REPORT

WHEN DOCTORS RUN AFOUL OF THE LAW

By Dr Bertha Woon

Attorney-General Professor Walter Woon gave his public lecture on "Criminal Aspects of Medical Practice" at the second Professor Chao Tzee Cheng Memorial Lecture on 30 November 2009, at the Supreme Court Auditorium, at the invitation of the Medico-Legal Society. Well attended by doctors, lawyers and members of the public, this event was reported in both *The Straits Times* and the *Lianhe Zaobao* whose journalists emphasised that "charging doctors is for the protection of the public".

The Attorney-General mentioned that doctors, although members of a noble profession are treated no differently from anyone else in the eyes of the law in criminal proceedings. Due to the nature of our job, what would be considered assault or even unacceptable to lawyers (among other people) is actually permissible to doctors due to the concept of consent. Examples include using needles to give injections, using fingers to enter various natural orifices or introducing instruments into these natural orifices, and asking the patient to undress before physical examination.

A doctor who commits a rash or negligent act is not usually charged if it is the first time he has committed the error, unless the error has serious consequences. Prof Woon gave a simplified illustration of the various levels of severity of offences for which a doctor can be prosecuted, using a 3 by 3 grid where the most serious offence would be causing death by an intentional act and the least serious, simple hurt caused by a negligent act. (See Table 1.)

TABLE 1

	Intentional	Rash	Negligent
Death	1 – most serious	2	3
Grievous Hurt	4	5	6
Simple Hurt	7	8	9 – least serious

(Scale: 1 to 9; 1 is the most serious.)

Numerous cases deluge the Attorney-General's Chambers daily. How are decisions made regarding which cases to prosecute? In the public interest, there are three major reasons why a doctor may be prosecuted. These are for General Deterrence (some general unacceptable misdemeanour), Specific Deterrence (specific to a doctor's particular type of practice) and for Denunciation (of a reprehensible deed or practice). He asserted that prosecuting the black sheep in the medical profession is in reality beneficial to the reputation of the vast majority of law-abiding doctors. To prosecute a doctor for any reasons other than those mentioned in Table 1 would be frivolous and a waste of the court's precious time and resources. Problems that are less serious can easily be dealt with by Disciplinary Tribunals under the Singapore Medical Council.

Section 87 of the Penal Code states that "nothing, which is <u>not intended to cause death or grievous hurt,</u> and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person above 18 years of age, who has given consent, whether express or implied, to suffer that harm; or

by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm."

Section 88 of the Penal Code states that "nothing, which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm."

The illustration for section 88 is that of A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under a painful complaint, but not intending to cause Z's death, and intending, in good faith, Z's benefit, performs that operation on Z, with Z's consent. A has committed no offence. In other words, Section 88 deals with the concept of **bona fide or good faith.**

Whether or not a doctor is negligent would depend on the standards of duty of care that a reasonably trained doctor in his same position would be expected to possess. Prof Woon acknowledged that there will always be differences in opinion regarding standards in practice.

He went on to give specific examples to illustrate his points e.g. the case of an ophthalmologist who performed trabeculectomy and insertion of a drainage tube in a patient's blind eye. The patient alleged that he had not been asked for informed consent or given options. In this case, the chief problem was the lack of documentation in the doctor's clinical notes of what had been explained and the patient's signature was on a standard pro forma consent form without the doctor's signature. (See section 87 of the Penal Code.)

Another case he mentioned was that of a so-called Traditional Chinese Medicine practitioner who administered colonic washout on an unsuspecting client, causing colonic perforation, sepsis and near-death. This person had gone through a three-week course in Heilongjiang China, bought the equipment over the internet and had asked the client to administer the washout herself without supervision.

However, the law will always take into account mitigating factors such as excessive fatigue or in the case of epidemic situations where doctors can be overworked.

During the question and answer session, Prof Woon was asked if there was any point in suing a hospital in the event of mismanagement or death of a patient. His answer was that this would depend on whether the suit is a civil suit, in which case, compensation is what is sought; or whether the suit is a criminal one, in which case, punishment of the person or persons involved is the end-point. Suing a hospital, which is a company, is only useful for financial compensation.

The take-home message would be to understand sections 87 and 88 clearly and for all of us to stay on the right side of the law. SMA

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