By Dr Wong Chiang Yin, SMA President

Regulating Aesthetic Practices

Health Regulation is a topic that is very close to my heart and at least two other members in this present SMA Council. I spent the large part of my Basic Specialty Training in Public Health working as a Medical Officer (MO) doing policy and regulatory work in the Ministry of Health (MOH) some 10 years ago. The other Council Members who worked in regulatory departments in MOH are our Honorary Secretary Dr Raymond Chua and Council Member Dr Tan Sze Wee.

How does one regulate healthcare? My first boss in health administration taught me this: regulation is effected by usually passing laws that pertain to four broad categories:

a) The person
b) The product or device
c) The place (premise)
d) The procedure

Dr Wong Chiang Yin is the President of the 48th SMA Council. He is also Chief Operating Officer in a public hospital and a Public Health Physician. When not working, his hobbies include photography, wine, finding good food, calligraphy, going to the gym and more (non-paying) work.

We regulate persons in healthcare by passing laws that require such persons to be registered with the state. For example, doctors are allowed to practise in Singapore only if they meet certain criteria and are registered with the Singapore Medical Council under the Medical Registration Act. Similar principles apply to other healthcare workers such as nurses, pharmacists, contact lens practitioners and TCM practitioners. Unlicensed medical practitioners can be charged under the Act for illegal practice of medicine. The Act also addresses the problem of quackery.

We regulate the products by registering them as well. For example, the Medicines Act, the Poisons Act and the Misuse of Drugs Act regulate the sale, purchase, prescription and even the storage of medical products. If a pharmaceutical drug is not registered with the Health Sciences Authority (HSA), the drug cannot be used in Singapore. Certain devices ranging from syringes to heart lung machines are regulated under the Medical Products Act which is administered by the HSA as well.

We can also regulate the premises by having a law that requires the practice of medicine to be carried out only in a licensed premise. That is why all clinics are required to be licensed under the Private Hospitals and Medical Clinics (PHMC) Act with the exception of mobile clinics on wheels. (My second boss taught me that mobile clinics in vans or lorries do not have to be licensed under the Act because the Act defines a clinic or a hospital by a physical address and mobile clinics do not have mailing addresses, but that is a discussion for another day.)

Finally, we regulate procedures. This is usually done indirectly. For example, the Radiation Protection Act addresses the safety aspects of radiology. Certain specialised procedures (such as dialysis, IVF and so on) require special approval under the PHMC Act. The Human Organ Transplant Act (HOTA) is an act that specifically deals with transplant procedures.

As MOs then performing health regulation work, we were expected to know all the major Acts and Regulations under MOH's purview. One of the mental exercises we often had as MOs when we encountered a new case of possible contravention of healthcare laws was to consider how many Acts a person had contravened at one go and under how many Acts and Regulations one can theoretically charge him under. The truth is, when one breaks the law, he often breaks it in a few areas: person, premise

Page 11 ▶

◀ Page 10 – Regulating Aesthetic Practices

and product as well. In case you may think health regulation MOs were a bloodthirsty and power-crazed bunch of people then, we were not. But I can assure you the mental exercise was good training.

Even though I have left health regulation work for at least a decade, I still keep a file of important healthcare legislations in my office today which I refer to not infrequently. As one ex-colleague quipped: "You can take the doctor out of health regulation, but you can't take the health regulation out of the doctor."

Incidentally, my first boss, one of the sharpest minds I have ever known, is a plastic surgeon. He once said: "Let me tell you this, I have been in the plastic business for a long time and women will do almost anything to look better!" Of course, it was not so common for men to go for aesthetic treatments a decade ago, hence the gender-challenging remark. This was my first induction into the business of aesthetics, because they never did teach us about this stuff in medical school. Nonetheless, his remark basically echoed the sentiments of *The Straits Times*' Editorial of 21 March 2008 which stated that "this (aesthetic practice) is a nakedly demand-induced service provided by doctors who are lured by the much higher earnings it brings than from treating mundane sicknesses" *(The Straits Times,* 21 March 2008, page 34). In short, people out there want it, and some doctors give it.

The Ministry's apparent decision to "ban" certain aesthetic procedures (as announced in *The Straits Times* on 20 March 2008) has drawn a lot of attention in the press and amongst the medical profession. This move was described as "seemed abrupt", "too harsh and ambiguous" and "it would be more appropriate if MOH could set up a panel of medical professionals to look into this issue and to propose guidelines for the practice of aesthetic and wellness medicine" (Dr Lam Pin Min, MP, *The Straits Times*, 21 March 2008, page 3). Fortunately, this purported "ban" has since been deemed "an inaccurate picture" by MOH (MOH Circular 14A/2008, 24 March 2008).

Indeed, the SMA has long felt that aesthetic medicine needs to be regulated from both the point of training and practice. What sort of training does one need before one can perform certain types of aesthetic practices? What qualifications should we recognise? These are questions that need to be answered now by the relevant authorities and not later in the wake of what has happened.

Certainly, the first time SMA got any wind of the move by MOH to tighten regulation of aesthetic medicine was when a reporter asked us about the issue on 18 March 2008, one day before news broke in *The Straits Times* on 19 March 2008. Until then, all we knew was that three of our Council Members were invited to a committee formed by MOH on aesthetic practices some two and a half years ago, as well as MOH's position on mesotherapy which was communicated to all SMA members in the 2007 May issue of the *SMA News* (Council News, page 4). We are still waiting for the report of this committee to be released.

