

# PROFESSIONAL ACCOUNTABILITY

## [PART 1]



Text by Dr Peter Loke

*This is the first article in a two-part series on professional accountability for medical doctors. In this section, the objectives and principles set out by the Singapore Medical Council (SMC) Ethical Code & Ethical Guidelines (ECEG) and the Medical Registration Act (MRA) are highlighted.*

### What is professional accountability?

Professional accountability is the answerability of behaviour and work performance that is placed on professionals above and beyond the laws applied to society at large. Society must be able to trust the professional who has knowledge and skills that are relied upon. This may be compared to the legal concept of a fiduciary duty, where the person of superior knowledge and training is expected to act in the best interests of the person who places reliance on this.

Paragraph 1 of the Preamble to the SMC ECEG 2016<sup>1</sup> illustrates it thus: “as a member of the medical profession, you are held in the highest esteem by the public and society, who depend on a reliable and trustworthy healthcare system and look to you for the relief of their suffering and ailments. Much trust is therefore vested in you to do your best by both. This trust is contingent on the profession maintaining the highest standards of professional practice and conduct. You must therefore strive to continually strengthen the trust that has been bestowed.”

### Professional self-regulation – empowerment of SMC

The objectives of the MRA, as stated in section 2A,<sup>2</sup> are to protect the health and safety of the public by providing

for mechanisms to ensure that registered medical practitioners are competent and fit to practise medicine, uphold standards of practice within the medical profession and maintain public confidence in the medical profession. The SMC is the institution established and empowered by the MRA to oversee the maintenance of the standards expected of licenced medical professionals and help to deliver the objectives of the MRA.

Under the MRA, SMC is constituted by the Director of Medical Services (DMS) and various medical practitioners, and established and tasked, among other things, to issue practising certificates to registered medical practitioners, determine and regulate the conduct and ethics of registered medical practitioners, and standards of practice and the competence of registered medical practitioners within the medical profession. According to paragraph 2 of the ECEG’s preamble,<sup>3</sup> this self-regulatory privilege is bestowed on the profession “... because society at large does not have sufficient knowledge or the experience of medical practice to decide on professional and ethical matters”. Thus, “the profession bears the concomitant responsibility to ensure this self-regulation be vigorously and fairly exercised”.

The MRA enables only persons registered under the Act and in possession of a valid practising certificate to practise as a medical practitioner,<sup>4</sup> except for ship’s surgeons while in discharge of their duties relating to the treatment of cabin crew and passengers on board.<sup>5</sup> Anyone else is an unauthorised person, and if such a person practises medicine, wilfully and

falsely pretends to be a duly qualified medical practitioner, or advertises or holds himself out as a medical practitioner, could face a hefty fine and/or imprisonment.<sup>6</sup>

The SMC ECEG is effectively the rulebook that provides a framework to guide decisions on professional conduct. Doctors must internalise the ethical responsibilities under the ECEG and discharge such responsibilities in accordance with its underlying spirit and intent.<sup>7</sup> Serious disregard of or persistent failure to meet the standards set out under the ECEG can potentially lead to harm to patients or bring disrepute to the profession with loss of confidence in the healthcare system, and consequently may lead to disciplinary proceedings.<sup>8</sup>

The ECEG is not a substitute for legislation and other applicable statutes and regulations. If there is a conflict between the ECEG and the law, the law takes precedence. Similarly, the ECEG has to be read in conjunction with current directives and guidelines issued by the Ministry of Health (MOH).<sup>9</sup>

### Basis of complaints to SMC and grounds for discipline

The assessment of the appropriateness of professional conduct vis-à-vis the ECEG is largely a matter of peer review (ie, the opinions of fair and reasonably minded doctors).<sup>10</sup> Complaints against registered medical practitioners can be made by any individual to the SMC in writing supported by a statutory declaration on the grounds as follows.<sup>11</sup> Such complaints can be broadly categorised as:

- Conduct of a registered medical practitioner in his professional capacity or his improper act or conduct which brings disrepute to his profession;

- Conviction of a registered medical practitioner of any offence implying a defect in character which makes him unfit to practise as a medical practitioner;
- Professional services provided by a registered medical practitioner are not of the quality which is reasonable to expect of him; or
- Lack of physical or mental fitness to practise as a registered medical practitioner.

