

# About That

# \$100,000 FINE

## for an Injection



This article was adapted from *The Hobbit's* article originally published at <http://bit.ly/2CMqa2l>.

*Editor's Note: Since the online publication of *The Hobbit's* original blog post, the Singapore Medical Council has met with key appointment holders of the Academy of Medicine, Singapore, College of Family Physicians Singapore and SMA to clarify the case. For updates on the meeting, please refer to page 13. We will continue to provide more updates on this matter.*

So, this is how the practice of medicine, as we knew it, dies in Singapore.

Not quietly or softly in the arms of compassion and empathy, but throttled inadvertently by a \$100,000 fine.

### Interesting points

There are many interesting points about the case.

**Firstly, the patient** who complained against Dr Lim Lian Arn. The H&L injection was administered on 27 October 2014 but the patient only complained against Dr Lim on 11 January 2016, some 14 months later. Especially when she was purportedly unhappy with the adverse effects which

were quick to surface and temporary: pain and inflammation, discolouration, paper-thin skin, and loss of fat and muscle tissues. What took her so long to complain?

**Secondly, the Singapore Medical Council (SMC) lawyer** asked for a five-month suspension for Dr Lim. This is mightily interesting. The ill effects suffered by this patient are far less serious than the ones in the Eu Kong Weng case, in which the patient suffered serious complications. Dr Eu was suspended for three months and he appealed to the Court of Three Judges. The Judges commented that had the law provided for less, a shorter period would have sufficed, but they upheld the minimum three-month period since they felt a suspension was indeed warranted. If so, on what basis did SMC's lawyer ask for a five-month suspension? This *Hobbit* does not understand. I hope the SMC President, Registrar and members understand, at least retrospectively.

**Thirdly, the doctor and his lawyer.** Faced with the SMC lawyer asking for

a five-month suspension, this *Hobbit* speculates that their priority is to avoid a lengthy suspension. They pleaded guilty at first instance and offered to pay the maximum \$100,000 fine or take the minimum three-month suspension. This is perfectly understandable; a successful senior orthopaedic surgeon in private practice probably makes that amount in three to five months. A five-month suspension would mean that he has no income and still has to bear the fixed costs of running a clinic.

A secondary concern is that should they offer something low, like \$5,000 or \$10,000, and the SMC Disciplinary Tribunal (DT) accepts it, there is no guarantee that the SMC lawyer will. He may instead choose to appeal to the Court of Three Judges. In other words, to avoid what they deem as undesirable consequences, Dr Lim has to make a generous-enough offer that *both the DT and the SMC lawyer* will accept. In his self-interest, Dr Lim did as he was supposed to do. Perhaps this *Hobbit* would have done the same too.

**Fourthly, we go on to the DT.** Faced with an offer of a \$100,000 fine, they had three choices – they can accept or lower the fine, or suspend Dr Lim. Thankfully and rightly, they decided that Dr Lim should not be suspended. It would look very strange if they decided to lower the fine since the defendant already offered \$100,000, even though the DT thought the closest comparison to this case was that of Dr Eric Gan, in which Dr Gan was fined \$5,000. So, as expected, they decided to fine Dr Lim \$100,000, the amount that *he offered*. This Hobbit does not think the DT did anything questionable up to this point.

What is questionable is the appropriate standard of care that this DT promulgated for taking an informed consent for an H&L injection. They said that for the patient to give an effective informed consent, she should have been told of:

- (a) post-injection flare, in particular, that:
  - (i) the Complainant may experience increased pain and inflammation in the area injected that can be worse than the pain and inflammation caused by the condition being treated;
  - (ii) the onset of the post-injection flare is usually within two hours after the injection and typically lasts for one to two days;
- (b) the post-injection flare can be treated by rest, intermittent cold packs and analgesics;
- (c) change in skin colour including depigmentation, hypopigmentation and hyperpigmentation;
- (d) skin atrophy;
- (e) subcutaneous fat atrophy;
- (f) local infection; and
- (g) tendon rupture.

To me, this is the kind of “information dump” that the Judges said should be avoided when they formulated the Modified Montgomery (MM) test for Singapore in 2017.

**Fifthly, the MM test** – now obviously applied in full force. The MM test

replaced the Bolam-Bolitho (BB) test because the five judges (in the Hii Chii Kok vs London Lucien Ooi case) felt that in the provision of medical advice (which includes getting an effective informed consent), the process must be patient-centric rather than doctor-centric.

A few doctors, when faced with disciplinary proceedings and medical negligence suits, relied on the BB test in their defence, almost to the point of abusing it. They would nominally come up with a few friendly “expert” opinions to justify their actions and pass the BB test.

This was the weakness of the BB test, but it also had its strength – it provided for a reality check. The BB test required one to ask what was practised on the ground by doctors and took reference to such common practices.

This element is somewhat missing in the MM test. So, the DT accepted an information dump checklist as the required standard of care in giving medical advice when practically no one does this. The only reality check the DT was seen to undertake was accepting that it was not universal practice to get a written consent for an H&L injection.

Dr Lim was charged under the 2002 version of the SMC Ethical Code and Ethical Guidelines. Many respected orthopaedic surgeons have been on the SMC Council since 2002. In fact, at least one of the current members is an orthopaedic surgeon. All the DT had to do was ask these SMC members if they routinely gave ALL such information to patients going for H&L injections, and documented as such in the case notes, to know what the reality on the ground is. This Hobbit is confident that practically all of them will fail this simple test. It’s just that none of their patients complained, unlike Dr Lim’s.

