

EDITORIAL

“Neither economic incentives, nor technology, nor administrative control has proved an effective surrogate to a commitment to integrity evoked in the ideal of professionalism.”

- William Sullivan, sociologist

Loos & Regulation

Dr Toh Han Chong, Editor

Last weekend, I had met several lawyers at separate *makan* sessions. Over post-dinner Udder's *Mao Shan Wang* durian ice-cream on Saturday, one august litigator asked me what I felt about the proposed amendment to the Medical Registration Act (MRA) to allow the option of appointing lawyers and retired judges to chair the Singapore Medical Council (SMC) Disciplinary Committees. She offered that the medical profession gave the impression of being protectionist, huddling together like a band of *brudders* and *sistas*, and that it was difficult to get local doctors to testify in medical negligence cases. Then on Sunday, another lady litigator discussed the same issue with me over *dim sum*. She conveyed that, in her experience, doctors have been known to be adversarial and unreasonably critical and hard on one another, so that having a legal person chair a SMC Disciplinary Tribunal (DT), the proposed new term for Disciplinary Committee, would ensure a fair and faster hearing. Two very divergent views.

As the Hobbit indicated in the June issue of the *SMA News*, the Disciplinary Committees already have lawyers, as legal assessors, and also lay people sitting in, ensuring transparency. Like the durian, this prickly issue has

become pungent to some doctors, while sweet-smelling to others. The biggest discomfort that many doctors feel about a Legal Eagle chairing the DT is the symbolic and real signalling of a loss of self-regulation with the passing of significant powers to The Other, who has not fought alongside them through the same trials, tribulations, pain, peaks, pathos, bathos, dilemmas and dynamic developments of Medicine – even if it is only to preside over legally complex cases and those where a medical conflict of interest situation might arise.

It is not a given that a Legal Eagle will exact more “guilty” verdicts as chairperson of a SMC DT than a senior member of the medical profession. Supreme Court Judge Nominee Sonia Sotomayor opined in the overpoliticised (by her detractors) statement in her 2001 address at University of Berkeley Law School, “I would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn't lived that life.” There is truth here. A senior medical chairperson who has walked in the same battle-worn shoes in the Long March of Medicine would have a deeper understanding of the nuances of a complex medical case in question.

I really enjoy the Heineken TV ad where a group of women shriek

ecstatically at the sight of a gal pal's walk-in wardrobe, only to hear the men folk screaming uncontrollably in glee at their own friend's Heineken-loaded walk-in wardrobe. Just as men and women are wonderfully and uniquely distinct, doctors and lawyers are necessarily different in many ways in how they think, what drives them and what makes their day.

Contrary to *Straits Times* journalist Andy Ho's assertion that “Medicine and Law have always competed against each other to be the pre-eminent cultural authority”, most doctors here do not harbour competitive tensions against lawyers, unlike in the United States, where feelings towards lawyers range from cautious avoidance to rabid hatred. In fact, in Singapore, many doctors work closely with lawyers on critical matters, many are good friends with lawyers, some doctors have lawyers for siblings, some have dated lawyers and some doctors have even *gasp* married lawyers. Still, the only exposure many doctors have to lawyers is under cross-examination, which induces the same potential fear as an army recruit during a stand-by-rifle conducted by a *seepeh ngiao* Warrant Officer purposefully looking for ‘elephants’ in the gun barrel.

In the inaugural Law-Medical Debate in 2003 that I took part in, the lawyers



opened their arguments by admitting that they were scum. The doctors tended to look far too self-righteous for their own good. But seriously, one is totally grateful for countries where the supremacy of Law prevails than countries tailspinning into lawlessness.

On a recent flight out of Changi Airport Terminal 3, I noticed that in the pristine Men's Room, a life-like picture of a fly had been painted into the axis of the urinal's ceramic wall near the draining system. This is meant to enhance proper aim and reduce collateral eco-unfriendly waste product splash, a simple yet powerful means of self-regulation.

