

# The Patient, His Doctor and Third Parties

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Third parties can often affect the relationship between a patient and his doctor. In this article, we will consider how the position of third parties, namely employers, insurers and the regulatory bodies can pose ethical and legal challenges to the therapeutic relationship between the patient and the doctor.

## Employer sponsored medical care

It is not uncommon for doctors to enter into a contractual relationship with an employer for the provision of medical services for the employees. The nature of these contracts varies. Contractual obligations which are in serious conflict with ethical norms, including those spelt out in the Singapore Medical Council (SMC) Ethical Code and Ethical Guidelines (ECEG) are unlikely held to be lawful. The SMC ECEG serves as a guide on standards for doctors on appropriate professional conduct in their work. These guidelines are supportive of, and consistent with, the Medical Registration Act which was legislated in the public interest. A contract involving conduct contrary to the interests of the public is unlikely to be met with the approval of the law.

## Case study 1: Consent

A consults your clinic. Your medical group has been providing care for her. The costs of her care have always been high because of her frequent visits, investigations and tests which turn out to be normal. Her symptoms suggest a psychological basis, compounded by domestic difficulties, insomnia and stress. The company human resource manager has sought your help in understanding these medical claims and requested for information about her medical condition. The company has also stated that in the employment contract with the employee, the employee signed off at the time of recruitment the consent for release of information from the company doctors when necessary. Should you share information with the manager? Should you inform A of the request?

## Commentary

Ostensibly, consent has already been given and the doctor is free to divulge information. However, a closer look would reveal reasons for caution. The consent was signed off at the time of recruitment, when her health status would presumably be different. Consent must be viewed as a continuing process, rather than as a one-off decision, with the potential to impact prospective events yet to be known. We could speculate on the motives of the employer for wanting to gain access to the medical information of the employee. The medical information could be used to her detriment, or there could be a genuine desire on the part of the company to assist her. Whatever the case, it is only right that the consent of the patient be obtained before information is divulged to the employer. It would be better if the patient can have sight of any medical report before onward transmission to the employer.

## Case study 2: Medical leave, economic interests

B, a construction worker sustained an amputation of the right index finger at work, and he lost the distal two phalanges as a result. He was treated by the company appointed medical practitioner and given two days' medical leave followed by light duty. His request to the doctor for an extended period of leave was turned down, as the employer insisted that he was fit to work in a light duty capacity. Dissatisfied, B sought legal help from a lawyer who lodged a complaint to SMC, citing among other things, that the sick leave given was inappropriate and that the doctor had failed to act in the best interests of the patient.

## Commentary

### Medical leave

Sick leave certification following industrial accidents can be a contentious area. A *Straits Times* (ST) report, "Lost part of finger, two days MC" (9 October 2011), has indicated that such cases, where the doctors' certification authority is subject to

competing pressures from the employer and the worker, both attempting to “game” the system, are not isolated incidents.

Businesses have corporate interests to protect. Industrial accidents, the severity of which is graded, among other criteria, according to the amount of medical leave, have to be managed. Safety records, also based on lost time injury are sometimes zealously guarded to the detriment of injured workers. On the other hand, some workers have been known to exaggerate the extent of their injuries for personal advantage.

The medical practitioner has to use his independent judgement to evaluate what is fair and medically necessary for the injured worker for recovery and rehabilitation, and not cave in to external unmerited pressures.

#### *Economic interests*

Third party pressures, whether directly from employers or from company sponsored insurers to restrict care to save costs is another pitfall. However, it is not the doctors' role to restrict care in order to help protect the economic interests of the business. The containment of healthcare costs can be better achieved by other administrative strategies. Care should be determined by the patient's medical needs and judged according to the Bolam standard. Although the employer may not have approved referral to tertiary care on economic grounds, the patient, however, should be given the option to decide for himself whether to go ahead and perhaps pay for his own treatment if necessary. The courts will take a dim view of the financial relationship between the doctor and the employer, which clouds the therapeutic relationship between the patient and the doctor.

The Malaysian case of Kamalan a/p Raman, in which the company appointed doctors failed to refer for timely care in this worker-patient who died shortly thereafter of severe hypertension and stroke is particularly instructive. The ST report, “Some foreign workers seeking help for botched medical treatment” (1 January 2012), serves as a caution to doctors not to stray beyond the limits of their professional competencies and to make appropriate referrals when indicated. In the report, mention was made of several cases of occupational hand injuries that needed further corrective management because of complications from initial treatment.

## **Relationship with insurers**

### **Case study 3: Confidentiality of medical information**

C is a 30-year-old patient admitted to the hospital for a chest infection. HIV testing was carried out with the patient declaring that he does not want to know the result. What are your views about the conducting of the blood test under these circumstances?

