

# Lessons Learnt after the Storm

By Dr Barry Thng Lip Mong

## EDITORIAL NOTE

Dr Barry Thng spoke about his experience as a respondent in a High Court case in 1998/9 at the short course on Medical Negligence: How to Reduce Your Chances of Being Sued on 3 November 2000. A civil suit brought by a patient against Dr Thng and SGH was dismissed by the high court with all costs (to be borne by the patient). The judge ruled in favour of the respondents (Dr Thng and SGH) in all material aspects of the factual arguments.

Despite due care and diligence, patients with poor medical outcome could and do sue doctors. Complaints to the Singapore Medical Council which have been dismissed as having no merit could and do resurface as civil suits in the High Court. We publish Barry's talk and a summary of the case as continuing education for all doctors. Doctors must be educated on how the legal process works. We must thank Barry for sharing with us his deep insights into the issues forged from having being thrust into a STORM. The poignantly appropriate acronym stands for:

S: Be in a STATE OF READINESS to prevent and pre-empt malpractice lawsuit

T: Be TRUTHFUL TO ONESELF when being sued

O: Be OPEN ENOUGH TO DISCUSS THE PROBLEMS

R: Be READY FOR THE COURT HEARING

M: Be able to MOVE ON IN LIFE despite the outcome

## STATE OF READINESS

Medical negligence issues will continue to be a nagging problem for all practising clinicians. Having an attitude of ignorance and escapism can only aggravate one's risk of being sued for malpractice.

A proactive approach that systematically considers, anticipates and pre-empts any potential litigation is the best solution to minimise these painful legal tussles.

There are four areas that we can work on to enhance our protection from unwanted malpractice litigation. These are: ourselves, patients, medical records, working environment.

## 1. Self-management

The three key areas for self-improvement are professional competence, professional ethics, medical protection insurance and better understanding of the Laws. It is important to:

- Have a valid medical protection insurance.
- Have a basic knowledge and understanding of the Law and ethical issues in the community.
- Be equipped with enough professional skill, knowledge and experience before venturing to private practice.
- Treat continuing medical education as a necessary investment.
- Engage in networking among peers and colleagues to avoid professional isolation.
- Be familiar with the ethical code provisions as they are reliable guidelines in our professional conduct.

## 2. Patient-management

The key element in patient management is patient's satisfaction. A happy and satisfied patient will be less likely to complain or sue. He will also be more receptive to our explanation when an adverse clinical outcome occurs. It is thus important to:

- Make all effort in establishing a good doctor-patient relationship so as to minimise misunderstandings.
- Constantly explore patient's ideas, concerns and expectations as this will help to build a good therapeutic relationship with the patients.
- Be sensitive to patient's profile and personal agenda.
- Deal promptly with dissatisfied patients or treatment complications as this may pre-empt and prevent a potential complaint or lawsuit. A useful acronym to remember when attempting to take heat off potentially explosive situations is H.E.A.T.:

**H:** Hear the patient out.

**E:** Empathise with the patient (i.e. try to understand the feeling behind the dissatisfaction, not the facts).

**A:** Address the issues.

**T:** Take actions to diffuse the tension.

## 3. Medical record management

Our medical record is and will be our first and last defence in court. It is thus essential to:

- Ensure that all the important basic data is recorded as a routine.
- Be focussed in our case note entries with the use of keywords so as to overcome the problem of time constraint.
- Be very thorough in those clinical situations that may have a potentially poor or uncertain outcome.
- As far as possible, record all communication we have with our patients e.g. the telephone consultation.

## 4. Working environment

It is important to know that we are solely responsible for the mistakes made by our assistants. It is therefore useful to:

- Train our assistants well.
- Avoid keeping rude and antagonising assistants.
- Constantly improve our clinic management after collecting feedback from patients, clinic assistants and fellow doctors.

## TRUTHFUL TO ONESELF

When we are faced with the possibility of medical negligence litigation, there are a few issues to consider:

- When deciding whether to contest any alleged negligent claims, it is crucial to ask whether one was indeed in the wrong.
- A moral high ground and clear conscience is crucial as it will help to provide the necessary strength, courage and stamina to pull through the ordeal without developing self-doubt or losing steam along the way.
- In circumstances where there may be neglect not amounting to negligence, one may want to consider mediation, compensation and settlement after discussing with the lawyer.

## OPENLY DISCUSS THE PROBLEM

The entire process of medical negligence litigation is an emotionally draining one. It is indeed important to:

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- Harness enough support and avoid the tendency towards isolation.
- Be open about the issue by talking, explaining and gaining support from persons who are important to you.
- Ignore the skeptics as their opinion of you will not affect the outcome of the case.

