# Concerns on the Ground

## SMA Seminar: Professional Accountability, SMC Complaints and the Disciplinary Process

By Gracia Ong

In the light of the amended Medical Registration Act (MRA) in 2010, Dr T Thirumoorthy noted that with changes in legislature, all doctors must be aware of their impact when managing professional risks and dealing with complaint letters and disciplinary proceedings from the Singapore Medical Council (SMC). With that, he opened the SMA Seminar: Professional Accountability, SMC Complaints and the Disciplinary Process to an audience of 195. The session, held on 5 November 2011 at the KK Women's and Children's Hospital Auditorium (immediately after the SMA Lecture, see pages 4 to 9), was aimed at reinforcing the professional duties of care as expected of a doctor, ethical principles to adhere to and the common pitfalls in managing risk.

L to R: A/Prof Chan Yew Weng, A/Prof Goh Lee Gan, Dr Chong Yeh Woei and Prof Tan Siang Yong during the panel discussion

Prof Tan Siang Yong, Professor of Medicine and Adjunct Professor of Law, University of Hawaii, introduced his topic of "Professional Misconduct" by pointing out that SMC placed a premium on ethical behaviour as evidenced from the SMC Ethical Code and Ethical Guidelines.

He raised several cases and brought up issues of negligence, competence, informed consent and use of unorthodox therapy. He highlighted cases where the courts rebuked SMC for delays in managing cases and inappropriate decisions, and recent cases where they ruled in favour of SMC on decisions of the disciplinary tribunal (DT). Prof Tan explained that though SMC lays down rules to protect the public, the courts and tort law provide additional procedural safeguards. All these serve to deter substandard medical practice.

Ms Mak Wei Munn, partner, Litigation and Dispute Resolution at Allen & Gledhill LLP then spoke on "Understanding the SMC Disciplinary Process". She elaborated on the various instances where the DT can make a finding against a doctor, and pointed out instances of when a practitioner could be found guilty of professional misconduct. Agreeing that there was no clear definition available for professional misconduct and what constitutes serious negligence, Ms Mak also noted that the responsibility of interpreting and setting the ethical standards lies within the medical profession. The SMC Ethical Code and Ethical Guidelines remains the standard that practitioners are held against.

She then elaborated upon the complaints process after it is lodged with SMC. The complaint is referred to the Complaints Committee (CC) and enquiries are commenced two weeks after appointment. Through inquisitorial findings, the complaint may be dismissed, investigated or forwarded to the DT. The responsibility of investigating is transferred to Investigators, this being a change from the previous procedure. Parties may be required to attend a pre enquiry conference, and the charge and details of the enquiry will be presented to the doctor in advance, which she commented was a positive development.

Lastly, Mr Tham Hsu Hsien, partner, Litigation and Dispute Resolution at Allen & Gledhill LLP spoke on "Responding Effectively to an SMC Complaint Letter". He reflected that from experience, many issues doctors faced through the complaints process could have had a better outcome, had their initial reply to the SMC complaint letter been effective and comprehensive. He then noted that an effective response would be able to arrest the escalation of the complaint, and it would also determine if the complaint is dismissed, investigated by the CC or escalated to the DT.

Mr Tham cautioned that information provided or even withheld within the doctors' initial response could either be used for or against them. He then advised that doctors should go through the complaint letter thoroughly and identify the underlying issues before collating evidence for an effective response. In drafting the response letter, Mr Tham suggested dispelling all misimpressions so that discrepancies of fact could be explained early. He noted that to address issues professionally, the tone of the reply should be clear, factual, precise and dispassionate. He then concluded that upon receiving a complaint letter, it was paramount to address it effectively and in a timely manner in order to nip the issues in the bud.

Mr Tham's talk was followed by a panel discussion and question

Dr T Thirumoorthy

Prof Tan Siang Yong

Ms Mak Wei Munn

Mr Tham Hsu Hsien

and answer session fielded by Prof Tan Siang Yong, Dr Chong Yeh Woei, A/Prof Goh Lee Gan, A/Prof Chan Yew Weng, Ms Mak Wei Munn and Mr Tham Hsu Hsien. Dr Thiru queried if there had been situations where the application of the Bolam test had a place in professional misconduct. To this, Ms Mak responded that although the test functions as an indicator of standards, doctors are expected to strive towards a higher standard of professionalism or ethics. Prof Tan Siang Yong agreed, noting that cases of professional misconduct can be lodged against doctors even if patients are not injured. A/Prof Goh Lee Gan commented that increasingly, the Bolam standard is seen as insufficient. However, he reinforced that it was important for practising doctors to understand their duty of care and be aware of how not to fall short.

A member of the audience asked if the doctor could still maintain contact with his patient upon receiving a complaint letter. Mr Tham Hsu Hsien replied that it was preferable not to do so, as this would give rise to the possibility of additional evidence being collected and sent to SMC without the doctor's awareness. He noted that the SMC process once started, cannot be halted or the complaint withdrawn by the patient. Dr Thiru reminded that it would be prudent to obtain professional legal advice early and guidance throughout the disciplinary process.

