

A Request for House-call

When the Doctor is Seeing His Patients

By A/Prof Goh Lee Gan

EDITORIAL NOTE

In their course of practice, doctors are sometimes faced with practice situations arising out of conflicting demands. As we are trained to manage difficult clinical problems, we must also acquire the knowledge and skills to navigate these situations.

SMA-News is therefore starting a new series called 'Ethics Clinics'. The first article is based on an actual complaint made to the Press against a doctor who refused a request for house-call. The journalist following up the story thought the verdict cut-and-dry – that the uncaring doctor should be censured. We however deliberated on the case with advice from our legal advisors, analysing the case from different dimensions. These are the Legal, Ethical, Administrative and Practice dimensions represented by the acronym "LEAP". The views of our legal advisors on several key issues specific to the case are written as a case study. We also like to share with you some related issues arising out of this case study.

Legally, we were advised there is no duty to attend to and treat a 'stranger' in an emergency. Even if there was a legal duty of care, the other three (of the four Ds needed to prove negligence) must be kept in mind. These are dereliction of the duty, damage or injury caused by it and direct (or proximate) relation of the dereliction and damages. For example, it may not be dereliction of duty not to do the house-call if in the professional judgement of the doctor, an ambulance should be called instead to bring patient speedily for emergency care not possible in the house. Time wasted waiting for the doctor's arrival may not be in the best clinical interest of the patient.

Ethically however, Prof. SY Tan cited two cases (when he conducted the Medico-legal course in November 2000) to show that the Singapore Medical Council (SMC) censured two doctors for failure to provide care to 'legal strangers' in emergency situations (1992 SMC report). SMC stated that the 'public expects a doctor to respond promptly to a request for medical help in an emergency'. These two cases of course did not involve request for house-call but Prof. Tan wrote that 'although its opinion do not constitute legal precedent, its discussion nevertheless set the tone for what might be expected for doctors practising in Singapore'. The jury is still out on the specifics.

What about the administrative dimension? Can polyclinic or restructured hospital doctors refuse to do house-calls because that duty is not administratively contracted during working hours? Has a polyclinic doctor or specialist who is regularly following up a patient for chronic ailments less legal and ethical duty than a GP seeing the patient sporadically for minor ailment when a house-call is needed for complications arising from the chronic disease? Can GPs, if they wish to also administratively declare that house-calls are not part of their professional service? These are vexing questions indeed.

The Practice dimension is another consideration. Some GPs may want to provide comprehensive care to their current and potential patients and accept all request for house-calls. Others may not want to provide such service to 'strangers' and do not mind risk losing the custom of related persons who may be unhappy such of refusal.

We hope this case study and the new series will empower you the next time you are faced with a difficult legal and ethical situation. Look before you LEAP.

Editor

The Case Study Scenario

A lady, upon seeing her father in a semiconscious state, rushed to the nearest clinic for assistance. The doctor who was consulting in his clinic at the time replied that he was unable to perform the housecall. His reasons given were that firstly, his priority was to the patients in his clinic, and secondly, he did not have his medical record for immediate reference as he had not seen him before.

ISSUES FOR DISCUSSION

The dilemma here is how can the doctor discharge his legal duty of care to the patient who is sitting in the waiting room of his clinic and to a person requesting urgent/emergency attention for someone at home.

Q1 Is it correct to say that the law in general does not make it a necessity to rescue a stranger? If so, does this therefore mean that there is no duty owed by the doctor to the semiconscious man that he does not know?

Q2 Is there a diminishing duty of care owed when there is multiple demands on the doctor's time as in the following order: (a) the patient in the doctor's clinic; (b) the patient seen 3 days ago requesting urgent treatment at home; (c) the regular patient of the doctor for last 2 years but last seen 6 months ago requesting urgent treatment at home; and (d) the person not previously seen by the doctor.

“ Although there is no legal duty to attend to a stranger, there is a professional obligation to do so because of the ‘causal proximity’ created by the information given to the doctor. ”

Q3 What would be prudent for the doctor to do from the legal and ethical perspectives under circumstances where he was unable to do more than one thing at a time?

