

Could SMA Have Not Withdrawn the Guidelines on Fees (GOF)?

"A sick person often has neither the time nor inclination to shop around to determine what a reasonable price should be."

– "Time now for a guideline" in *The Straits Times*, Editorial, 20 January 1982

Though the SMA Guideline on Fees for Doctors in Private Practice in Singapore (GOF) is now another flicker in the pyres of history, this concern raised by *The Straits Times* 25 years ago remains relevant today. Indeed, it succinctly encapsulates the crux of the issue.

The withdrawal of GOF has generated much media interest and writings from several columnists in this newspaper: law academic Mr Burton Ong (10 April 2007), Senior Writer Mr Andy Ho (11 April 2007), and Health Correspondent Ms Salma Khalik (12 April 2007).

To understand the issues around the withdrawal, we need to understand or answer the following:

- History and rationale for GOF
- Market asymmetry and the limitations of the (market) price system
- The extent of GOF
- The effect of GOF
- The events leading up to withdrawal and should SMA have appealed for an exemption
- Could we and should we have not withdrawn GOF?

HISTORY AND RATIONALE FOR GOF

Firstly, it is important to know the history of GOF: how did it come about?

The first edition of GOF was originally issued in 1987 following complaints of overcharging when SMA and MOH discussed and agreed that there was a need to draw up a schedule of fees for medical practitioners. The main objective then was to enable greater transparency of medical fees and to safeguard patients' interest. GOF was neither an instrument to protect doctors' (GPs and specialists) incomes nor an effort by SMA to facilitate doctors engaging in cartel-like behaviour.

Mr Andy Ho's comparison between the SMA and the Institute of Certified Public Accountants of Singapore is instructive – the latter does not issue price guidelines. Without being disrespectful to our accounting colleagues, there are two fundamental differences between accounting and medical services.

The first is practically everyone sees a private practice doctor, whether a GP or specialist, but most accounting clients are usually companies and well-to-do individuals with considerably more resources than an average Singaporean. The man in the street seldom needs an accountant for personal reasons.

More importantly, there is often an emergency or urgent nature to medical services that does not permit the luxury of time in decision-making for consumers and patients.

INFORMATION ASYMMETRY AND LIMITATIONS OF THE (MARKET) PRICE SYSTEM

Information Asymmetry and Trust

Nobel Prize Economics laureate Kenneth Arrow, one of the founding fathers of healthcare economics in the 20th century, in his seminal work "Uncertainty and the welfare economics of medical care" summed up the main problem with choice in healthcare – consumer choice as we know in market economics seldom apply because of information asymmetry (the term he used was 'information inequality'). And this is no secret because "both parties are aware of this informational inequality, and their relation is coloured by this knowledge". Under competitive market conditions, a consumer is able to insure away his risk and uncertainty, but in healthcare he is unable to. In the absence of this, he has to look for substitutes.

This substitute is in the form of a guarantee that "at least the physician is using his knowledge to the best advantage. This leads to the setting up of a relationship of trust and confidence, one which the physician has a social obligation to live up to.....To put it another way, the social obligation for best practice is part of the commodity that the physician sells, even though it is a part that is not subject to thorough inspection by the buyer". Arrow adds: "One consequence of such trust relations is that the physician cannot act, or at least appear to act, as



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if he is maximizing his income at every moment of time. As a signal to the buyer of his intentions to act as thoroughly in the buyer's behalf as possible, the physician avoids the obvious stigmata of profit-maximising.....the very word, 'profit' is a signal that denies the trust relations."

The Nobel laureate's thinking is in obvious contradiction to Mr Ho's claim that "physicians *qua* businessmen will try to maximise their profits over the long run by leveraging on their market power".

Even Minister for Health, Mr Khaw Boon Wan, commented on many occasions that there was information asymmetry in the healthcare sector, and one of his priorities highlighted in this year's Budget Speech was to reduce information asymmetry by publishing outcomes and performance indicators, so as to increase market transparency and help patients make better choices.

The Limitation of the (Market) Price System

It is noteworthy that at the end of this landmark paper, Arrow stated matter-of-factly: "The logic and limitations of ideal competitive behaviour under uncertainty force us to recognise the incomplete description of reality supplied by the impersonal price system." In other words, prices that appear to be set freely by market forces (without guidelines) in healthcare may not be what it seems.

THE EXTENT OF GOF

Mr Burton Ong's column "A rather hasty jab in the dark" gives the impression that GOF applied only to GP charges and little else. Mr Andy Ho too, pays much attention to GP consultation charges.

The truth is, only a small part of GOF applied to GPs. As the title of the guidelines suggests, it is for the doctors in private practice in Singapore and the vast majority of GOF recommendations apply to specialist and procedural charges. In fact, the latest edition of GOF is 97 pages long and less than 20% of the recommendations therein are applicable to GP charges. So a decision to keep or withdraw GOF cannot be based on Mr Ong's apparent narrow understanding of GOF as comprising only recommendations on fees charged by GPs.