**A doctor can be deemed to have fallen short of acceptable standards by a Disciplinary Tribunal (DT) on the following grounds:**

- 1 Convicted in Singapore or elsewhere of any offence involving fraud or dishonesty;
- 2 Convicted in Singapore or elsewhere of any offence implying a defect in character which makes him unfit for his profession;
- 3 Guilty of such improper act or conduct which, in the opinion of the Disciplinary Tribunal, brings disrepute to his profession;
- 4 Guilty of professional misconduct; or
- 5 Failed to provide professional services of the quality which is reasonable to expect of him.

**Professional confidence**

Professional accountability is a cornerstone of the assurance to society that delivery of medical care is carried out responsibly and is of the appropriate quality. The power to censure is essential and how it is exercised is just as important. As much as the public must, medical professionals also must have confidence in the system. It should not just be transparent and fair, but seen to be so. Following the case of Chia Foong Lin,<sup>12</sup> a thousand doctors petitioned to the DMS against the three-month suspension of the doctor imposed by the SMC DT for failure to

diagnose Kawasaki’s Disease that was not overturned upon appeal to the High Court. It is an illustration that there is work to be done, both for doctors to understand the disciplinary process including the appeal mechanisms, and to be convinced it is robust and fair.

**Mediation and other conciliatory approaches**

For a profession that is rightly trained to be compassionate, caring and conciliatory, the enforcement of the ECEG in an adversarial quasi-criminal legal manner potentially alienates the process from the professionals it regulates. The medical professional is perhaps better suited for issues to be assessed in an inquisitorial and more conciliatory manner, with all but the most onerous and serious issues settled with mediation or with a collaborative law approach that is currently used in a divorce or family law context.

A primary goal of medicine is to deliver patients’ and society’s best interests based on sound ethical principles. In assessing disciplinary matters, the underlying intent of the practitioner could be given even greater emphasis. For example, all cases where the practitioner’s intent is noble (eg, the desire is for the best patient outcome) and not egregious, mediation or the collaborative approach should always be the first course of action.

**“Multiple-jeopardy”**

Doctors are also held accountable in other contexts, bearing in mind all regulated professionals face this “multiple-jeopardy”. The second instalment of this article will look at Professional Accountability and the Law. Other examples of areas of accountability in the context of medical professionals are investigations by the MOH (under the Private Hospitals & Medical Clinics [PHMC] Act), hospital inquiries for serious reportable events, statutory responsibilities such as reporting infectious diseases, and maintaining confidentiality.

Perception often trumps reality. Trust and confidence in the healthcare system requires a global approach that

encompasses all stakeholders. Strong deterrence of frivolous complaints, irresponsible media reporting and even excessive official investigations must be in place. Inappropriate application of strong laws like those contained in section 12 of the PHMC Act, enabling officers using the powers of entry, inspection, search and seizure, must be applied judiciously, with the officers properly trained to understand this. ♦

**References**

1. Para 1, Introduction and Preamble to the Singapore Medical Council (SMC) Ethical Code & Ethical Guidelines 2016 (ECEG).
2. Section 2A of the Medical Registration Act (MRA).
3. Para 2, Introduction and Preamble to the SMC ECEG.
4. Section 13 of the MRA.
5. Section 66 of the MRA.
6. Section 17 of the MRA.
7. Para 5, Introduction and Preamble to the SMC ECEG.
8. Para 6, Introduction and Preamble to the SMC ECEG.
9. Para 7, Introduction and Preamble to the SMC ECEG.
10. Para 8, Introduction and Preamble to the SMC ECEG.
11. Section 39 of the MRA.
12. Chia Foong Lin v Singapore Medical Council [2017] SGHC 139.

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