Medico-Legal Dimension of Professionalism

By Prof Tan Siang Yong

This article[1] will provide a brief overview of the law's impact on medical ethics, but will not consider other worthy components of medical professionalism such as trust, altruism and the quest for excellence.

THE SINGAPORE Medical Council (SMC) places a high premium on ethical behaviour, the touchstone of professionalism, and relies on its Ethical Code and Ethical Guidelines to determine what constitutes acceptable or unacceptable professional conduct. While it is true that ethics is aspirational and law mandatory, with the two distinguishable on many levels, there is no denying that the law in Singapore has much to say about the procedural and substantive aspects of professional misconduct. Indeed, it has the last word. Not only is the authority of SMC and its Disciplinary Tribunal derived statutorily from the Medical Registration Act (MRA), the defendant who is deemed guilty has the right of appeal, and the High Court's ruling, either affirming or reversing, is final.

Professional misconduct covers a wide spectrum of malfeasance, such as moral turpitude, negligent medical acts or omissions, lack of informed consent, breach of confidentiality and research misconduct. In reviewing appeals, the Singapore High Court has repeatedly emphasised that it shall accept as final and conclusive any finding of the Disciplinary Tribunal relating to any issue of medical ethics or standards of professional conduct, unless such a finding is, in the opinion of the High Court, *"unsafe, unreasonable or contrary to the evidence"*.

Law and professionalism

Law and professionalism intersect most acutely in quality of care issues, including lack of informed consent. The seminal legal case is *Low Cze Hong v Singapore Medical Council*,[2] where the High Court affirmed SMC's finding of professional misconduct in an ophthalmologist for operating without informed consent. In *Low*, the Court held that *"professional misconduct can be made out in at least two situations: first, where there is an intentional, deliberate departure from standards observed or approved by members of the profession of good repute and competency; and second, where there has been such serious negligence that it objectively portrays an abuse of the privileges which accompany registration as a medical practitioner"*.

Both limbs cited have been used by SMC in charging doctors with professional misconduct; the first requiring intentional behaviour, and the second, serious negligence. Both require prosecutorial proof beyond reasonable doubt, which is a criminal evidentiary standard, as contrasted with "balance of probabilities", a lower threshold used in civil negligence suits. SMC's bag of disciplinary decisions leads one to conclude that a single instance, not a pattern, of negligence suffices as professional misconduct. But what separates "serious" from "ordinary" negligence, in the absence of intentional wrongdoing, is less clear. In the typical negligence lawsuit, the plaintiff's burden is simply to prove ordinary negligence, ie, conduct of the defendant below what is ordinarily expected under the circumstances.

The Court's considerations

The gamut of SMC cases and affirming appellate decisions appear to span the entire spectrum of culpability and not only the most serious transgressions. In *Gan*,[3] the Court affirmed the doctor's conviction on a charge of wilful

neglect of his duties and gross mismanagement of the post-operative treatment of a perforated duodenum. In Dr LE, serious negligence was used to describe the doctor's gross negligence when he failed to timely refer a premature infant to a paediatric ophthalmologist for screening of the infant's retina. Another case referenced by the Court was that of Dr T, who pleaded guilty for failing to check a patient's hepatitis B status prior to chemotherapy and for failing to refer to a hepatologist. (Was that ordinary negligence?) And in a recent case, an obstetrician was faulted for beginning a C-section before ascertaining that the anaesthetic had taken full effect.[4] All were found guilty of professional misconduct on the basis of negligence, although the penalties varied somewhat.

In a number of instances, the Court had set aside SMC's order. For example, in *Devathasan*,[5] the Court concluded that the conviction of a prominent neurologist of the inappropriate use of ultrasound therapy was "wrong in law" and that the charge had not been proven beyond a reasonable doubt. In another case, the Court deemed SMC's retroactive use of standards in the practice of aesthetic medicine impermissible.[6] The Court also disagreed with SMC over Dr LA's conviction for failing to arrange for a neonatologist to be present despite the presence of meconium-stained liquor accompanied by suspected fetal compromise.[7] It chided SMC for ignoring, without explanation, the expert testimony of a majority of experts favouring the accused doctor (five out of seven), and for the first time, imposed defence attorney costs on the regulatory agency. And just this past month, the Court reversed the conviction of cardiac surgeon, Dr UK, attributing his failed operation on a two-year-old patient to a systems failure.[8]

However, the most frontal example of the High Court's role in "legalising" medical professionalism is in the appeal of Dr SL,[9] where it tackled the ethical issue of overcharging of fees. The Court characterised the nature of her professional misconduct as "grave", and held that the abuse of trust and confidence is dishonourable to the doctor as a person, as well as in his or her profession, ie, it would constitute professional misconduct within the meaning of Section 45(1)(d) of the MRA. The defendant, a prominent surgeon, was found guilty by SMC for overcharging fees of approximately $24 million for medical services provided to a member of the Bruneian royal family over some 110 treatment days in 2007. The services took the form of palliative care and treatment coordination during the advanced stages of breast cancer, and not for any surgical procedure. Emphasising the asymmetric knowledge and skill of provider and patient, the vulnerability of the patient, and the trust and confidence that underpin the doctor-patient relationship, the Court held that all doctors who practise medicine in Singapore are under an ethical obligation to charge a fair and reasonable fee for services rendered.

The Court further noted that *"the charging of fees is common to all professions, and there must therefore be – even in the absence of express statutory provisions or regulations – an ethical obligation on the part of a professional, over and above contractual and market forces, to charge his or her client only a fair and reasonable fee for services rendered. As already explained above, a professional possesses special expertise and learning which clients or patients (in a natural position of vulnerability) depend upon, reposing (in the process) trust and confidence in the professional concerned."*

In determining what constitutes a fair and reasonable fee, the Court referred to the helpful SMC's Disciplinary Committee decision at 4.5.7: *"We do not, however, accept that the affluence of the patient is an objective criterion which can legitimately be taken into account in setting or assessing what is a fair and reasonable fee. It is ethically legitimate, and indeed something to be encouraged, for a doctor to charge an indigent patient a fee which is less than a fair and reasonable fee, or even to waive a fee, simply because the patient is indigent. It is not ethically legitimate for a doctor to charge a rich patient more than a fair and reasonable fee simply because that patient is rich."*

Conclusion

SMC's administrative oversight of medical professionalism, in particular regarding the standard of care, has emerged as a worthy complement to traditional tort remedy. It remains the gatekeeper of physician competence and ethical propriety. The High Court has stepped in, usefully, as an objective referee. In this hybrid model, the lines of demarcation between ethics and law may be forever blurred. ■

Notes

1. *Portions of this essay are adapted from the author's 2012 Halsbury treatise "Medical Negligence and Professional Misconduct".*
2. *Low Cze Hong v Singapore Medical Council [2008] 3 SLR 612.*
3. *Gan Keng Seng Eric v Singapore Medical Council [2011] 1 SLR 745.*
4. *Lee Kim Kwong v Singapore Medical Council [2014] SGHC 151.*
5. *Gobinathan Devathasan v Singapore Medical Council [2010] 2 SLR 957.*
6. *Low Chai Ling v Singapore Medical Council [2012] SGHC 191.*
7. *Ang Pek San Lawrence v Singapore Medical Council [2014] SGHC 241.*
8. *Uwe Klima v Singapore Medical Council [2015] SGHC 97.*
9. *Lim Mey Lee Susan v Singapore Medical Council [2013] SGHC 122.*

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