MEDICO-LEGAL Thoughts

Text by Dr Lee Yik Voon

I was invited to open the Annual National Medico-legal Seminar 2019. I was glad to see many enthusiastic participants, many of whom were new and young faces. It is indeed heartening to see that our younger generation of doctors are interested in this subject.

This triggered me to think about various issues facing medicine today, such as defensive medicine. Is offering our patients a less risky choice of treatment a form of defensive medicine? Or is that how medicine should be practised in the first place? That, I guess, will depend on what constitutes playing safe.

It is a fine line. We may order all sorts of tests or accede to patients' and their family members' requests to protect ourselves legally and avoid complaints and lawsuits. Or we could do the right thing by ordering just enough to be fair to the patients so that we cover sufficient grounds to confirm the diagnosis, so that treatment will be appropriate for our patients.

We may sometimes hear that a particular treatment may be better than nothing. Or we may use such an argument to justify the services that we provide for our patients. But is that enough? Is it a spectrum of decreasing severity of negligence when we compare doing nothing, doing something, doing enough and doing almost everything (otherwise known as over-servicing)?

Is returning to Bolam-Bolitho better than using the current Modified Montgomery test? Is facilitating doctors so that they can do their work as important as reassuring that patients' welfare is taken care of? It is not true that the old ways are absolutely paternalistic and patients have no say at all. We must not forget that the doctor-patient relationship is prime.

Is standard of medical practice an absolute and distinct line which we must all cross and not breach? Or do we have a range for our standards of medical practice? What then defines grave departure from the standard of medical practice? And at which point are we considered to have crossed over to unprofessional conduct?

Is it a direct and absolute comparison? Or is it a relative comparison with common standards across specialties and regions? How then are the various ways of approvable actions considered a normal behaviour and normal medical

considerations? Or at which point does it cross into a massive departure of acceptable norms?

Do we consider common mistakes as a departure? But to err is human.

Or should we be judged and prosecuted only for severe negligence of duty? Is that fair to the public and patients?

How can we practise medicine if everything is held at perfection and at aspirational standards that are modelled after the best practitioner under the most ideal condition?

Relevance to telemedicine

It is interesting to apply all these arguments to the newest kid on the block – telemedicine. Telemedicine has generated a lot of interest recently because it is seen to be:

a. a source of revenue to stakeholders;

b. cost savings for the public and patients;

c. convenience to patients who do not need to step out of the comfort of their homes and queue at a clinic with strangers;

d. a disrupter of traditional modern medicine – a face-to-face model that requires a physical presence; and

e. filling up gaps in-between consultations in real time and person.

We are well aware of the weaknesses and dangers of telemedicine. It not only lacks direct face-to-face interaction, but also does not allow any physical examination at all. Detractors may argue that devices and sensors are available to bridge those gaps. However, current devices are still experimental and unreliable.

When these devices are introduced into telemedicine, we have to grapple with the accuracy, reliability, sensitivity, acceptability and cost of these equipment.

Is what you see on the screen the same as what you see with your naked eye? Often, an image captured by the handphone today can make one look better than in real life. The camera could also be unkind and make one a lot less similar to the real life image.

Is the doctor at the end of the camera a real bona fide doctor? How would anyone know and be able to verify? Could it be a chatbot? Could it be a simulation using artificial intelligence or could it be an imposter?

Is the doctor locally registered and familiar with local medical conditions, epidemiology, patterns of antibiotic resistance and cultural nuances and cues? What about the expectations of local patients and their acceptance?

When a patient is unhappy with the doctor's service and standard, can the public approach the local authority for mediation or complaints? Should the doctor be an imposter, a foreign-registered doctor or a chatbot, what recourse does the public have? How will the insurance company view this? How will the employers view this?

How sure are we about safeguarding the privacy of the users? How is patient confidentiality maintained? Are you sure you are really alone with your doctor? Or is there an irrelevant person to the consult with him/her outside the view of the camera during the teleconsultation? How sure are you that there will be no one else eavesdropping or walking into the room during the consultation?

Telemedicine can be a useful option for those of us with overseas patients. How do we ensure we receive the fees due to us? How can the public be assured that the payment is received by the doctor? How do we settle any dispute should it arise?

One may think that this is a self-selected group of patients and it is very unlikely to have any severe problems that require closer medical attention. Some quarters have shown data that there have been no cases of missed diagnosis with severe consequences.

There are too many "what if's" and often users and patients might not even have thought about them. This is a brave frontier where regulations are not yet set and cast in stone. Many potential issues are still unknown.

Are we ready to face a test case? When that happens, will our patient suffer severely in the short term or worse, have a prolonged period of suffering with nasty complications and consequences? As practitioners, we need to abide by the relevant laws and our Singapore Medical Council Ethical Code and Ethical Guidelines. Are we able to satisfy all the requirements when we engage in telemedicine now?

Hence, telemedicine is housed in a regulatory sandbox. Although it is convenient and disruptive, its safety and framework are not mature enough to be released for use in real life like a face-to-face consultation. It is still very much a work in progress and we can only hope that this will lead us towards a robust form of telemedicine.

Telemedicine is not something entirely new. We have been using it to follow up on our patients since the telephone was invented. We use the telephone to check with our patients if treatment and management are effective, whether they are encountering any side effects or complications of our treatment, if they are compliant to our management plan, and whether they understand, register, agree with and have retained all the instructions and explanations that we have told them.

Companies and start-ups looking to venture into telemedicine are not going to sit still and take all the criticism lying down. They are moving quickly into other areas where there are gaps, such as house calls and tele-monitoring. If one looks carefully, one will realise it is not telemedicine, but doctors themselves who are implementing and driving it forward. As long as medical professionals are behind it, we will have to address the medico-legal requirements and issues behind this. ◆

Dr Lee is a GP practising in Macpherson. He is also a member of the current National General Practitioner Advisory Panel. He is a pet lover at heart who is the proud owner of a dog, and regularly feeds neighbourhood community cats. He also enjoys playing online war games and thinks that playing Pokemon Go is a good form of exercise.