Medical Malpractice

– *Hard Truths that Housemen Need to Know about Risk Management in Avoiding Claims and Complaints*

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In the housemanship year, the medical student evolves from being a student with minimal responsibilities for others, to a trainee doctor with legal and professional responsibilities and duties to her patients, colleagues, the employing institution and society in general. The medical student is often carefree and is mainly responsible for her learning to gain the qualifications to become a doctor. Having gained the qualifications, the houseman is now required to gain clinical competence (beyond qualifications) in the clinical and practical skills to practise Medicine and achieve the appropriate professional demeanour to become a doctor. In the professional development ladder, the house officer (HO) is moving from the *advanced beginner* stage to the *competent doctor* stage. Medical school can never completely prepare the HO for all the varied real life clinical encounters that she is expected to manage in a competent and professional manner.

It is important to know that the full licence to practice as a doctor is not an inherent right by virtue of passing the examinations and achieving the qualifications. Rather, it is a privilege given only to those who have proved themselves to be competent to uphold the responsibilities and show a professional fitness to practise.

While embarking on this professional journey, HOs need to be aware of the rising expectations of healthcare professionals by patients and the public. Clinicians are facing greater calls to be transparent and accountable for our decisions, conduct and performance. This accountability stretches from answering complaint letters to facing medical litigation.

Professional accountability

All professionals are involved in work that is important to the majority of society. Professionals in any field can be called upon to be accountable for their professional actions, behaviours and performance.

The nature of medical practice and the manner in which healthcare is provided has a big impact on the patient's welfare, rights and interests. The practice of Medicine is a duty based profession embedded on clinical competence, compassion and integrity. Society expects doctors to know their duties under the code of professional ethics and the law with understanding of the concept of legal and professional accountability. Duties and obligations are based in both ethics and law, and doctors must therefore be mindful of the legal and ethical standards within which they practice.

Professional duty and standard of care

The standards against which professionals can be held accountable are embodied in the professional standards of their particular profession. These standards are expressed in ethics guidelines or codes of conduct for each profession. For doctors practicing in Singapore, these are covered by the Singapore Medical Council Ethical Code and Ethical Guidelines.

The duty of care and the standards of care are also embodied in common law. From R v Bateman (1925) 94 LJ KB 791:

"If a doctor holds himself out as possessing special skill and knowledge, and is consulted, as possessing such skill and knowledge, by or on behalf of the patient, he owes a duty to the patient to use due caution in undertaking the treatment. If he accepts the responsibility and undertakes the treatment accordingly, he owes a duty to the patient to use diligence, care, knowledge, skill and caution in administering the treatment. No contractual relation is necessary, nor is it necessary that the service be rendered for reward."

The standard by which doctors are to be judged is described as the Bolam's test or professional standard. The standard of care is that of *"the ordinary skilled man exercising and professing to have that particular skill"*. A doctor is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a responsible body of medical men skilled in that particular art (minority rule). The standard of care in any particular case is articulated by a medical expert witness, and this standard must be consistent with that of a body of responsible, reasonable and respectable medical men. The court will determine whether the standard articulated is logical, shows internal consistency of reasoning, comprehensive and up to date with advances in medical practice (the Bolitho test).

What is the scope of the duty of care of medical practitioners in clinical practice?

1. The duty to diagnose – provide an accurate assessment of the patients' medical conditions by appropriate history taking, proper physical examination, clinical reasoning and ordering appropriate investigations.
2. The duty to treat – institute appropriate and timely treatment.
3. The duty to inform – involve patients in the informed consent and other medical decision making processes, provide information on the patients' diseases and therapy, and warn of potential risks of the disease and therapy for the present and future.

4. The duty to attend – be personally available or to attend when called, and not to delegate critical duties to others unless it is reasonably not possible to do so.
5. The duty to refer – be aware of the limits of one's knowledge, skills and experience and make timely and appropriate referrals, and avoid practising beyond one's competence, even when asked to do so, at all times.
6. The duty to preserve medical confidentiality and patient privacy.

The fiduciary nature of the doctor-patient relationship

Both professional ethics and common law define the doctor-patient relationship as fiduciary in nature. It is a relationship of trust where the doctor always acts in the best interests of the patient and even above the doctor's own personal interests and those of third parties. The reasons for this are that sickness undermines the patients' judgement and makes them vulnerable, patients trust and expect doctors to focus efforts on relieving the sick and suffering, and the imbalance of power and knowledge between the doctors and the patients. Fiduciaries hold something in trust for another and patients place their health and well-being in trust to their doctors.

