

# Litigation and Dispute Resolution

By Dr Bertha Woon

**A**lthough the recent slew of high profile court cases have caused consternation among interventionists and surgeons, it is important not to panic. No one is expected to list down and discuss every known risk and complication for any particular procedure. In any case, appending a thick compilation of the laundry list of all risks and complications will not protect you in a court of law.

Disputes regarding informed consent typically arise from a breakdown in doctor-patient communication and erosion of trust. As mentioned in the various articles in July's *SMA News*, very few cases escalate to litigation. As such, it behooves us to contemplate what we clinicians can do to arrest the problem.

I remember Prof Lee Eng Hin telling me long ago, when I was a post-“A” Level attachee, that whenever we explain a procedure to a patient who needs it, we should do so in such a way that the patient buys the operation, as opposed to us selling the operation to the patient. This principle is very important since some of the potential medical litigation cases involve doctors selling operations to patients rather than patients buying them.

We should be clear and honest about our own expertise and not propose or perform any procedure that we are not trained in or accredited to do.

Apart from these very basic points, I also remember Prof John Wong teaching me, when I was a medical student, that we should note the date, time and names of everyone present, before writing down the contents of the discussion in the clinical notes.

After a four-month internship in medical litigation, I have the following suggestions for safer clinical practice:

1. Always write legibly.
2. Write down the date, start and end time of the consultation, names of all persons present, including their relationship to the patient.

This is important so that even if you did not write down every word of the discussion, the sheer length of time spent would give an approximation of how much was discussed.

3. Discuss the indications for operation, various surgical or other options available to treat it and note why you offered the particular procedure.
4. Note major and important risks and complications of the procedure that are pertinent to the patient in question.
5. If there are non-surgical risks, refer the patient to the appropriate specialists for management and optimisation first.
6. Always allow “cooling-off” time and a follow-up appointment, if you detect that the patient or the relatives do not buy your explanation. It is better to lose the “business” than to face potential complaints later on.
7. Do not attempt to doctor medical records if a complaint arises. All our documents are discoverable by the lawyers representing the plaintiffs. It is difficult to defend a doctor if dishonesty is proved.

Lastly, please avail yourselves of the courses organised by SMA and the Medical Protection Society, to learn how to master communications and difficult doctor-patient interactions, and minimise risks. **SMA**



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