

# New Challenges Await

# NEW DOCTORS



Text by Dr Benny Loo and Dr Lee Pheng Soon

The month of May marked a new chapter of life for many colleagues graduating from the National University of Singapore Yong Loo Lin School of Medicine (NUS Medicine) and Nanyang Technological University Lee Kong Chian School of Medicine (LKC Medicine), as did July for their peers at Duke-NUS Medical School (Duke-NUS). No longer students, these young “padawans” started work as doctors in training who are legally and professionally responsible for the consequences of their everyday work. Any of them might now be queried by the Complaints Committee (CC) or even subsequently face a Disciplinary Tribunal (DT)! Although assured that MOH Holdings would cover legal costs and civil liability, each junior doctor will remain personally liable for any penalty dispensed, be it censure, fine or worse. To the more thoughtful, defensive medicine and survival medicine no longer seem theoretical concepts to be scoffed at.

It was therefore no surprise that the January 2019 case of Singapore Medical Council (SMC) vs Dr Lim Lian Arn (LLA) caused a stir among many young doctors. In short, Dr Lim pleaded guilty at the DT for failing to take informed consent before administering an H&L injection – a minor procedure. Though no serious complication or permanent harm resulted, he was fined \$100,000 – approximately two years’ worth of a junior doctor’s basic salary.

Each day in the life of most young doctors is filled with multiple minor procedures on countless patients. Many might be unsure what would constitute taking an *adequate* informed consent, if that point ever came to judgement. For example, if implied consent had been inadequate for an H&L injection, would it also be considered inadequate for a venepuncture or the setting of an

intravenous plug? Doctors work very well when there are clear definitions and classifications, such as with the staging of cancers. On the other hand, patients also expect doctors, even junior doctors, to be both knowledgeable in theory and confident in technique. Extensive discussion of previously unthought-of complications before a common procedure does not encourage patient confidence and therefore is avoided by many junior doctors.

In the SMC vs LLA case, the charge was for not taking informed consent **at all**, rather than it being *inadequately* taken. Thus, whatever the outcome of the current appeal may be, junior doctors will still need clarity on which procedures are simple enough to be covered by implied consent, and for those not so, how much discussion is necessary for informed consent to be successfully defended as having been adequately taken. This guidance must be specific and must come from an authority sufficient to assure concurrence by a future DT.

In the absence of such guidance, SMA swiftly wrote to the SMC to voice Members’ concerns, highlight difficulties young doctors face and request clearer instructions to help them navigate this muddle. At the same time, the SMA Doctors in Training (DIT) Committee also wrote to the *Straits Times Forum* emphasising the need to resolve this matter urgently, as young doctors continue to perform minor procedures daily, even at personal risk of prosecution.<sup>1</sup> All doctors support both high ethical standards in medical practice and good doctor-patient communication, but the practical constraints when meeting specified rules and regulations need to be taken into account. To many junior doctors, the LLA judgement seemed to say that

doctors need to explain all complications (including rare ones with potentially serious outcomes) before every minor procedure and, for defence, will need to have this documented in adequate detail. In reality, such a requirement is extremely difficult to achieve consistently, bearing in mind demanding clinical duties and the bolus nature of patient admissions.

On 15 March 2019, SMA organised the “Masterclass on Principles of Consent Taking”, attended by representatives from SMA, College of Family Physicians Singapore, Academy of Medicine, Singapore and SMC, as well as Medical Protection Society experts and junior doctors from major institutions. Led by Dr Lee Pheng Soon, the discussion served as a platform to voice misgivings and also put on record recommendations from senior doctors in our community. In summary, all doctors were urged to use consent-taking before minor procedures as an opportunity to build the patient-doctor relationship, by sharing appropriate information especially relevant to the specific patient. If routinely practised in any unit, such communication and subsequent implied consent can be inferred from the management plans and case notes filed by the medical team (without needing an actual signed consent form). This conclusion was very comforting; it confirmed that current practice was consistent with recommendations of senior doctors present.

## Another case emerges

Barely had the dust settled before the judgement of another relevant case was published: SMC vs Dr Soo Shuenn Chiang. In summary, at the request of someone claiming to be his patient’s husband, Dr Soo interrupted his very busy clinic to help provide a memo

that included an urgent suicide risk assessment, so that his patient, reportedly unstable at home, could be admitted to the Institute of Mental Health. However, he did not verify the identity of the family member receiving the memo (the patient's brother claiming to be the patient's husband) and was thus charged with breaching patient confidentiality. He was fined \$50,000.

