

Clearing the Air

SMA Conference: Professional Accountability & Professional Misconduct

By Loy Mongshi and Geraldine Tan

The issues of professional accountability and the legal parameters of what constitutes professional misconduct in the medical profession have recently come under great scrutiny in the public and medico-legal spheres. With the recent cases of *Susan Lim v Singapore Medical Council (SMC)* and *Low Chai Ling v SMC*, the need to clearly define the ambiguous term "professional misconduct" has increased exponentially.

In a bid to remedy this ambiguity and provide healthcare professionals with a clearer view, the SMA Centre of Medical Ethics & Professionalism (CMEP) held a two-day event, titled SMA Conference: Professional Accountability and Professional Misconduct, at Sheraton Towers Singapore from 23 to 24 November 2012. The first day of the conference consisted of three symposiums which discussed various issues related to professional accountability and professional misconduct. A diverse array of speakers, well known in their respective fields, presented on and discussed a variety of topics with an audience comprising nurses, doctors and lawyers. Meanwhile, the second day of the conference was a training workshop catered to healthcare professionals sitting in judgement of professional colleagues.

Day I

SMA President A/Prof Chin Jing Jih opened the conference, calling for the "inject(ion of) new ideas, fresh ideas" and increasing discourse, so as to make the healthcare environment safer for all. A/Prof Chin pointed out the widening communication gap and changing dynamics between doctors and patients, and warned against the rise of defensive Medicine that would result from this change in dynamics. He also highlighted the urgent need to learn from the relevant points in other countries' medico-legal systems, and to adapt these relevant points so as to shorten Singapore's learning curve. Dr T Thirumoorthy, Executive Director, SMA CMEP, also stressed the importance of a continuing educational

process for all healthcare professionals, so as to better our current system and professional medical conduct as a whole. This was followed by a keynote address on professional misconduct by Prof Tan Siang Yong, Emeritus Professor of Medicine, University of Hawaii, in which he encouraged interaction and debate on the contentious issues of professional misconduct and the disciplinary process. Through his address, Prof Tan gave an overview of the two aforementioned issues, and suggested some ideas for reform, such as tougher disciplinary measures and greater allocation of resources to medical boards, that could improve our current system.

The first symposium delved straight into the weighty medico-legal issue of professional misconduct and accountability, presenting a comprehensive range of perspectives from Singapore, Malaysia, Hong Kong and Australia by the respective speakers A/Prof Chin; Dr N Arumugam, Past President, Malaysian Medical Association; Dr Tse Hung Hing, President, Hong Kong Medical Association; and Dr Steve Hambleton, President, Australian Medical Association. These speakers each gave an illuminating presentation on their respective countries' medico-legal framework, citing examples and detailing how the different systems work with respect to medical regulation.

In the second symposium, lawyers Mr Edmund J Kronenburg, Managing Partner, Braddell Brothers LLP, and Mr Edwin Tong, Partner, Allen & Gledhill LLP, discussed the issues of professional accountability and professional misconduct within the healthcare sector from a legal perspective. Following which, Dr Teoh Ming Keng, Head of Medical Services (Asia), Medical Protection Society, provided insights on the two issues from a medical indemnifier's perspective.

The third symposium provided conference participants with experiences from the dental, nursing and Traditional Chinese Medicine professions, respectively represented by Dr Asha Karunakaran, Senior Mediator, Ethics & Practice

Management Committee, Singapore Dental Association; Ms Karen Perera, Committee Member, Executive Nurses Chapter, Singapore Nurses Association; and Physician Leong Kwai Yin, Secretary General, Singapore Chinese Physicians' Association.

