THE PATHOGENESIS AND ANATOMY OF MEDICAL DISPUTES

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INTRODUCTION

The practice of medicine is complex and filled with uncertainties, and so are medical disputes that arise in the process and outcomes of care between patients and their families and the healthcare professionals and hospitals.

One factor that most lawyers and mediators frequently identify as a unique feature of medical disputes is the extent and severity of emotions involved by all stakeholders. In a landmark study in the UK, 90% of patients expressed feelings of anger and 80% felt bitter about the event. 55% described their feelings as being betrayed and 40% felt being strongly humiliated by the doctors and healthcare team.[1] This is compounded by misunderstanding of the facts because of ineffective communication and the complexity of medical issues. Most medical disputes are neither due to negligence nor professional misconduct.[2]

Medical disputes that arrive at the law courts and the disciplinary process of the medical council are often marked by several previous attempts, often of good intentions but lacking in expertise and processes for effectiveness or comprehensiveness in dispute resolution. A recent example is where the hospital had settled the matter of equipment failure with adequate compensation; following which, the patient complains to the medical council on the same issue, with no additional facts. Sometimes, the expression of empathy or a simple apology is necessary to help achieve the emotional closure.

Medical disputes are inevitable and cannot be completely eliminated, but there is common understanding as what would be considered as good outcomes or resolutions. The optimal outcomes of a medical dispute include:

(1) Timely and appropriate financial compensation for actual loss, suffering and future care.

(2) Accountability for why things went wrong and how this would be prevented in the future by change in practice and protocols.

(3) A collaborative, non-adversarial, confidential, efficient and timely settlement process.

(4) Amicable restoration of relationships and continuity of care for the patient.

THE PATHOGENESIS

Many factors and issues contribute to the development and evolution of a medical dispute. The medical term "pathogenesis" describes the origination and development of a disease or disorder. It is appropriate to use the 3Ps model in understanding the evolution of a medical dispute – namely Predisposing Factors, Precipitating Factors and Perpetuating Factors.

PREDISPOSING FACTORS

The major predisposing factors include a lack of a good therapeutic doctor-patient relationship and unaddressed issues, concerns and expectations. Good therapeutic relationships need effective interpersonal and communication skills on the part of the healthcare professionals. Effective compassionate communication makes the patient feel respected, empathised with as to the difficulties being experienced as a result of the illness, and provides a dimension of sincerity and trust in the relationship.

Unaddressed patients' expectations and concerns especially before starting new therapy or surgery is the other major predisposing factor. Patients undergo significant distress, grief and loss from their illness experience beyond the biomedical and physical aspects, extending to the psychosocial, occupational and financial aspects of their lives. Failure to appreciate the patient's perspective of illness and suffering, and when doctors focus only on the biomedical aspect of the disease, leaves the patient feeling poorly understood, undervalued, unsupported and uncared for.

PRECIPITATING FACTORS

The commonest precipitating or trigger factor for a patient to start thinking of a claim or complaint is the occurrence of an unexpected adverse event. An adverse event is

defined as any unintended injury or complication of medical treatment that resulted in extended hospital stay, morbidity or disability at the time of discharge, and mortality caused by healthcare management rather than by the patient's underlying disease. It is estimated that only 50% of such adverse events are preventable. The median overall incidence of in-hospital adverse events was 9.2%, with a median percentage of preventability of 43.5%.[3]

The other precipitating factor is when a known side-effect of therapy or surgery materialises in the background of inadequate information sharing or explanations.[4] Dissatisfaction with or unmet expectations in the process of care and large unexpected medical bills, even in the absence of negligence or bad clinical outcomes, can precipitate a medical malpractice claim or complaint.

PERPETUATING FACTORS

The factors that tend to perpetuate a medical dispute into a medical malpractice suit are often the poor handling of information after an adverse event. Patients' experiences, after an adverse medical event, have been marked by poor information sharing and unclear, inaccurate, inadequate or delayed explanations. Sometimes, these explanations are not only defensive and misleading, but also delivered in an insensitive manner with no offer of apology or acceptance of responsibility.[1]

Sometimes, patients are transferred to another speciality to manage after an adverse event and the break in the relationship with the original team is viewed as abandonment by the patient. It is stated that between 27% - 54% of patients' explicit recommendation to call a lawyer came from a subsequent consulting or treating specialist.[4]

Of course, a large number of claims are motivated by the seriousness of the injury that has impact on the patient's work, social life and family relationships. There are also concerns about accountability, standards of care and a prevention of similar events to others in the future.[1]

THE ANATOMY OF MEDICAL DISPUTES

A preventable adverse medical event is defined as a medical error. There are many reasons why medical errors occur. Healthcare is a complex environment with multi-morbidity disease processes, several teams of healthcare professionals, equipment, infrastructure, organisational policies and procedures. As such, medical errors are multifactorial, and systemic factors rather than individuals are the cause of most errors.[5] In root causes analysis, there is often more than one cause ranging from patient, task, environmental, team, management to institutional factors. Medical disputes are thus complex and bring along with negligence and professional misconduct a whole host of other contributing causative factors.

In addition, there are other important stakeholders, including the hospital, the insurance and medical indemnity organisations, emotionally distressed patient's families together with distressed doctor's families, and healthcare teams with significant interest in medical disputes.[6] There are many parts and parties that make up the anatomy of a medical dispute.

CONCLUSION

Medical disputes arise not only from bad medical practice and soured relationships but also from unmet expectations. In the resolution of medical disputes, it is important to understand the complexity, the pathogenesis and anatomy of the dispute so that the appropriate avenues of dispute resolution are used, which can then meet the desired outcomes and serve the interest of all parties for an efficient and equitable resolution. ◆

PROFILE

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