



The Clinical

Legal implications

In the law of negligence, CPGs are relevant in establishing whether there has been a breach of the practitioner's duty of care to his patient, ie, a failure to provide the required standard of medical care. A breach is usually established through expert testimony on what the accepted and proper practice is, which is where CPGs are relevant. Courts tend to give due weight to CPGs, as they are often viewed as consensus statements issued by the medical profession regarding the acceptable practice in a given situation.

However, compliance with a CPG does not automatically exonerate a practitioner, as the CPG may not be applicable for a number of reasons. For example:

- There could be complex circumstances or uncertainties, such that the CPG is not applicable or should not be rigidly followed;
- The CPG may be of poor quality, outdated or there may be sponsor bias;
- There may be a respected contrary school of thought in the profession (which can be established through expert evidence);
- The CPG may post-date the incident in question (practitioners are generally judged based on the standard of care prevailing at the time of the incident, not when the matter goes to court some years later); or
- It may be inappropriate to apply a CPG from one country to another due to variable local circumstances.

Therefore, a practitioner should not be lulled into a false sense of complacency by blindly complying with a CPG. Clinical judgement must still be applied. As aptly stated by one author, "treatment can depend on something as subtle and unquantifiable as the glint in a patient's eye".³

Nevertheless, the fact remains that compliance with a well-recognised and applicable CPG may well exonerate a practitioner from liability in the event of an adverse

Introduction

Clinical Practice Guidelines (CPGs) are commonplace in present day medical practice. However, practitioners often underestimate or overlook the legal and ethical significance of CPGs. This article will provide a brief overview of the key legal and ethical issues in Malaysia arising from CPGs.

What are CPGs?

CPGs are systematically developed statements, based on best evidence, intended to assist practitioners and as the case may be, patients in making decisions about the appropriate management of specific clinical conditions.¹

In short, CPGs are guides for the best clinical practice in a given situation. They are intended to aid clinical judgement, rather than to replace it. Therefore, ultimate decisions on clinical management will still depend on, among others, the individual patient's condition, local circumstances, patient's choices, and the clinical judgement of the healthcare team involved.²

Against this backdrop, it is pertinent to consider the legal and ethical implications for practitioners arising from the compliance or non-compliance, as the case may be, with CPGs.

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By Dhinesh Bhaskaran

outcome. Conversely, deviation from a well-recognised and applicable CPG may well be defensible. However, in the latter case, the practitioner must be prepared to justify the deviation and record his reasons in his clinical notes.

Ethical implications

Under the Malaysian Medical Act 1971, disciplinary proceedings may be commenced for ethical transgressions. The charges are most commonly based on "infamous conduct in a professional respect".

The Malaysian Medical Council (MMC) is not ordinarily concerned with errors in diagnosis or treatment, or with the kind of matters which give rise to proceedings for negligence, unless the practitioner's conduct has involved such a disregard of his professional responsibility to his patient or such a neglect of his professional duties as to raise a question of infamous conduct in a professional respect.⁴

However, MMC often investigates complaints of negligence on the ground that the practitioner's conduct may involve such a disregard of his professional responsibility to his patient or a neglect of his professional duties.

Therefore, non-compliance with a well-recognised and applicable CPG may be considered by MMC as evidence of disregard or neglect by the practitioner, and may form part of the basis for disciplinary action.

Conclusion

Compliance with a well-recognised CPG may, in the circumstances of the case, constitute evidence of the absence of negligence or ethical breaches. Conversely, non-compliance may, in the circumstances of the case, constitute evidence of negligence or ethical breaches.

However, it must be ultimately borne in mind that while CPGs are important healthcare quality enhancement tools, they are to be applied when the practitioner's professional judgement dictates. The practitioner's professional autonomy always remains.⁵ **SMA**

References

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Mr Bhaskaran is an Advocate and Solicitor of the High Court of Malaya and a Barrister-at-Law of Gray's Inn, England. He holds a Masters in Law from the University of Cambridge, and is a Partner in the Dispute Resolution Practice Group of Shearn Delamore & Co, who are Solicitors for the Medical Protection Society.