THE EFFECT OF GOF

Keeping Private Healthcare Affordable

It is a well-known fact that healthcare inflation is often, if not always, higher than the Consumer Price Index (CPI). However, if you look at how

much GOF price ranges have risen in its 19-year history from 1987 to 2006, one will realise that GOF recommendations have been modest and responsible. For example, surgical and anaesthetist fee recommendations for common operations such as trans-urethral resection of the prostate (TURP) and total knee replacement have risen by only 29% and 18% respectively. An ultrasound abdomen has only gone up by 19%. This is very modest for a 19-year period when prices of many things would have doubled if not tripled.

SMA can look back proudly and be confident that GOF did its part to keep private healthcare in Singapore affordable.

Baseline and Cap: An Inconvenient Truth

Ms Salma Khalik has obviously examined the GOF in detail when she correctly quoted that the recommendation for specialist report for court attendance was "\$600 and above". Because this recommendation has no upper limit, she inveighs that GOF does not appear to protect patients and promptly labels the cause for having a GOF "a non-starter".

What she fails to report is that of the some 1,500 fee recommendations in the 97-page GOF, this is the ONLY recommendation that has no upper limit. Practically all other recommendations come with a baseline and a cap. SMA makes no apologies for not setting an upper limit to a specialist report for court attendance because of the potential and unpredictable complexities of a court case.

Mr Andy Ho's assertion that GP earnings have dropped mainly due to the influence of "huge group medical practices" remains unproven. Large group practices (those with 10 branches or more) constitute no more than 20% of the private GP market. Most GP clinics remain one-clinic practices or small group practices (more than five branches) with little economies of scale.

EVENTS LEADING TO WITHDRAWAL To Appeal or Not

The second question posed by Mr Burton Ong is more substantial: whether or not the SMA ought to have applied for, either on its own initiative or with the assistance of the Ministry of Health (MOH), an exemption under the Third Schedule of the Competition Act. It would be necessary here to recap the sequence of events leading to the withdrawal of GOF.

SMA had sought MOH's guidance on this matter at an early stage. MOH's advice to us in November 2006 was essentially that we should follow the advice of our lawyers.

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We had consulted independently five of our honorary legal advisors, all of whom are widely recognised to be eminent experts in their field. One of our legal advisors had advised that: “...recommendations and guidelines on fees for medical services **would not qualify for exemption or be exempted from the prohibition by virtue of the Third Schedule.**” Another advised similarly: “**The Act provides for some exclusions and exemptions to the prohibition but the Fees Guidelines are unlikely to satisfy the requirements.**”

We did ask one of our legal advisors to draft a letter of appeal to the Minister for Trade and Industry, under whose purview the Competition Commission of Singapore (CCS) comes under. We were told by the legal advisor that the law does not provide for such a direct appeal.

Letter to CCS

We then wrote to the CCS CEO, Mr Ong Beng Lee on 28 February 2007 informing him that we may have no choice but to withdraw GOF soon after our Annual General Meeting on 1 April 2007. That four-page letter, which was copied to MOH, set out the history of GOF, the economic argument for keeping GOF – from the standpoint of decreasing information asymmetry, as well as the consequences of GOF withdrawal. It also put on record our attempts to obtain input from CCS, including the suggestion to have a meeting.

In particular, we pointed out the following major consequences of withdrawing GOF:

- Consultation fees for GPs and private specialists will be floated.
- Medical report fees will also be floated.
- There will be no guidance for doctors on how to charge for court appearance fees for civil cases.
- The SMA Complaints Committee will no longer handle complaints about overcharging.
- The SMA will also withdraw its guidelines on drug price mark-ups.

Our concerns then could be summed up by what we had stated in the same letter: “**The withdrawal of the GOF and the resulting increase in information asymmetry will mean that patients’ interests might not be better served, especially amidst rising concerns of increasing and unaffordable healthcare costs.**”

The CCS CEO’s reply to us dated 9 March 2007 stated the relevant parts of Section 34 in the Competition Act and Paragraph 3.5 of the CCS

Guidelines on the Section 34 Prohibition, and it ended only with: “The CCS notes that the SMA has received legal advice that the GOF may contravene section 34(2)(a) of the Competition Act.”

Based on this reply from CCS, and with the earlier advice from MOH, the 47th SMA Council decided to recommend to the SMA general membership at its AGM that GOF be withdrawn. This recommendation was unanimously accepted at the AGM.

Both letters as well as our media briefing slides are available for download from our SMA homepage at www.sma.org.sg. SMA would like to urge all interested parties to read the documents and decide for themselves, that given the circumstances, if SMA could have avoided withdrawing GOF.