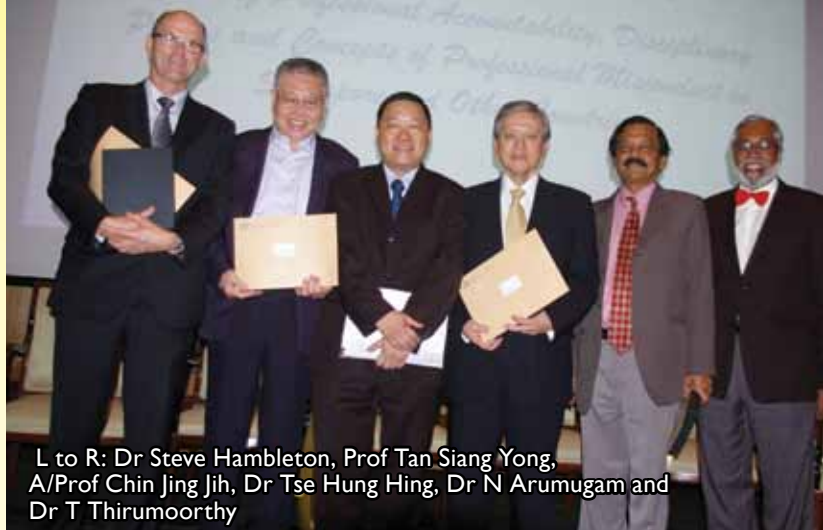
All three symposiums each ended with a panel discussion, drawing energetic debate and discussion from the participants. Concerns brought up included sexual misconduct and its ambiguities, whether sexual misconduct includes the professional's social and private sphere or not; the extent and severity of disciplinary action against medical students who are guilty of professional misconduct; whether the same standards that doctors are measured against should be rigorously applied to medical undergraduates; and the rationale behind not limiting the code for correct, ethical professional conduct by going into specifics.

Day 2

The second day was a full-day training workshop which aimed to help participants acquire methodology, framework and skills for ethical reasoning and judgement. In addition, it aimed to impart the knowledge and application skills of underlying legal concepts and principles of conducting a disciplinary inquiry, to benefit those who have been tasked with the serious duty of sitting in judgement of healthcare professionals accused of professional misconduct. The training workshop was spearheaded by Prof Tan Siang Yong and Dr T Thirumoorthy, who put together a lively and interactive programme on these otherwise heavy and serious topics.

The faculty were encouraged that the training workshop saw a full house of 64 participants. There was a good mix of professionals from different areas of the healthcare sector – the group was made up of doctors (48%), dentists (14%), nurses (9%), pharmacists (2%), lawyers (6%) and healthcare administrators (23%).

Dr Thirumoorthy delivered the first lecture in which he discussed core concepts in healthcare professionalism. He mentioned that healthcare professionalism encompasses a set of competencies, duties, values (principles), virtues, behaviour (professional conduct), outcomes (performance) and relationships that aims to achieve the goals of Medicine, and promotes trust and confidence in the healthcare system. He highlighted the professional and ethical responsibilities of a doctor, which include serving patients' best interests, respect for persons, preserving medical confidentiality, maintaining clinical competence, being veracious, establishing appropriate relationships with patients and their families, and preserving justice in the system. He opined that clinician-patient relationship is fiduciary in nature and the manner in which healthcare is provided has a big impact on the patient's physical and psychological well-being, rights, finances and interests. It



L to R: Dr Steve Hambleton, Prof Tan Siang Yong, A/Prof Chin Jing Jih, Dr Tse Hung Hing, Dr N Arumugam and Dr T Thirumoorthy



L to R: Dr T Thirumoorthy, Dr Teoh Ming Keng, Mr Edmund J Kronenburg, Mr Edwin Tong and A/Prof Chin Jing Jih



SMA Conference Day 2



L to R: Physician Leong Kwai Yin, Ms Karen Perera, Dr Asha Karunakaran and Dr Chong Yeh Woei

is therefore important for clinicians to be clinically and ethically competent, to know their duties under the rule of law and understand the concept of legal and professional accountability.