The panel received the comment that it was too easy for patients and other third parties to file a complaint if they felt they had been wronged, and if it was appropriate for SMC to restrict its purview to that of professional misconduct. In response, Dr Chong Yeh Woei responded that SMA was aware of the concerns on the ground, and endeavoured to rectify the situation by way of education and mediation. Efforts implemented include collaborations with the Medical Protection Society to conduct various workshops and seminars. He hoped that eventually doctors and professional bodies themselves, rather than the DT, would be able to clarify the definition of professional misconduct. A/Prof Chan Yew Weng, who has had experience in both the CC and DT, noted that the standard also depended on the DT chairperson. He reiterated that to protect the doctor, documenting treatment and continuation of care of patients was key.

Can the duty to attend be made into a contract in the instance of going on leave, and will this absolve the primary doctor from professional responsibilities, queried a participant. Prof Tan Siang Yong replied in the affirmative, if the information was conveyed to the patient of the replacement doctor. However, he cautioned that the primary doctor must first be aware of the covering doctor's competence. In the event that the covering doctor does not attend to the patient, the covering doctor will then be held liable. Ms Mak Wei Munn included a caveat that should the primary doctor be alerted that the covering doctor did not attend to the patient, the ethical duty would remain that of the primary doctor to rectify the situation. A/Prof Chan Yew Weng noted that replacement care is often facilitated in team practice, and the patient should be informed that his care is to be transferred to the covering doctor, with documentation of the process.

The SMA Seminar closed to applause, and we thank all speakers and attendees for their participation, without which the event would not have been a success. SMA

# Letter from Dr Chew Shing Chai

Dr Chew Shing Chai attended the SMA Seminar on 5 November 2011 and sent this letter to SMA two days later. He requested that *SMA News* run his letter unedited. We reproduce his letter in its entirety here.

The views expressed in Dr Chew's letter do not represent the views of the Editorial Board nor the SMA Council. If you would like to share your thoughts, please email news@sma.org.sg.

**7 November 2011**

On 14 December 1999 I wrote to the *Straits Times* in response to a Mr Daswani who had made several allegations against Singapore doctors and criticised our system. In my letter I pointed out that the system was against the doctor rather than the converse as our system was wrong to allow the complainant "two bites of the cherry" in that he could get the PPC to give an opinion and then he could take it forward with a lawsuit. This puts the doctor in a "double jeopardy" situation which is wrong in common law and common sense. I later deduced that Mr Daswani had lost a child and my heart goes out to him, but the fundamental flaw in our system remains.

I attended the seminar two days ago. The title was exciting and I expected to be educated, inspired and brought up to date on the medico legal aspects. I even hoped that we would be shown the way forward. Not surprisingly, the speakers agreed with my long gone conclusion that our system was unfair but all seemed resigned to the inevitable. Prof SY Tan (from Hawaii) even went so far as to say that the standards imposed by the DC were very high, severe and worse than what a High Court could do, but that the standards had to be set by the local panel at the DC.

As a medical student in the mid 1960s, my understanding of "infamous conduct" was that it came under the purview of the Medical Council and consisted of five items all beginning with the letter "A" viz: Abortion, Advertisment, Alcoholism, Adultery (with patient) and Association (with unqualified personnel). All other complaints were to come under negligence or criminal negligence (e.g. operating while drunk). This simple but comprehensive classification meant that cases of injury to patients were dealt with in a law court where the Bolam principle was then the prevailing yardstick. The lines are now blurred and the CC deals with negligence and refers such cases to the DC where the panel members may not be fully conversant with the issues, yet the power to penalise is even more draconian than the High Court (to quote Prof SY Tan).

At the end of the seminar I asked the panel why the SMA, which purports to uphold and help its members allows this system to be in place. I was not surprised that the President of SMA answered after a long pause that he "did not know the answer".

As a houseman I eagerly joined the SMA thinking that it would come to the assistance of its members. In the mid 1980s I resigned from the SMA because a GP in the Bendemeer area was highlighted in the *Straits Times* for not rushing to the aid of a man whose hand was caught in a coffee grinder. The then President of the SMA was interviewed by the press and announced that the doctor "would be punished", thus passing judgement before ascertaining the facts. My objection was not that the GP in question was right, but that the statement should have been "we will investigate to ascertain the circumstances of the matter".

I am not writing this for my own advantage, as I do not think I will be practising for much longer, but I do feel that the younger doctors deserve a more level playing field. Listening to the lawyers at the seminar and observing their body language the impression is that they resent the fact that the courts in Singapore still rely on the Bolam principle. In fact they bitterly stated that the only case where Bolam was reversed was a case where the kidney donor died in the recovery area (govt hospital).

The adversarial lawyers' way to circumvent the Bolam principle is to divert the attention of the court to the Consent Form where by legal verbiage and cunning the doctor is shown to be derelict and Bolam cannot apply. The SMA should be aware of this new tactic and instruct the CC to channel negligence cases away from the DC (which should not be the correct platform) to the courts where they belong and where true justice can be served. The DC should concentrate on ethical misdemeanours e.g. overprescribing and adhere to the old definition of "infamous misconduct" minus those that have been now approved e.g. advertisement and legal abortion.

**Dr Chew Shing Chai**

*Dr Chew welcomes comments at scchew1710@gmail.com.* SMA