STANDARD OF CARE

Assoc Prof Goh Lee Gan
Department of COFM, NUS
President, SMA
OUTLINE

- Ethical perspective
- Medical perspective
- Legal perspective
- How is standard of care determined in the court
- What do we need to remember
ETHICAL PERSPECTIVE

The ethical perspective of the standard of care is stated in the Hippocratic Oath

- I will follow that system of regimen which, according to my ability and judgment, I consider for the benefit of my patients and abstain from whatever is deleterious and mischievous
ETHICAL PERSPECTIVE

- The ethical perspective of the standard of care is stated in the Hippocratic Oath

*I will not cut persons labouring under the stone, but will leave this to be done by men who are practitioners of this work*
“...Treat the patient with care, competence, skill and diligence; ensure that the patient is well looked after in his (the doctor’s) absence by competent persons; and your patient will be grateful to you. Thus there is no fear of litigation against you.”

Chao Tzee Cheng, 1981
MEDICAL PERSPECTIVE

Questionable standards of care relating to drug use

- Empirical treatment without scientific basis e.g. steroids in sore throats
- Medicines that one does not know its effects e.g. traditional medicines
- Wrong dosage of medications – overdosage resulting in harm; underdosage resulting in ineffective treatment
Questionable standards of care relating to drug use (cont’d)

- Ignorance of adverse effects of medications in subgroups of patients e.g. NSAIDS in the elderly; beta-blockers in asthma; hypnotics in the elderly

- Failure to check for drug allergy and failure to avoid medications patient is allergic to
LEGAL PERSPECTIVE

Plaintiff needs to prove beyond reasonable doubt

- A duty is owed
- **Breach has occurred** -- the standard of care provided did not conform to the recognised standard of care material to the case
- Damage has occurred
- Causation was due to the breach
HOW STANDARD OF CARE IS DETERMINED IN THE COURT

- Specific standard of the case
- Practice parameters
- Respectable minority standard
- General competency standard
- Reasonable man standard; duty to warn, check etc
- Not wilful or wantonly negligent

- Competing evidence
- Guidelines
- Bolam’s test
- Good clinical Practice
- Judge-made standards
- Good Samaritan
General competency standard

- The reasonably competent physician standard e.g. Good Clinical Practice enunciated by GMC – 2nd edition, 1999
- Attend to emergency care
Respectable minority standard

- The standard of care may not always have to be an unanimous community standard. In medicine there is frequently a minority view of how things ought to be done.

- So long as this minority view is held by a respectable group of physicians, the court will frequently accept that standard of care as the legitimate alternative.
Respectable minority standard

- This principle was enunciated in the case from Great Britain

*Bolam v Friern Hospital Management Committee (1957)*

*1 WLR 582*
Standard of reasonable care demanded by the law

- It is misinterpretation of the law of professional negligence to claim that a doctor need only come up to the standards of his peers to be legally unchallengeable.

- A doctor, like any other person, must come up to a standard demanded by the law – the standard of reasonable care.

  *Rt Hon Justice Michael Kirby*  
  *J of Medical Ethics 1995;21:5-8*
Standard of reasonable care demanded by the law

- Rogers v Whitaker case before High Court of Australia (1992)
  - Mrs Whitaker was nearly blind in the right eye from scar tissue
  - Her ophthalmologist recommend removal of the scar tissue
  - Postoperatively, she developed inflammation of the right eye and this triggered sympathetic ophthalmia in the left (good) eye
  - Total loss of sight of left eye
Standard of reasonable care demanded by the law

- Rogers v Whitaker case before High Court of Australia (1992)
  - The evidence at trial was the risk of sympathetic ophthalmia was 1:14000 cases
  - Mrs Whitaker did not ask Dr Rogers specifically whether the good eye could be affected by such a condition
  - Mrs Whitaker won because she was not properly warned about the risk of sympathetic ophthalmia
Standard of reasonable care demanded by the law

- In passing judgment, Chief Justice King of South Australia explained why the Bolam test is not acceptable:

  "In many cases an approved professional practice as to disclosure will be decisive. But professions may adopt unreasonable practices, particularly"
Standard of reasonable care demanded by the law

as to the disclosure, not because they serve the interests of the clients, but because they protect the interests or convenience of members of the profession...

The ultimate question, however, is not whether the defendant’s conduct accords with the practices of his profession or some parts of it,
Standard of reasonable care demanded by the law

*but whether it conforms to the standard of reasonable care demanded by the law. That is the question for the court and the duty of deciding it cannot be delegated to any profession or group in the community.*”
Physicians as Good Samaritan’s: Beyond legal obligation

- The doctor has no legal obligation to attend to a victim from motor vehicles, falls or cardiac arrests.

