



Mr Loong Seng Oon



Dr Peter Loke

Striking a Happy Medium

SMA Mediation for Dispute Resolution: Preserving Relationships, Saving Costs

By Mellissa Ang

Many in the medical profession are aware of the option of mediation when conflicts arise in the course of their practice, but only some utilise this non-confrontational method before it escalates to the courtroom. Therefore this seminar, held at Grand Copthorne Waterfront Hotel Singapore on 10 November 2012, was aimed at providing more information about mediation to healthcare professionals.

Mr Loong Seng Oon, Executive Director of the Singapore Mediation Centre and Senior Director of the Singapore Academy of Law, started the session by introducing what mediation entailed. Mr Loong explained that mediation is a forward looking process: "The aim of this process is to see how we get to this point in the future where the dispute no longer exists. We're not saying the past is irrelevant. Very often, the parties will still want to talk about what happened in the past. The point is that the focus is not in the past. Very often, parties can just agree to disagree." Mr Loong further noted that mediation allows control over the outcome of the session and terms of the settlement, saves time and costs, and improves the relationship between parties as well.

Dr Peter Loke, a Board Member of the SMA Centre for Medical Ethics & Professionalism, and Principal Mediator of Singapore Mediation Centre, continued with reasons on why choosing mediation for medical dispute resolution makes sense. He shared that a majority of medical disputes are due to lack of communication between parties so mediation could potentially improve doctor-patient relationships. Dr Loke shared that more often than not, patients and their families are seeking honesty, acknowledgement and appreciation of trauma they suffered, instead of compensation. Hence, Dr Loke believed that mediation is the most appropriate first-pass resolution mechanism for medical disputes.

A/Prof Joel Lee, an associate professor at the Faculty of Law, National University of Singapore, stressed that

one of the key points of the mediator is to act as a catalyst without being involved in the dispute. In order to arrive at a win-win solution for all parties, A/Prof Lee introduced mediation clauses, which are contractual and binds parties, whether it is the patient, doctor or healthcare institution. He explained that mediation clauses are preemptive steps before a dispute even arises, especially the terms and conditions of the contract, whether the law of the country governing the contract enforces mediation clauses or not.

Explaining why clauses are not enforced at times, A/Prof Lee made it clear that some feel that mediation clauses take away the courts' jurisdiction and they could cause uncertainty when the terms of the clause are not stated clearly, such as costs. Futility is another reason why clauses are not enforced as there is no guarantee that there will be a deal after mediation. Lastly, insufficiency of damages could also prevent clauses from being enforced because if someone wants to breach the mediation clause, no one can force them to continue with mediation.

Role play: "Fishbowl of Mock Mediation"

A different group of experts then took to the stage, not with their PowerPoint slides, but their acting skills, to reenact a mediation session. Dr Seow Wan Tew played Patient S, Dr Joseph Sheares was Dr P and Dr Loke was the mediator. In this mediation role play, Patient S had sought Dr P's expertise to remove some gallstones. Unfortunately, in the course of the procedure, Dr P had to make immediate surgical decisions to stop excessive bleeding from Patient S's wound, which resulted in a large scar across Patient S's stomach. Concerned that the scar would affect his career as an underwear model, an infuriated Patient S took to his online blog to defame Dr P. During the mock mediation session, Patient S and Dr P were seen exchanging heated words, to which the mediator stepped in several times to prevent it from escalating further. After a combined session with



A/Prof Joel Lee

An insightful and humorous mock mediation session between Dr Joseph Sheares (left) and Dr Seow Wan Tew (right), with Dr Loke as the mediator

Speakers for the panel discussion (L to R): Dr Sheares, Dr Seow, A/Prof Lee, Mr Lek Siang Pheng, Ms Kuah Boon Theng and Dr Loke

both parties as well as private confidential mediation sessions, Patient S and Dr P finally arrived at an agreeable settlement:

Dr Loke (as the mediator): Let's look at the two big issues which are of particular concern to you. We could start with the cosmetic issues. Dr P, if you could share with Mr S, what are you willing to do?

Dr Sheares (as Dr P): I can appreciate your cosmetic problem and I can refer you to my sister, who is a very experienced plastic reconstructive surgeon to diminish that scar. As I mentioned earlier, there are some costs involved in this but I can speak to my sister and see how these costs can be minimised to a figure agreeable to you. It'll be very difficult for me if I have to pay you what you demanded – \$100,000. If I don't get paid, it seems like only I am making all the concessions. On top of that, my reputation is damaged and I thought this was supposed to be a win-win situation.

Dr Seow (as Patient S): Okay, if I pay the hospital, can you ask her to give me a free liposuction too?

Dr P: I think I can get her to do that.

Patient S: Okay, I'll pay the hospital bill but you tell your sister that this one is free. I tell you what, if I pay you the \$5,000 professional fees, you use that and you pay your sister. Why should I pay you and then she doesn't get her professional fees?

Dr P: I think that could be worked out.

The mediator: That's very encouraging to hear. The other thing we want to settle is the reputation issue.

Patient S: If he's willing to do this, I will stop writing about him on my blog. And if he's very nice, I can even write something nice about him so it's up to him. If he keeps his promise, I will keep my promise.

The mediator: Like what we said at the beginning, in the event that we can come to an agreement, the next thing for us to do is to draw up the agreement. It has to be formalised. Once it's formalised and you've signed on it, it is binding so you won't have to worry about it.

Panel discussion: "Compulsory Mediation Clause for Disputes in Healthcare – Can It Work?"

The last item on the programme was a panel discussion featuring A/Prof Lee, Dr Loke, Dr Sheares, Dr Seow, Ms Kuah Boon Theng, Director of Legal Clinic LLC, and Mr Lek Siang Pheng, partner at Rodyk & Davidson LLP. They shared their vastly different views about mediation, mediation in the medical industry and the use of mediation clauses to bring medical disputes to mediation:

Dr Sheares: Some cases are so complex but if the medical dispute is about the quantum of fees or unclear explanation from the doctor, then they are ideal cases for mediation.

Dr Seow: The reason why we become doctors is because we really want to help patients. For a patient to complain against you, it goes against the grain of why we become doctors in the first place. Mediation does work because in some ways, it restores some confidence, faith and trust.

A/Prof Lee: In every case, there is a question of suitability. To conclude that every case should not go to mediation is as erroneous as concluding that every case should go to mediation. It is not whether mediation clauses are good or not, it's whether right now, since we're in a position where everything leads to litigation, do we have the capacity to support that?

Mr Lek: It is not necessarily the case that in every medical legal dispute, it'll necessarily go to mediation. However, in one case, it was settled two months later because they had the benefit of listening to what the senior mediators had to say.

Ms Kuah: A lot of cases do get mediated, whether there is a clause or not. For example, in our Subordinate Courts, there is a pre-action protocol where anybody who is contemplating on filing a suit is obliged to send a letter to the other party and invite them to a meeting.

Dr Loke: I guess I'm the kind of person who doesn't look at problems, but at the solutions. At the end of the day, to me, mediation is just logical so the next step is how to make it happen. **SMA**