The following are comments from our legal advisors:

WHAT IS THE DUTY OWED TO THE SEMICONSCIOUS MAN?

Mr K Shanmugam:

The position in law is that generally, a medical practitioner owes a duty to exercise fair, competent and reasonable skill and care in his treatment of a patient. The relationship and duty are created when the doctor accepts the patient for treatment. A doctor can be liable for negligence only in a situation where a duty is found to exist.

A doctor is not in general to rescue or render assistance to a stranger. He is thus under no duty to attend to and treat a stranger, even in an emergency. However, you should be aware that whether a duty is created depends on the factual circumstances of such case. For instance, there is case law for the proposition that a doctor owes a duty to attend to a person in urgent need of medical care, where a direct request had been made for him to do so and there is no reasonable impediment preventing him from attending. In general, whether such a duty exists depends on:-

- (i) the doctor's physical proximity to the patient; and
- (ii) the ‘causal proximity’ created by the information given to the doctor and his consequent understanding that this was a life-threatening emergency with dire consequences if not treated.

However, as the man was semi-conscious and may be in a life-threatening situation, the doctor should not ignore the call for help. Whilst that doctor may

not be able to attend to the problem personally, it would be prudent for him to seek assistance appropriate to the situation.

Dr Myint Soe:

As a matter of public policy, the area of duty of care has to be limited. One must not mix up the three duties.

- * contractual duty;
- * tortious duty (negligence);
- * professional duty.

It is trite knowledge that even a common prostitute can refuse to deal with persons she dislikes. In contract, a doctor can, likewise, refuse any patient.

In tort, there had to be a duty of care, and the test is laid down in *Donoghue v Stevenson*. In my opinion the doctor can foresee that once he is called for an emergency, and if he does not go, grave injury may result. However, I am not prepared to say that as a matter of tortious duty, a doctor must go whenever he is called. Public policy would step in to limit that area; otherwise no one will be a doctor. Negligence always depends on the facts of that case.

In my view, the doctor's professional duty of care must be considered. It may overlap with the legal duty of care. Supposing a doctor and his friends are having dinner at a poolside. A young child is drowning and is luckily brought out. Can the doctor who is having dinner there and is enjoying a juicy steak, say that the kid is a stranger and he has a right to refuse treatment, and will therefore finish his juicy steak instead. He could have easily resuscitated the child. In such a case, I have no doubts it will be professional misconduct, and may be even sued in tort for damages. A court of law may well take into account a doctor's special duty as a member of an honourable profession whose professed aim is to save lives, and impose a legal duty on the special facts.

IS THERE DIMINISHING ORDER OF DUTY WHEN THE DOCTOR HAS MULTIPLE DEMANDS ON HIS TIME?

Mr Lek Siang Pheng:

If a person has never been a patient of a doctor, then that doctor is not legally obliged to attend to a house-call.

Even if a person is an existing patient of a doctor, there is generally no legal obligation on a doctor to attend to a house-call. However, there may possibly still be some situations in which that doctor may have some legal obligations to attend to a house-call by his patient. For example, the patient takes the prescribed medication immediately on reaching home and suffers a reaction. His family telephones the clinic. Can the doctor legally refuse to attend the housecall? Possibly the doctor can discharge his legal obligation by giving instructions to the family members and telephoning for an ambulance. There is some doubt here. What if the patient's home is very close by, for example, an apartment located in the same apartment block as the doctor's clinic?

There may well also be ethical questions arising if the doctor refuses to attend to an emergency housecall very nearby, especially if the doctor does not have any seriously ill patients inside his clinic requiring immediate attention.

Mr K Shanmugam:

On emergency treatment, there is no duty for the doctor to drop everything and attend immediately to the emergency patient. In general, there are no varying degrees of duty of care. A duty is either created or it is not. In order to consider if a duty is owed, one has to consider the factual circumstances in each case. For example, it would be relevant to consider what the doctor was doing at the time these different requests were made of him. It would also be relevant to consider the degree of urgency in

“The doctor should endeavour to discharge his professional duties and not ignore the call for help.”

each case and whether - there was any reasonable impediment preventing the doctor from attending to the patient.