The second speaker was Mr Edmund J Kronenburg, who elaborated on the topic of the legal aspects of disciplinary tribunals and inquiries. He shared the legal principles on how a disciplinary tribunal (DT) should hear and decide a case. He covered five areas, namely judicial review, the rule of law, natural justice, expert witnesses and the burden of proof. Particularly, when explaining the rule of law, Mr Kronenburg mentioned the powers of the DT must be exercised subject to the rule of law; for example, absence of bad faith, no arbitrariness, following precedent and no retrospective application of rules. Mr Kronenburg then used the *Low Chai Ling v SMC* case to explain that no person should be punished retrospectively. He stressed that, as pointed out by the court, it is unfair to single out somebody for something that only became unacceptable through guidelines that were established at a later time. Moving on to natural justice, Mr Kronenburg explained that it refers to justice that everybody expects to be done, justice that even a person who knows nothing about the case, will be able to see has been done. The common rules of natural justice are "*audi alteram partem*" (Latin for "one must hear both sides"), "*nemo debet esse iudex in propria causa*" (Latin for "no one should be judge in his own clause"), no bias (no predisposition to one side or the other) and *Wednesbury* rationality (decision must make logical sense). Explaining on the principle of *audi alteram partem*, and using *Tan Tiang Hin Jerry v SMC* as the case reference, Mr Kronenburg mentioned that if a new charge is framed, there must sufficient opportunities for the doctor to take in the charge and get evidence for his defence. Therefore, prior notice must be given to the doctor.

Prof Tan spoke on the ethical analysis of professional misconduct and provided four important ethical guideposts when doing ethical analysis, namely *A* for autonomy, *B* for beneficence, *C* for confidentiality, and *D* for deceit. Based on the ethical principle of autonomy, consent is always necessary for all procedures or treatments, unless there are legitimate exceptions. Doctors have to explain the procedures, warn of material risks, discuss alternatives, and document discussions. Beneficence refers to always practising within the standard of care to benefit the patients, to put patients' welfare foremost, to avoid all unnecessary expenses, especially those that benefit the doctors personally, and above all, do no harm. With regard to confidentiality, Prof Tan emphasised the importance of not betraying patient confidences and to safeguard

all medical records, especially electronic ones. He also alerted the participants to be aware of situations where revealing patients' secrets is ethically justifiable or even mandatory. The last guidepost, deceit, was for doctors to be truthful to the patients, their families and the society in their practice of Medicine, and to aspire to always be honest, even in matters outside the practice. He concluded that when doing ethical analyses, one good question for those sitting in judgement to ask is: "Has the doctor betrayed trust?"

The last speaker for the day, Mr Eric Tin, Partner, Donaldson & Burkinshaw LLP, gave a talk on the grounds of decisions and sentencing. Grounds of decisions are the reasons for the decisions issued by a competent body, which is empowered by law to adjudicate on a particular matter and make orders in accordance to the law. Mr Tin mentioned that the DT is quasi-judicial in nature because of its adjudicatory capacity, coupled with less formal characteristics in matters of procedure and reception of evidence. A DT proceeding is also quasi-criminal in both substantive and procedural sense. He pointed out that the conduct of disciplinary inquiries commencing with a notice of inquiry enclosing a charge is akin to the summons procedure of criminal courts. The requirement of proof beyond reasonable doubt in DT proceedings is the same threshold of burden required in criminal proceedings. Mr Tin then commented that it is important for the DT to give reasons for their grounds of decisions because the parties, profession and community have a legitimate interest to know and the DT needs to show the soundness of their decisions. Giving reasons can also make the appellate court's task less arduous in the event of an appeal, and to curb arbitrariness leading to greater accountability and transparency.

Sentencing is the process by which the competent body determines the appropriate legal punishment having regard to all the circumstances of the case. Mr Tin brought up the sentencing philosophy, and opined that disciplinary action against professionals can serve three functions, namely: punishment of errant professionals for the misconduct, deterrence against similar defaults by other like-minded professionals in the future and protection of public confidence. He stressed that any sentence meted out to an errant professional has to be proportionate and sufficient as punishment, deterrent to him and his peers, and one which protects public interest and upholds public confidence in the integrity and competence of the profession.

The training workshop closed to rousing applause, marking the end of the SMA Conference. On behalf of SMA, CMEP would like to thank all speakers for their outstanding contributions and all participants for taking an active role in this conference. **SMA**