### READY FOR THE COURT HEARING

As the consequence of the verdict is profound, one must be thoroughly prepared for the actual court hearing.

#### Before the court hearing

Ask yourself the following questions about the case:

- What are the facts?
- What are the important issues?
- What are contentious?
- What are the strengths and weaknesses of my case?
- Make an effort to get the necessary information to support your case.
- Go through your affidavits as many times as possible.

#### During the court hearing

- Be honest.
- Do not be intimidated or agitated by the Plaintiff's solicitors.
- Think before making any reply.
- Remember what was said and do not contradict yourself.
- Answer slowly as this gives you time to crystallise your thoughts.
- Have confidence in the legal system and the judge's decision.

### MOVING ON IN LIFE

- There is always a positive side to any story.
- Treat it as a lesson learnt, an experience gained.
- The pain from the lawsuit will fade and Time will heal all wounds.

In summary, medical negligence litigation is indeed costly, complex, emotionally charged, publicised, socially-divisive; it is also lengthy, distressing and traumatising.

A proactive approach that systematically considers, anticipates and pre-empts these problems remains the best way from being embroiled in unwanted and unnecessary lawsuits. ■

### SUMMARY OF THE CASE

"On 22/4/95, I was an orthopaedic medical officer stationed at the A&E Department.

I saw a young army officer who was kicked over his left shin during a football match. He was in excruciating pain immediately after the kick and was referred to the hospital to exclude fracture and acute compartment syndrome.

When I saw the patient at the orthopaedic room, his pain had already diminished. Upon physical examination, there was no clinical evidence suggestive of acute compartment syndrome. Examination of the X-ray did not reveal any fracture.

In view of the residual pain that the patient was having, I felt he needed observation to exclude any delayed complications.

I therefore decided to refer him to a 24-hour SAF Medical Centre for overnight observation. I contacted the doctor on duty and explained the reason for my referral, followed by a written memo. Upon request from the patient, I also spoke to his Officer-in-Command regarding the need for observation and thus his absence from stand-by duty in his camp.

The patient stayed and rested in the medical centre overnight. Upon review the next morning, the SAF doctor noted that the patient's condition had further improved. He was thus discharged and advised to rest at home.

As the patient was concerned with his officer duty in the camp, he spent a number of hours back in his camp instead of resting at home. On the same afternoon after returning from his camp, his left leg became painful and swollen.

The swelling and pain over his left leg got progressively worse but he resisted seeing a doctor until the next afternoon. By then, his left leg was already grossly swollen.

He was seen by a private orthopaedic surgeon on 24/5/95 at 2.15 p.m. and a diagnosis of lateral compartment syndrome of the left leg was made. He subsequently underwent 2 operations to decompress and remove the dead muscles of the left leg.

As a result of the development of compartment syndrome, he suffered severe damage to his left leg.

He then filed a civil suit naming me as the first defendant and the hospital as the second defendant in May 1998.

It was a 13 and a half day trial in the High

Court stretching from Jan 1999 to March 1999. On Aug 6 1999, the Trial judge Honourable Justice Judith Prakash delivered her detailed Grounds of Decision stating her findings of fact as well as giving reasons for those findings.

She ruled in favour of the Respondents in all material aspects of the factual arguments. Her Judgement followed from the findings of the fact she made and there was no real dispute regarding the applicable law on the facts on the case. The case was dismissed with costs.

The Appellant filed a Notice of Appeal on Sep 1999 and was subsequently dismissed by the Court of Appeal in Nov 1999."

### WHAT TO DO ABOUT A COMPLAINT?

#### Handout given by Prof S Y Tan during the Short Course

All complaints are to be treated seriously. They must never be ignored. Written complaints or queries require a prompt written response. In drafting a response letter to a patient or a regulatory agency, the doctor should be guided by the following:

1. Be honest. The truth always surfaces in due course. Candour and trustworthiness are virtues expected in a doctor.
2. Be accurate. Review carefully the medical records that pertain to the incident, with compulsive attention to factual accuracy.
3. Be focused. Do not ramble on and on regarding unrelated or tangential issues. Focus on what the patient is complaining about. No one is interested in your views regarding your philosophy of medical practice or the healthcare system. At least, not in a response letter to a patient's queries.
4. Be brief. Your main points will be lost, or go unread, if your reply is 10 pages long...
5. Be professional. Your letter may be reproduced at a later hearing, and it should not come back to haunt you. Imagine the embarrassment to see a letter that is barely legible, replete with grammatical errors, or just infantile in tenor. If you cannot write well or effectively, get someone who can to help you.
6. Be humble. Arrogance at this stage (or at any stage for that matter) may prove disastrous. Adopt a contrite and humble tone. Blame no one, especially the patient.
7. Be a patient advocate. Show that patient well-being is always your first and last concern.