii Kok v Ooi Peng Jin London Lucien and another?

A • No. A doctor should provide information and advice on risks to which (1) a reasonable patient would be likely to attach significance, or (2) exceptionally when the doctor knows or ought to know that the information would be significant to a particular patient. Doctors are not required to disclose all conceivable risks to patients.

Q4 • Must a doctor take written consent for even minor treatments or procedures?

A • No. The DT clearly stated that it was not universal practice to take a written signed consent for an H&L injection, and did not suggest that it should be.

Q5 • If a doctor needs to document in the case notes that the patient had been adequately informed and was agreeable to the injection, is that not akin to taking written consent?

A • No. As the Court of 3 Judges (the High Court on appeal from the decision of a DT case) highlighted in *SMC v Peter Yong*, "[i]t is important that medical professionals properly document the management of patients under their care. Properly kept medical records form the basis of good management of the patient and of sound communications pertaining to the care of the patient." However, proper documentation does not merely benefit patients; as Hii Chii Kok illustrates, it can assist to protect doctors against unmeritorious complaints that they failed to advise patients.

Additional questions from audience present

After the presentation by the SMC's Director (Legal), the audience posed various questions. The following topics, among others, were discussed:

- The decision of the CC to refer the complaint against LLA to the DT for a formal inquiry;
- Whether the DT could or should have decided on a lesser sentence notwithstanding that the Doctor's Counsel had sought a \$100,000 fine;
- The suitability of mediation in the disciplinary process;
- The severity of a sentence of \$100,000 fine;
- The implications of the DT's decision for junior doctors working in public healthcare institutions and doctors who are not financially well-off;
- The capability of CC members to understand the nuances of the expert opinion they have obtained and how the opinion bears on the decision whether to refer a complaint to a DT or not; *[On this topic, the SMA CMEP has offered its resources to assist in the training of members of the SMC Complaints Panel.]*
- What the SMC staff do when a complainant approaches the SMC to lodge a complaint against a doctor. *[On this topic, the SMC's Director (Legal) informed the audience that the SMC staff are trained to counsel complainants to consider other avenues of resolution, and before the complaint is officially lodged, the complainants are encouraged to approach the healthcare institution*

and doctor involved first, or consider mediation, before they lodge a complaint with the SMC.]

Conclusion from SMC's presentation

The Doctor was disciplined because he wholly failed to inform the Patient of any risks or possible complications.

This case does not mean that a written signed consent must now be obtained for all procedures or treatments, or that all risks and possible complications must be communicated to patients.

A doctor's duty to inform or advise remains guided by the SMC ECEG (on the ethical front) and Hii Chii Kok (on the legal front).

This case does indeed emphasise the importance of adequate documentation and record-keeping.

This case should not change the way doctors are expected to practise.

Take-away message from the meeting: at the very least, this case confirms the general wisdom of the advice to all doctors: "Document, document, document." ♦

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