Subject to the above, the doctor's duty is owed to the person that he is treating at that time. In a situation where multiple demands are made, a doctor owes a duty to his patient not to take on so many matters that he is unable to properly and adequately care for his patient.

Mr Leo Fernando:

On the one hand the law does not impose any duty on a person (including a medical practitioner) to treat a stranger who he knows requires or may require his professional help.

On the other end of the scale once a person has been accepted as a patient, the doctor must exercise reasonable care and skill in his treatment of that patient and any negligent omission to provide adequate treatment will be actionable in negligence.

In *Barnett v Chelsea & Kensington Hospital Management Committee* (1969) 1 QB 428, the Court held that hospital authorities owe a duty to any patient admitted for treatment including a patient presenting himself at a casualty unit. In *Barnes v Crabtree*, *The Times* November 1 & 2, 1955 the Court held that a general practitioner owed a duty in law to attend to an emergency in his "practice area". Similarly a doctor owes a duty to every person on his N.H. S. list (in the UK).

It would therefore appear that a doctor owes a duty to treat a person who is his patient even if that means making a home call.

This requirement would be qualified by the fact that the call has to be from an existing patient. It's an emergency and the doctor concerned does not have any emergency case in his clinic at that time and the standard of reasonable care and skill would require that the doctor make the house call in such circumstances. In other words, a reasonably competent general practitioner would have

recognised from all the facts available to him that attendance was necessary. If however from all the available facts it would be more prudent or reasonable to call for an ambulance, then it cannot be said that the doctor has been negligent in doing so. As the authors of *Clerk & Lindsell on Tort* (16th Ed, page 629) noted "general practitioners must be allowed some discretion in determining which calls to respond to."

The situation is slightly more removed if the person requesting his professional help is not an existing patient. If the doctor and that person have absolutely no existing relationship, then it is less likely that the law would impose a duty on the doctor to act. However it must be noted that there is no case which sets out this principle clearly although the law does say that no one is obliged to act in a given situation if there is no preexisting relationship between the 2 parties.

Mr Kumal Lal:

A doctor/patient relationship is contractual. He has a contractual obligation to exercise due care and skill expected of him as a doctor and if he falls short of it; and the patient suffers loss or injury, he is liable to make compensation. Until a contractual relationship comes into being there is no legal duty on the part of a doctor to attend to any person.

If there is a contract to treat a patient over a period or until the happening of an event, neither can terminate without being in breach of contract. Of course like any other contract, a contracting party may be entitled to terminate the contract in certain circumstances. It is unnecessary to go into this here.

In common parlance, a doctor refers to his regular patient as his patient in the same way a lawyer refers to his regular client as his client. In the absence of any agreement to the contrary, the contractual relationship of a doctor/

patient and lawyer/client exists and ends in respect of a particular transaction.

WHAT IS PRUDENT FOR THE DOCTOR TO DO?

Dr Myint Soe:

In my view, one must balance the two harms of leaving and not leaving the clinic. If the clinic has about two patients having a cold, and there are clinics nearby which can take care of newcomers, there is no reason why he should not answer an emergency call within a reasonable area and leave the patients with an apology. At least go to the place and get an ambulance. He would have satisfied the standard of care. He should be back at the clinic in 45 minutes or so. No disaster can take place at the clinic during that time. Nor can a big hole be made in his pocket.

Mr K Shanmugam:

As the man was semiconscious and may be in a life-threatening situation, the doctor should not ignore the call for help. Whilst that doctor may not be able to attend to the problem personally, it would be prudent for him to seek assistance appropriate to the situation.

TAKE HOME MESSAGES

From the above discussion, the following are take home messages

- * Although there is no legal duty to attend to a stranger, there is a professional obligation to do so because of the "causal proximity" created by the information given to the doctor and his consequent understanding that this is a life-threatening emergency with dire consequences if not treated.
- * The doctor should endeavour to discharge his professional duties and not ignore the call for help: whilst the doctor may not be able to attend to the problem personally, it would be prudent for him to seek assistance appropriate to the situation. ■