

Professional Accountability and Professional Misconduct

By Dr T Thirumoorthy, Executive Director, SMA Centre for Medical Ethics & Professionalism

The SMA Conference: Professional Accountability & Professional Misconduct will be held from 23 to 24 November 2012. For more information about the event, please refer to pages 16 and 17.

Healthcare professionalism

Healthcare professionalism has been defined as an ideology encompassing a set of professional duties, competencies, values, virtues, behaviours (professional conduct), outcomes (performance) and relationships that aim to achieve the *goals of Medicine*, and promote trust and confidence in the healthcare system. The trust and confidence of the patients, public, medical professionals and all stakeholders in the healthcare system is necessary to provide stability and consistency in the midst of complexity and uncertainty in the healthcare ecosystem.

The healthcare professionalism ideology is marked by *clinical competence* and an ethical framework (*ethical competence*) which governs the relationships in the delivery of healthcare. This professionalism ideology is based on the fiduciary nature of the relationship between the professional and patient – *the principle of the primacy of patient welfare is above that of the interests of the healthcare professional or any third parties*. The fiduciary nature recognises the imbalance in power, knowledge, experience and expertise within the doctor-patient relationship. The ethical framework aims to protect the vulnerability and dependency of the patient by promoting respect, empathy and altruism, which are essential ingredients for an effective therapeutic relationship.

Healthcare professionalism, which aims to provide the foundation of consistency in the midst of complexity and uncertainty of today's medical practice, is being challenged as the only or preferred mode of relationship in healthcare. Patients' higher levels of education, awareness of their rights and wider access to high quality medical information have altered the vulnerability and dependency factors in the doctor-patient relationship. Commercialisation of healthcare for profit and consequent increases in medical advertising are important factors that have raised both patients' expectations and costs of healthcare. The expected relationship is traditionally marked by mutual respect and mutual trust, which cannot be taken for granted.

Professional accountability

Societal changes worldwide are resulting in increased awareness and avenues which express the rights of persons and groups, causing greater demands for transparency and accountability. In this present climate of participatory democracy, all professionals and public officials, including the media, politicians and corporate leaders, are accountable for their conduct and performance, even with the slightest perception of inappropriateness.



Not surprisingly, patient complaints and claims have increased. The current legal system has been engineered to lower the bar for patient complaints at minimal costs and losses to the complainants. When new patient expectations are unmet and the relationship dynamics result in loss of trust, patients will complain and litigate for financial claims. As a result of the change in dynamics of the healthcare professionals and patient-public relationship, there will be an increase in medical indemnity fees and costs, which means that doctors have to acquire the knowledge, skills and personal attributes to prevent claims and complaints, on top of doing their work competently. In addition to meeting patient expectations and maintaining good relationships, doctors have to acquire new skills to be ready to account for their conduct and performance, even when the medical outcomes are good.

Professional misconduct

When doctors are found guilty of medical negligence, the emotional and financial costs are significant. However, most doctors are able to return to work, care for their patients, earn a living and move on in their professional lives. Nonetheless, when doctors are found guilty of professional misconduct, the emotional, reputational and financial costs and fines are greater. Worse still, they could have their licences suspended or even removed, such that they cannot return to work, neither to care for their patients nor earn a living. An eminent defence lawyer shared with me that "professional misconduct trials are like criminal trials, where the doctor is fined and the loss of licence is akin to going to jail, as the doctor is deprived of his freedom to do the things that matter most to him".

It is clear that all doctors and healthcare professionals cannot adopt an indifferent *laissez-faire* approach to the issue of professional misconduct. Healthcare professionals must understand the rules and process by which a charge of professional misconduct is framed. They must know how to respond to such charges of professional misconduct and defend themselves effectively.

Healthcare professionals, who are called to be expert witnesses in complaint hearings and disciplinary tribunals for professional misconduct, have a professional duty to gain competence so that they can provide objective, relevant, logical and comprehensive expert reports.

Sitting in judgement of colleagues to establish a verdict of professional misconduct needs significant skills, wisdom, moral courage and experience, as well as knowledge in professional ethics, skills in reasoned analysis and judgment of misconduct. The responsibility of such a duty includes competency in basic legal jurisprudence, rules of procedure, admitting evidence, sentencing and principles of natural justice and fair play. Healthcare professionals

must be schooled, trained and skilled when called to sit in judgement of their colleagues and be able to carry out their duties competently without fear or favour.

A competent, effective, efficient, timely and fair system of complaint hearing and disciplinary trials in professional misconduct promotes trust in the system of professional accountability. Trust and confidence of our patients and the public in the healthcare profession and system is essential for it to be sustainable, stable and effective for the benefit of patients and society.

SMA Conference: Professional Accountability & Misconduct

The SMA Conference: Professional Accountability & Professional Misconduct will be held from 23 to 24 November 2012. The programme consists of a conference on 23 November and a training workshop on 24 November.

The conference on 23 November will bring together local healthcare professionals (doctors, nurses, dentists and Traditional Chinese Medicine physicians) with our international colleagues from Malaysia, Hong Kong and Australia, as well as legal and medical indemnity experts, to examine and understand the concepts, issues and challenges of professional accountability and professional misconduct.

Meanwhile, the training workshop on 24 November is aimed at healthcare professionals sitting in judgement of professional colleagues. The targeted audience includes: medical professionals sitting on disciplinary tribunals, hospital inquiry panels and complaint committees, Heads of Departments, and administrators in hospital management. The workshop will help participants acquire methodology, frameworks and skills, based on real and typical cases, for ethical reasoning and judgment. In addition, it will impart the knowledge and application of the underlying legal concepts and principles of conducting a disciplinary inquiry. The workshop will definitely be practical and useful for those tasked with the serious job of sitting in judgement of fellow healthcare professionals accused of professional misconduct. **SMA**



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