His HIV test came back as positive. The patient brought with him the insurers' request for a medical report, with documented signed consent by the patient. Is it ethically permitted to disclose the positive HIV test result to the insurers?

### **Commentary**

There is a presumption of consent for blood tests when patients consult doctors. However, HIV testing poses different issues from other tests like liver function panel or blood sugar tests. Information related to sexuality is sensitive. Furthermore, there are implications of harm to and protection of partners. Therefore, pretest counselling for HIV testing is important. If a patient declares he does not wish to know the result, despite counselling and extensive discussion, the withdrawal of the offer of the test might be ethically tenable. Hopefully, these cases are rare.

Legislation pertaining to disclosure of a positive HIV status confines itself mainly to partners who are potential victims of harm. The legislation is understandably silent on disclosure of such information to third parties like employers or insurers. There is a common law of right to confidentiality of personal information. This is also maintained in the SMC ECEG where medical information is concerned. This right to confidentiality can only be defeated by a court order or the argument of public interest. In other words, consent for release of medical information can be forgone only if there is a public interest to protect. Disclosure to insurers in such a case would not measure up to the protection of public interest, therefore consent is still necessary.

Any written report by a doctor should be factual, accurate and verifiable. A doctor is not required to provide information not sought for. However, clinically relevant details should not be omitted if its omission renders the report misleading. In the scenario above, consent notwithstanding, the patient should be made aware of what the hospital would be disclosing in response to the request of the insurers. If he does not wish to know, and validates his consent for disclosure, the doctor would be protected.

However, he should be given a chance to withdraw his consent (regardless of whether he knows or does not know the HIV result), in which case, the report will not be sent. He should then be advised to inform the insurers.

The same ethical rules for disclosure would apply under healthy times. If C had applied for an “insurance upgrade”, the success of which is subject to a medical examination, C's agreement and understanding should be sought. This is important especially if there are abnormalities, before onward transmission to the insurers. Put baldly, it is a hard fact of commercial reality that insurers are not interested in the insuree's health in as much as his risk. The implications of abnormal findings on exclusion

for future payments will have to be clarified. Furthermore, if C decides not to go ahead with the insurance upgrade, from an ethical point of view, he should be able to exercise his right of confidentiality over his medical information.

A report, construed as deliberately misleading, misguided as to the best interests of the patient, can potentially be a subject of a complaint by the insurers.

## Foreign domestic workers, pregnancy and employers

### Case study 4: Legislation

D, a foreign domestic worker (FDW), attends your O&G clinic for the termination of pregnancy. This is not a routine medical checkup. The maid was able to diagnose her pregnancy by conducting her own urine test with a commercial test kit. She wants everything kept confidential and specifically does not want the employer to know. What are the disclosure issues?

### Commentary

As a patient, she has a right to medical confidentiality and autonomy. However, the conditions of work permit for foreign domestic workers as spelt out by the Ministry of Manpower (MOM) includes her not becoming pregnant or delivering "any child in Singapore during and after the validity period of her Work Permit, unless she is a Work Permit holder who is already married to a Singapore Citizen or Permanent Resident with the approval of the Controller". As long as she has been in Singapore for at least four months, her decision and request for a termination is covered by confidentiality assured in the Termination of Pregnancy Act. Doctors performing the termination are not legally bound to inform the MOM. Going by the regulation, it is the duty of the employer to notify the authorities once they know that the FDW is pregnant.

The doctor performing the routine mandatory medical examination for MOM every six months has a duty to determine pregnancy and to communicate and to record the findings in the prescribed form to be handed over to the employer.

Pregnancy is neither an offence nor a crime. The decision of the FDW to terminate or to continue with her pregnancy should always be respected, as long as the legal boundaries and consequences (repatriation) are explained.

## Conclusions

The relationship of the medical practitioner and his patient, his patient's employers, insurers and the regulatory bodies can be coloured by considerations that pose a conflict of interest and a risk in professional ethics. In this complex web, doctors must be mindful that their professional allegiance lies with the patients under their care. All doctors should always act in the best interest of their patients, with respect to the patient's

welfare, wishes and dignity. The standards of professional care and ethics are not to be determined by the payer of the medical bill. In the balance of competing interests, the patient's welfare and autonomy takes precedence. Some aspects of this web of relationship are legislatively driven. Naturally, the law of the land shall have to be complied with.

A wider understanding of ethical principles and the law in healthcare among doctors and third parties would promote better working relationships among all and minimise misunderstandings. **SMA**

### Further reading

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