There is nothing in the published Grounds of Decision that suggests they did such reality checks; the MM test does not include such an element except suggesting that expert opinion could be taken into account when appropriate. The test of materiality (in deciding what

information needs to be given) is solely from the patient’s perspective and nothing about what was being practised on the ground. Nonetheless, the standard of care stated in the Grounds of Decision of the DT is *Medico-Legal Reality*.

### What’s next

Let’s get back to the procedure itself: an H&L injection. This is a cheap, effective and common procedure done in the specialist and GP setting. But no more in the post-\$100,000 fine era. This Hobbit would like to differentiate by calling the past the pre-LLA era and the current period as post-LLA era. (*Dr Lim deservedly gets naming rights to such a momentous incident.*)

Ask any business school professor and he/she will tell you to price in the risk. Here is how you do it:

Pre-LLA era price for an H&L injection by a GP: \$50 to \$150; \$100 as a reference price.

Number of H&L injections given before a patient complains: 100

Number of successful complaint cases (where you pay a fine of \$100,000): one in three

Estimate: 300 cases will result in three complaint cases, of which one will be successful

Economic cost: one \$100,000 fine **and** estimated \$200,000 (about \$70,000 a case) for the emotional distress, time lost and effort in preparing for the complaints, etc.

Total risk premium: \$300,000 for 300 cases

Risk premium: \$1,000 a case

New price for one H&L injection: \$1000 + \$100 = \$1,100

**Conclusion 1: price of H&L injection by a GP in the post-LLA era: \$1,100 (up from \$100).**

Of course, these numbers will only be significantly higher in the specialist setting. An H&L injection by a hand or orthopaedic surgeon may now cost \$2,000 to \$4,000, after taking into account their own risk premiums.

Many patients in the heartlands cannot afford a thousand-dollar jab and the GPs know this. Most of these patients will then be treated conservatively with brace and medication, resulting in unnecessary pain or suffering by the patient (which may cost between \$100 and \$1,100), or referred to the public sector. This is not to say that the public sector doctors can do a better job with better outcomes and attract fewer complaints. It is just a simple transfer of the risk premium to the public sector, where much of the costs are subsidised by taxpayers. The richer patients will be referred to the private specialists because they can afford to pay the higher charges, and the private specialists may refer their poorer patients to the public sector.

The patients that will complain to the private GP sector will also likely complain to the public or private specialist sector. In the former, the state/taxpayer takes up the risk and in the latter the risk premium is covered by higher private specialist fees.

Incidentally, fee benchmarks currently do not cover office procedures like H&L injections.

**To summarise** – there will be little demand for a \$1,100 H&L injection in the HDB estates, and GPs are also unwilling to take up this new risk premium. In simple economic theory, the demand and supply curves do not cross and there will be few or no transactions (ie, no volume of work). Consequently, the standard of care given in the Grounds of Decision of the DT, while now is *Medico-Legal Reality*, will also in all likelihood become *Virtual Reality* in the HDB Heartlands. How interesting.

**Conclusion 2: in the post-LLA era, not many heartland GPs will offer H&L injections. H&L injections will go the way of dodo bird in the heartlands.**

The expected repartee from people who are out of touch is that this is not about risk premium but about good consent-taking and documentation.

Frankly, not many doctors are interested in this spiel anymore. After the Eu Kong Weng case, no doctor is really sure what will be deemed effective informed consent-taking under the scrutiny of SMC or the Courts. If I were to take this kind of risk for a \$100 job, I'd rather refer to someone else to take the job (and the risk).

This is probably the outcome that will take place in the next few months, if it has not taken place already. Please do not call this defensive medicine. As this Hobbit has said before, it is called *survival medicine*. It's the only practical way to survive. For me at least.

But it's not just about H&L injections. How about other simple everyday office procedures like speculum examination, proctoscopy or ear syringing? The same principle applies and a heartland GP will transfer the risk premium to the public sector or the private specialists through referrals.

**Conclusion 3: in referrals we trust (to avoid taking on insufferable professional risks).**

### How it came to be

You may ask how we got to this situation. It is because everyone behaved in a way expected of them.

The judges wanted to move from a doctor-centric to a patient-centric process where medical

advice is provided. They promoted patients' rights to autonomy through promulgating the MM test.

The lawyer wanted to do a good job by pushing for a deterrent five-month suspension. He is defending the patient-complainant's rights to autonomy, as well as promoting patients' rights in general.

The SMC DT wanted to be seen defending/promoting patients' rights by accepting Dr Lim's offer of a maximum \$100,000 fine. They also want to send a signal to all doctors that the standards as prescribed by the MM test are well in force when they promulgated that long list of potential complications and side-effects for an H&L injection.

Dr Lim Lian Arn acted as he should, by offering to pay \$100,000 or be suspended for only three months.

The patient-complainant is probably satisfied too that the doctor was fined \$100,000. Whether she proceeds on to a civil suit or not, we don't know.

Every party got what they wanted: The patient, doctor, SMC lawyer, judges and SMC DT.

But this Hobbit cannot help but wonder if Singapore society deserves more.

Because the *Likely End-Result* is that patients will either find the H&L injection less accessible or have to pay significantly more for it. Same goes for other common, cheap and effective office procedures. A situation of either scarcity of service providers and higher prices will result, leading to unnecessary higher healthcare expenditure.

Society will have to pay for this in the long run. Unless the politicians and senior civil servants step in soon with some form of tort reform for medico-legal cases, the practice of medicine, as we knew it, has truly died. And the biggest losers are the patients collectively and society. Not the doctors. I just earn a few hundred less a month, but I'll live. Don't worry. ♦