- But, there is a humanitarian obligation – and General Medical Council and Singapore Medical Council do require it as a standard of care.
Physicians as Good Samaritan’s: GMC

- Treatment in emergencies

*In an emergency, you must offer anyone at risk the treatment you could reasonably be expected to provide. This applies both when dealing with your patients and when members of the public need treatment immediately.*

*Good Medical Practice (3rd ed) page 7
General Medical Council, United Kingdom*
Physicians as Good Samaritan’s: SMC

- Two cases heard by the SMC ruled that the doctor needs to respond.
- But SMC also stated -- “Not read as ruling ... doctor ... must respond irrespective of the circumstances” -- SMC Annual Report 1992
- Exonerating circumstances
  - Handling another emergency
  - Other reasons for not being able to attend
Physicians as Good Samaritan’s: SMC

CASE 1 -- FAILURE TO ATTEND TO A PATIENT WHO HAD A HEART ATTACK

“A patient who went to a doctor’s clinic was told by the doctor who was teaching his staff that the clinic was closed. The patient appealed, saying that he had chest pain. Without probing further into the complaint, the doctor told the patient to go to the nearest hospital instead. The patient went away and was later admitted to a hospital and diagnosed as having a heart attack.”
Physicians as Good Samaritan’s: SMC

“...A bypass operation was satisfactorily carried. The doctor was charged for failing to attend to the patient when he was informed by the patient that he had chest pain and required immediate medical attention. The doctor was found guilty of infamous conduct in an unprofessional aspect.”

“... doctor was censured and gave undertaking not to repeat offence”

Physicians as Good Samaritan’s: SMC

CASE 2 -- FAILURE TO ATTEND TO A ROAD VICTIM

“A general practitioner who failed to attend to the victim of a road accident in the vicinity of his clinic, was charged for professional misconduct. The doctor had been informed by the driver of the care of the seriousness of the accident, but despite the fact that he was not busy at that time, he failed to respond to the request to render immediate attention to the victim.”
Physicians as Good Samaritan’s: SMC

“*The public expects the doctor to respond promptly to a request for medical help in an emergency. The doctor was found guilty of infamous conduct... censured...required to give undertaking not to repeat the offence.*”

“In making this ruling, the Medical Council stated that whether failure to respond to a request for medical attention constitutes infamous conduct depends on upon the individual circumstances of each case.”
Physicians as Good Samaritan’s: SMC

“\textit{The decision in this case should not be read as a ruling that in each and every case where a doctor is called to attend to a patient he must respond irrespective of the circumstances.}"

\textit{SMC Annual Report 1992 page 10}
Physicians as Good Samaritan’s: are they liable?

- States in the US with “Good Samaritan statutes” do not hold physicians to the usual reasonable professional negligence standard. Instead they are judged by a wilful or wanton misconduct standard.

Paul Hattis,

*JAMA March 3, 1989;261(9):1357*
Physicians as Good Samaritan’s: are they liable?

- Where there is no statute, “some case law has held that even in the absence of a statute restricting liability, one who voluntarily assumes the care of an injured person is liable only for “wilful and wanton” negligence.

  
  Paul Hattis,  
  *JAMA* March 3, 1989;261(9):1357
Practice Parameters as standard of care

- In the US, development of practice parameters arose out of concerns about quality and cost of health care.

- The term practice parameters encompasses a wide variety of approaches toward the development of patient management strategies, including guidelines and standards.

*American Medical Association, 1989*
*In: JAMA March 16, 1990;263(11):1556 - 1562*
Practice Parameters as standard of care

- Guidelines are recommendations for patient management that may identify a particular management strategy or a range of management strategies.
- Standards are generally accepted principles of patient management.

*Attributes to Guide the development of Practice Parameters -- American Medical Association, 1990*
Practice Parameters as standard of care

- As practice parameters are developed, they will probably become a source of evidence for proof of the standard of care.
- The evidentiary weight of practice parameters will vary according to the degree of its acceptance and authority.

Edward Hirshfield, Associate General Counsel, Health Law, Litigation & Policy
JAMA March 16, 1990;263(11):1556 - 1562
Practice Parameters as standard of care

- The evidentiary weight of parameters will probably be affected by their purpose.
  For example, parameters based only on medically objective considerations may have a greater evidentiary weight than parameters that are also based on economic considerations, such as cost reduction.

Edward Hirshfield, JAMA March 16, 1990;263(11):1556 - 1562
Practice Parameters as standard of care

- The standard of care developed in most malpractice cases are oriented toward the patient’s interests, and societal concerns, such as the need to control costs, are generally not considered relevant.

  Rosenblatt R, *Rationing normal health care: the hidden legal issue*  
  *Texas Legal Review* 1981;59:1401-1420
Practice Parameters as standard of care

- Practice parameters will probably have a place in malpractice litigation, but not as inflexible standards of care that condemn physicians who depart from them for legitimate reasons

Edward Hirshfield, JAMA March 16, 1990;263(11):1556 - 1562
WHAT DO WE NEED TO REMEMBER

- We need to practice with the concept of good standard of care which has been made explicit e.g. Good Clinical Practice by the GMC.

- In emergencies, doctors are encouraged to come forward and to offer help on humanitarian grounds. The court is not likely to prosecute unless the poor care is wilful or wanton.
WHAT DO WE NEED TO REMEMBER

- Bolam’s test is still useful but need to think beyond that
  - Where deviation is practiced, ensure that there is a respected minority (Bolam’s test); if not, do get informed consent

- Recognise that you have a duty to warn as a standard of care, particularly if the adverse outcome though rare is serious. It is a balance between tell, scare and rare
WHAT DO WE NEED TO REMEMBER

- Guidelines and its public versions help to define standard of care – use them in a relevant way

- In managed care, standard of care is still based on good clinical practice; guidelines based on economic considerations are likely to have a lower acceptance
REFERENCES FOR FURTHER READING

- Hirshfield E. Practice parameters and the malpractice liability of physicians. *JAMA*, Mar 16, 1990; 263(11):1556-1562
- Kirby M. Patients’ rights – why the Australian courts have rejected “Bolam”. *J Med Ethics* 1995; 21:5-8
Thank you