The Ministry's main concern that "doctors performing unsubstantiated procedures, being unethical and subjecting patients to unacceptable health risks" (*The Straits Times*, 20 March 2008, page 1) may be the key point here although I do not believe if there are few doctors if any, who perform such questionable practices while quietly believing or knowing that they are subjecting patients to "unacceptable health risks". They may question the benefits quietly themselves but to say they do so while knowing their patients undergo "unacceptable health risks" is stretching the argument. As such, education by MOH on what these specific "unacceptable risks" are would be welcomed. From an ethical standpoint, unproven beneficence or non-beneficence is very different from uninformed maleficence and worse – informed maleficence. Let us be clear about that.

Personally, I have no problems with banning some procedures such as colon-cleansing as I have had a bad experience with the procedure (but not as a patient!). If we can take a look at the specific example of colon-cleansing, the question is really how to regulate it in the whole of society. Banning it in licensed clinics is the easy part.

About 11 years ago, a TCM practitioner who performed colon-cleansing on a middle-aged lady perforated her rectum. The patient had peritonitis and went into septic shock and almost died. Fortunately, she survived and since then has a permanent colostomy. Dr Tan Sze Wee and I were the investigating officers and I had to give evidence in Court. There was no TCM Act in those days and TCM practitioners were not registered with the state. In other words, anyone could call themselves a TCM practitioner then. Eventually, the TCM practitioner was convicted under the Penal Code and sentenced to a jail term of a few months in this

Page 12 ▶

◀ Page 11 – Regulating Aesthetic Practices

case. The TCM practitioner appealed to the High Court and the case was heard by the then Chief Justice. The TCM practitioner was unsuccessful in his appeal. All this was extensively reported in the press then. If such a thing happened today, the TCM practitioner could be tried under the Act that regulates them, similar to the MRA for doctors. Lawyers will tell you that generally, it is far more onerous on the authorities to successfully prosecute someone under the Penal Code than say the MRA because the Penal Code provisions were not geared to cover medical or other purportedly therapeutic procedures. On the other hand, the offences provided for in health law Acts such as the MRA or PHMC Act are usually quite specific. The prosecution has to prove that the accused had criminal intent or was rash or negligent, that is, criminal negligence, for example, before one can be convicted under the Penal Code. Of course the Penal Code also carries heavier punishment provisions generally.

Now, what if a lay person performs colon-cleansing today? A senior MOH official has said: "This is not medicine. Such services should never be offered on the pretext that they are medical in nature and are medically beneficial." (*The Straits Times*, 20 March 2008, page 1). If indeed it is now conclusively decided that this is not part of medicine, then colon-cleansing can be performed outside a clinic or a hospital by anyone. Healthcare laws pertaining to regulating persons, medical devices and premise then probably do not apply and hence the procedure is also not regulated directly or indirectly.

To sum this up, we may have to contend with what Mdm Halimah Yacob (MP, Chairman of GPC for Health, *The Straits Times,* 20 March 2008, page 1) has pointed out that there is the real danger of such procedures being performed by "unauthorised beauty saloons, which could be worse". Her statement is insightful because there is no special Act that specifically governs beauty saloons or beauticians. In other words, from a law enforcement point of view, there may be nothing to enforce until and when something bad happens in which case the Penal Code can be used or the person sued for negligence in a civil suit. By then, something bad would already have happened and the customer (not "patient") would have suffered pain and loss. (Thinking aloud, could we for example ban the import and sale of all colon-cleansing equipment as "medical devices" under the Medical Products Act? That would cover both clinics and beauty saloons. But if we say colon-cleansing is NOT medicine, then can we still ban the equipment as a medical device? Of course, we can also try to consider the equipment as a "cosmetic product" and still ban it under the Medical Products Act. But then again, does the equipment qualify to be called a cosmetic product under the Medical Products Act and Regulations in the first place?)

The Minister for Health's clarification on 23 March 2008 ("I think let's leave it to the profession to sort it out") to leave the regulation of the aesthetic industry to professional bodies is welcomed. It underscores the importance of self-regulation within the medical profession.

Tools such as the SMC Ethical Code or guidelines by the College of Family Physicians Singapore or Academy of Medicine Singapore are measures which appear to be aimed at regulating doctors so that they practise medicine and medicine only. This should be in-principle supported. However, the basic and bigger question to be addressed by society should not be about regulating doctors, but rather regulating procedures and practices that do harm. And once we declare something as "non-medicine", it is even harder to regulate such practices and consumers have even less access to recourse. Perhaps MOH should look into enacting a Beauty Saloon Act or a Beautician Registration Act and audit what they do as Dr Lam and Mdm Halimah have suggested? Since cosmetic products already come under HSA, why not put the rest of the beauty business (the people and the premises) under MOH as well? That would then comprehensively and truly protect the public from practices such as bio-resonance, endermologie and colon-cleansing.

In the meantime, ban or no ban, folks who can afford it like celebrity hairstylist David Gan can still get their mesotherapy fix by going to Bangkok (*The Straits Times*, 21 March 2008, page H3). But that is consumerism and not medicine, of course.

In any case, SMA members are strongly advised to take heed of the wise words by our Minister for Health:"Doctors are supposed to do what they think appropriate, taking into account possible benefits, and then possible risks. So that's a decision which doctors have to make all the time. Because if they fail to do that, they could be subject to investigation."

With great power comes great responsibility and accountability. That has been, is and will always be the lot of doctors. ■