Doctors are thus to exercise due diligence and caution, use medical knowledge and skill to arrive at unbiased optimal professional judgements in their decisions. HOs are expected to forgo minor personal inconveniences to attend to patients' needs in a timely and effective manner.

Why patients and relatives sue doctors and hospitals – understanding the causes

Medical malpractice is a term sometimes used to describe any wrongdoing by a medical practitioner which may involve criminal negligence, civil negligence and professional misconduct, where there is a breach of duty, neglect of responsibilities and abuse of privileges.

Medical negligence is defined as an act or omission in the care of a patient resulting in an injury, which arises from the standard of care falling below the established standard expected of a reasonably prudent professional under the given circumstances.

Medical litigation is a legal action or claim for the purposes of enforcing a right or seeking a remedy in medical negligence.

The majority of malpractice claims and professional complaints can be identified with six themes relating to poor interpersonal and communication skills after an adverse outcome.[1,2] They include:

1. The patients' perspectives were not understood because the doctors did not listen.
2. The patients' views were devalued because the doctors did not show respect to the patients' concerns.
3. The doctors failed to give patients adequate, timely and clear information in an empathetic manner.
4. The doctors did not involve patients appropriately in medical decision making.
5. The patients felt deserted and uncared for when referred away after adverse outcomes.
6. The doctors failed to empathise or apologise when unexpected adverse outcomes occur.

The decision to take legal action is usually motivated not only due to the medical injury but also by insensitive handling and poor communication.[2] Patients who suffered serious injuries resulting in loss of work, effect on social life and for future medical therapy sought litigation as a means of financial compensation.[2] Medicine today is a team effort and up to 25.4% of adverse medical events have interactive or administrative causes.[3] Patients expect doctors to be held accountable for their work and that errant doctors are identified and punished and sent for remediation. The injured patients and their families do not want others to suffer the same fate and expect changes in the system of healthcare delivery.[2,4]

Identifying and addressing patients' expectations are a well recognised risk management strategy. Recognising patients' expectations during both the medical interview and the consent process, and seeking to appreciate the patients' perspective is necessary in preventing claims and complaints. A failure to address unrealistic expectations before starting treatment often leads to unmet expectations and a breakdown in the doctor-patient relationship.

Risk reduction in medical malpractice – avoiding claims and complaints using the 8Cs approach

For effective risk reduction or primary prevention of legal and ethical disputes, all HOs must seek to acquire skills in the following areas:

1. **Communication** – communication skills are essential to understand patients' perspectives and build effective therapeutic relationships. The appropriate professional demeanour should be maintained even in emotionally difficult encounters. Respect, empathy and sincerity should be the hallmark of all clinical encounters.
2. **Competence** – exercise knowledge and skills at all times and avoid practice beyond one's competence.
3. **Consent** – consent is a process of sharing information and getting informed consensus. Involve your patient in medical decision making.
4. **Clinical records** – good and timely medical record keeping serves as good evidence when replying to complaints and in legal defence. Avoid altering clinical records as that not only reduces your credibility, but also puts you at risk of being charged for professional misconduct of fraud and misrepresentation.
5. **Careful prescribing** – make prescriptions and give instructions of use for products carefully. Check for allergies, drug interactions and dosages.
6. **Confidentiality** – preserve medical confidentiality and privacy. Always use a medical chaperone when indicated. Social media is not the right forum to discuss the challenges you face at work, e.g., difficult patient encounters.
7. **Colleagues** – work with a network of colleagues to confer and refer in a respectful and professional manner for the benefit of patients.

8. **Constant vigilance** – ensure that your medical indemnity subscription is current, review risk management strategy with your mentors and seniors regularly, and attend risk management workshops to stay updated.

In addition to the 8Cs approach, it is useful to remember the 3Cs of courtesy, caring and compassion.

Conclusions

The lack of a good doctor-patient relationship and unmet expectations are the commonest predisposing factors that prompt patients to make complaints and sue doctors. Employing effective therapeutic relationship-building skills based on respect, empathy and sincerity develops trust and prevents claims and complaints. Eliciting and meeting patients' expectations and simultaneously dealing with unrealistic ones effectively is an important risk management strategy.

Good and timely documentation in the clinical records forms the basis of good defence in litigation and useful evidence in replying to complaints. Good clinical records should contain evidence that decisions were based on sound clinical judgement and the patients' consent.

The practice of Medicine is both an art and a science, and demands a high level of commitment and effort on the practitioner's part. Acquiring the knowledge, skills, attitudes and professional behaviours that preserve the trust and confidence in the doctor-patient relationship even in the advent of unexpected adverse outcomes, makes for good risk management and the clinician's work purposeful beneficial and fulfilling. SMA

References

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