This judgement also created much unease among young doctors, who are frequently tasked to write many of such memos, whether addressed to public institutions (eg, for patient transfers), to support applications for public assistance (eg, for subsidies) or for a patient's non-medical reasons (eg, to support an application to employ an extra domestic helper or to support an insurance claim). If the patient is unable to personally make such a request, knowing which family member has the right to request such a memo and which family member has a right to receive it currently remains uncertain. Also uncertain is the wisdom of demanding proof of relationship (eg, a long-filed-away marriage certificate) at a time of medical urgency. But the junior doctor knows deep down that another family member may file a formal complaint with the SMC at any time, disputing the right of the original requestor to the memo and its attendant information, and at quiet moments cannot help but draw parallels between his/her action and Dr Soo's case.

Once again, SMA promptly wrote to the SMC to seek advice on the rights of relatives and the correct procedure for identity verification. Other doctors also wrote to the *Straits Times Forum* to highlight the gravity of the implications and magnitude of penalty. We now hear that the SMC has asked for the DT's judgement to be overturned, because new evidence is now available. From the available details, it seems that the brother (to whom the memo had been handed) now confirms that the husband (who had requested the memo with the confidential details) had been with him all along. But even if it is found that Dr Soo had not violated medical confidentiality, two questions relevant to junior doctors' daily practice remain: (1) In the absence of a patient's expressed consent, which relatives are "close enough" to request and receive confidential information?

(2) What effort to establish the relationship and the identity of the requestor will be ruled adequate by the DT?

This guidance is urgently required, especially by doctors of paediatric and geriatric patients. Patient consent may be impossible to obtain and, at the same time, the doctor's relationship with the family may be all that he is left to work with. Thus, the junior doctor may be reluctant to delay the memo. This matter is still a work in progress.

### What you can do

In situations like these, what can the junior doctor do other than to feel helpless? Here are some suggestions:

1. When unsure, seek advice from your senior team leaders. Understand the basis of their advice, record it in your personal diary and follow it unless you know better.
2. Discuss it with your peers in the SMA DIT Committee. They are well-placed to obtain a second opinion from senior doctors within the SMA.
3. For issues that still remain unresolved, ask the SMA for help. Its senior members can frame the controversy and present it in its context to "wise persons" (eg, the Professional Bodies, SMC, the Ministry of Health [MOH] and our Honorary Legal Advisors) for their points of view. This will often be done behind the scenes, but resultant advice will be shared and will benefit all doctors.
4. Support the SMA. Get your friends to join, support and participate. Without this, we will have far less impact when it matters.

### Looking forward

These two cases blew a chill wind across the medico-legal landscape and the chill was especially felt by junior doctors. However, awareness raised by the medical community to the MOH and the SMC has set waves of positive change in motion. The Workgroup tasked to evaluate the process of taking informed consent and the SMC disciplinary process, and MOH's requests made to the Court of Three Judges to review the DT's decisions in the above two cases, are perhaps unprecedented. Dare we hope that together, their outcomes will give doctors

more confidence, and be enough to slow the drift towards defensive medicine, to the benefit of both doctors and patients?

Medicine is often referred to as both a science and an art, with communication a key element of this art. Much effort has been made in recent years to improve doctor-patient communication. The above two cases have demonstrated, not least to junior doctors, how we need to improve our **intra**-profession communication: between senior and junior doctors, professional bodies, practitioners and the MOH/SMC. Initially, there was poor communication to doctors on the charges made and the resulting penalties, and little feedback was sought from the practitioners who are directly impacted and their regulators, MOH and SMC.

Every day, we see the benefits of the advancements of science in medicine. Perhaps it is time to try to improve our art, especially in communicating within the profession. Clear expectations of how doctors should carry out their professional duties and clear feedback on the consequences of meeting new expectations on the ground will reduce unnecessary pain and encourage trust within our self-regulating profession. ♦

### Reference

1. Loo B. Help young doctors by clearing up ambiguity. *The Straits Times Forum*. Available at: <http://bit.ly/2DvdrBJ>.

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