Let's suppose the Men's Room now has a senior police woman AKA Superintendant Sue sitting on a large chair in the Men's Room to oversee proceedings. Now that Superintendant Sue is in charge and empowered to pass judgement, the seamless natural flow of activities in the Men's Room might change. For one, men who have a Pavlovian fear of the police might pee in their pants even before they reach the urinal points. *Kiasu* overcompensation of flow might result in more collateral splash, especially when stimulated by the fight-or-flight (or fright) adrenergic response. Others might adopt technology like a long tube to direct a more accurate micturating flight path than rely on natural intuition and reflex autonomic nervous system to guide trajectory. Urinary catheter sales might rise. Serious tissue damage might occur when nervous men fumble with their zippers. Biotech companies might also develop Green Fluorescent Protein (GFP)-tagged mineral water so that the urine would glow like tracer bullets during night firing exercises. This level of defensiveness, fear and trepidation could translate to real world behaviour changes in medical decision-making like doing brain MRI for everyone with a headache, prescribing Tamiflu to anyone with a sore throat and giving the strongest antibiotic for anyone with a fever. Health costs might rise and it does not augur well for doctors, patients and society at large.

Self-regulation was brought into the medical profession in the early 1900s

because there was a growing sense that the practice of Medicine was becoming too complex and specialised for regulation from outside the profession. However, the social contract and trust between the medical profession and society eroded in recent decades because of errant flies in the profession's ointment. Medicine has inexorably become commoditised from within and without, with Subutex peddlers and dodgy doctors offering for-profit way-out bogus therapies emerging from dark corners. Around the world, some doctors have even committed heinous crimes against patients. Medical regulating bodies sometimes have not delivered swift, effective disciplinary action, meting out 'cheap grace' instead. But bringing a



lawyer or retired judge to chair a DT is not about breaking down possible inbred collegiality and opening up transparency and objectivity. Objectivity is not profession-specific, and transparency is already in place in Disciplinary Committees with non-doctors present.

Recently, a senior surgeon showed me his scarred knuckles, received in his younger days when he was knuckle-rapped repeatedly with surgical instruments in the OT when apprenticing with one of Singapore's pioneer surgeons, who is also known to throw scalpels at perceived "surgical knuckleheads". In hospital wards and OTs, self-regulation occurs at the micro

level every minute, every hour and every day in the lives of doctors, but with less brutal humiliation than in bygone days, where I had witnessed the ear of my fellow house officer vigorously pulled in a morning round by the senior consultant, and the supersonic verbal machine-gun execution of senior registrar down to house officer by the surgical chief during one dark call night that would make even Rambo weep.

The crux of the matter is whether a chair who is legally trained will make the conduct of a SMC DT more effective, efficient and impartial in those special cases as candidly defined by the Hobbit in this issue. This has yet to be validated as Level One evidence, but the hypothesis is sound. Or will it reconstruct the nature of the SMC to a point where the way Medicine is practised significantly changes for the holistic worse? It is premature to conclude this. Some doctors have speculated facetiously that this move is akin to hiring "Victor the Cleaner" from Luc Besson's *Nikita* to "take care" of cases that the "softer" medical establishment has trouble passing judgement on. The "acid in the bath-tub" (ugh) scene must be pretty gruesome for any doctor, including the most hardened forensic pathologist, to watch. A less edgy analogy is that of hiring a SuperNanny to manage marauding kids creating mayhem and madness where the parents have lost all control.

Hence, the proposed amendment to the MRA might suggest to some that it is not possible to find wise, strong, highly respected, objective, effective and legally well-advised senior medical doctors to chair a SMC DT. But the qualities of a DT chair do not need to reach the super-supreme stratospheres of courage as martyred Sicilian magistrates Giovanni Falcone and Paolo Borsellino, who fearlessly stood for justice and prosecuted the native Sicilian *La Costa Nostra* to their very end.

Even if the judges trying the charming, charismatic, influential and extremely clever biggest financial scammer (over 10 billion dollars of fraud) in history, Bernard Madoff, were all Jewish (Madoff is Jewish and a lawyer by training), I believe that justice would still be served. SMA