In any case, CCS’s media briefing held on 5 April 2007 vindicated our course of action as CCS Chairman Mr Lam Chuan Leong supported our decision to withdraw. That would by inference mean that any application or appeal for an exemption would have been unlikely to be supported by CCS. Thankfully, this is a case of foresight being as good as hindsight.

COULD WE AND SHOULD WE HAVE NOT WITHDRAWN GOF?

The most important issue here is the legal one. The current SMA leadership firmly takes the premise that first and foremost, SMA must be a law-abiding organisation. No SMA leadership would want to go down in history as the one that led SMA into breaking the law! But withdrawal does come with a fair amount of angst, because we are putting away some 20 years of work.

We were also prudent if not exhaustive in our attempts to know what the legal position of GOF was. Four out of five legal advisors were unequivocal in their advice: GOF in all likelihood contravened Section 34 of the Competition Act. Only one was more accommodating in his interpretation. As with most professional matters, it is hard to have unanimity among five professional minds. Four out of five in complete agreement is more than enough to go on. I would like to put on record SMA’s deep appreciation to these five honorary legal advisors who provided invaluable advice to us *pro bono*.

Mr Burton Ong also opined that one important consideration for not withdrawing the fee guidelines should be that SMA’s GOF is only a set of guidelines and GPs are not obliged to follow them.

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However, SMA would like to reiterate what the CCS Chairman was quoted in *The Straits Times* (6 April 2007), that “**even if GOF was not mandatory**, it can become a signal to market players and result in prices clustered around a narrow range. With the guidelines acting as an ‘unofficial sanction’ to peg fees at a certain level, doctors who are able to price their services more cheaply will have less incentive to do so”. Hence, it is no longer a question of whether GOF is only a guide or an obligatory fee structure to follow. It is about pro-competition and creating a system in which prices are set individually and which allows the forces of supply and demand to work.

THE FUTURE

I received this email from an insightful public sector oncologist a few days ago:

“If one takes away the speed limit on a highway, what will happen? We know that some cars are already driving really slowly, some cars are really going beyond the speed limit, especially when traffic cops are not looking, so they are already not following the speed limit sometimes. If the speed limit is removed, will more cars drive faster over the years on the highway, or slower?”

Unfortunately, he did not provide any answer to his question.

After all that is said and then, GOF is indeed no more. But we still have to grapple with the issue of pricing. There are really five ways to price anything:

- **Decide to make something free** – this is similar to how SMA decides to run its Complaints Committee. Complainants do not pay SMA anything to lodge a complaint. This has also been the time-honoured approach to the very poor patient – doctors have since time immemorial waived part or all their professional fees as a personal decision.
- **Decide to charge a nominal fee** – this is more symbolic than anything else. One example is the fees charged by government primary and secondary schools. The fees are so low they have little bearing on the true costs of education. An example of this in healthcare is our C-class services in public hospitals.
- **Charge at cost recovery** – this is commonly practised by related parties. For example, when a public agency sells services to another public agency or a charitable organisation, it usually does so at cost recovery.

- **Charge at cost-plus** – this is commonly practised and really was the spirit in which GOF was originally drawn up: to keep that commodity of ‘trust and confidence’ that Kenneth Arrow described exists between physician and patient due to information asymmetry. The consensus arrived at by MOH and SMA in the eighties was for the doctor NOT to maximise profit but to make a decent living after costs are covered – and hence the SMA GOF was born.
- **Charge at what the market can bear** – this is probably the brave new world we are now entering without GOF.

The economic argument that GOF limits consumer choice has also been raised repeatedly. Here, it is perhaps pertinent to quote another eminent health economist, past President of the American Economic Association and author of the classic health economics text *Who shall live? Health, economics and social choice* – Professor Victor R Fuchs. His take on the limits of applying economic theory to healthcare is that “The discussion of choices reveals some of the limits of economics in dealing with the most fundamental questions of health and medical care. The questions are ultimately ones of value, what value do you put on saving a life? On reducing pain? On relieving anxiety?...According to one well-known definition, ‘economics is the science of the means, not of ends’: it can explain how market prices are determined, but not how basic values are formed; it can tell us the consequences of various alternatives, but it cannot make the choice for us. These limitations will be with us always, for economics can never replace morals or values.”

And indeed they will be with us, unless we take the invidious path that the medically-trained Mr Andy Ho has taken against another doctor – to value a doctor’s effort at \$3.50, similar to “a plate of *char kway teow*”.

In retrospect, SMA cannot unilaterally choose to keep or withdraw GOF. The guidelines began with a set of values more than two decades ago. GOF is now gone because society’s values, which find expression in our law, have also changed in the last 20 years. ■

Editor’s note: Due to the constraints of space, an abridged version of this article was submitted to The Straits Times and published on 18 April 2007.