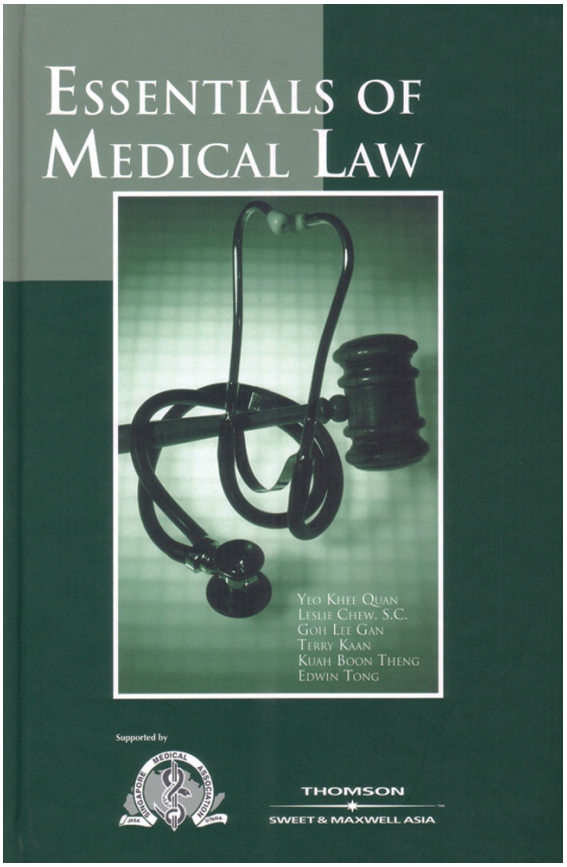
Essentials of Medical Law

As patients become more informed, and at times, demanding, it is timely for medical and healthcare professionals to apprise themselves of the medico-legal issues in the changing medical environment. In the speech of the Honourable Solicitor-General Mr Chan Seng Onn, at the launch of the book "Essentials of Medical Law" on Sunday, 10 October 2004, at the Meritus Mandarin, he congratulated Sweet & Maxwell Asia for gathering a group of distinguished authors from the legal and medical professions to write the book, which is a handy reference covering the principles of medical law, legal causation of damage, medical responsibility and other medico-legal aspects of medical practice.



THE CASE OF MR H

The Honourable Solicitor-General Mr Chan then went on to share his perspective when he was on the Bench as a Judicial Commissioner dealing with a medical negligence case some four years ago. The plaintiff, Mr H and his wife had been trying to conceive for some time without success. They sought fertility treatment and the plaintiff was advised to undergo a bilateral varicocelectomy. The procedure was subsequently carried out by the defendant, Dr T. After the uneventful procedure, Mr H was wheeled to a recovery room to rest. Against the advice of the hospital nurse, who brought Mr H a urinal and also offered him a bed-pan, Mr H insisted on using the toilet. Mrs H and the nurse thereupon helped him to the toilet and sat him on the toilet bowl. While seated, Mr H fainted and fell off. After the fall, Mr H complained of pain from the bump on his head but nothing further. That same evening, he was discharged.

The next day, however, Mr H noticed that his scrotum had swollen to two to three times its normal size. He felt excruciating throbbing pain around his testicular area. He called Dr T, who assured him that nothing needed to be done, except for Mr H to continue taking the prescribed medicines. But the swelling got worse – it swelled to about five to six times the normal size. The pain also became much more unbearable. The following day, Mr H tried several times to speak to Dr T but was not successful. So he spoke to Dr T's nurse, who told him to continue taking the pills and see Dr T two days later on 2 May 1997, 1 May being a public holiday. By 2 May, some five days after the operation, Mr H's scrotum had grown to a size of about seven inches by five inches and he was in great pain. Dr T saw him and explained that Mr H had scrotal haematoma. However, he did not warn Mr H that haematoma of the scrotum could lead to the atrophy of the testes. Towards the end of August, a seminal analysis of Mr H revealed that he produced no more mature sperms. Finally, on 9 October, Dr T informed Mr H that his testes had atrophied and that it was very unlikely that he could ever father his own child. Mr H then commenced an action against Dr T to claim damages for the atrophy of both his testes.

A LONG AND GRUELLING TRIAL

Medical experts were called by both sides to give evidence on the appropriateness of the treatment plan, on whether Dr T was negligent while performing the surgical procedure and the cause of the atrophy. Two associate professors from the NUS and NTU engineering schools were also called to give various projections on how the fall from the toilet seat could have caused the injuries. Causation became a hotly contested issue.

At the conclusion of the trial, Mr Chan held that "Dr T had shown that he had adopted the correct procedure and had exercised reasonable care in relation to it. I found that Mr H suffered scrotal and intratesticular haematoma, and that physical contusion rather than negligent surgery caused such haematoma. The evidence pointed towards the contusion which occurred soon after the operation when Mr H, fell by sliding off the toilet seat, which caused his scrotum to be caught and squashed between his body and the top of the toilet seat. As Mr H is a big man, I concluded that the squeeze

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would be fairly severe and that eventually caused the injury and damage to Mr H's testes.

Although Dr T was not negligent up to the time the surgery was completed, I was critical of his actions after the operation. Dr T should have seen Mr H on the next day when Mr H complained of the massive swelling and pain. Dr T also did not exercise due care when he failed to investigate the cause of the swelling on 2 May 1997 when he saw Mr H, especially in view of the fact that the testes had swelled to the size of a mango and were not palpable. From the evidence, Dr T should have checked for the existence of intratesticular haematoma and taken action immediately. Accordingly, I awarded damages to Mr H but apportioned the damages 60:40 in favour of Mr H. In other words, the award was made on the premise that had Dr T intervened with proper post-operative treatment, part of Mr H's testes could still be saved from atrophy."

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MANAGEMENT OF POTENTIAL CONFLICT

Mr Chan recognised that hindsight is always perfect, but much can also be learned reflecting on the "what should have been-s" and the "what if-s" of past cases. It is important for doctors to truly listen to their patients. Although the pressures and demands of the modern healthcare environment may present many distractions while the doctor is with a patient, the outcome may well be different had the doctors and nurses remained open, listened carefully, and not acted on assumptions.

Referring to Mr H's case, Mr Chan wondered "what the outcome might be had Dr T examined Mr H sooner and had not been too dismissive of Mr H's initial complaints? Would it have made a difference to Mr H's final condition? Even if it would not have made a difference, one wonders whether it would at least have made a difference in how the dispute would have developed and evolved. Would it have resulted in a less aggrieved patient? Would it have contributed in some ways to prevent the conflict from spinning out of control and ending with a 31-day trial?"

Mr Chan believed in being proactive and added that "I have come across cases where litigation might have been avoided if the healthcare team had taken more time to counsel the patient and answer questions, especially in situations where the risk is high and the treatment outcome may not be ideal. With better and more communication, there is a chance that the patients will feel better assured and go away with the perception that their doctors were there for them during the critical and difficult times."

DESPITE BEST EFFORTS

But what happens if a doctor is sued despite his best efforts at managing a potential dispute?

Mr Chan acknowledged that "There will always be situations like that. Hence, it makes sense to get into the habit of keeping patients' records and notes with some detail and accuracy. You never know when you will need them, and I can tell you that when a case goes to court, you will be grateful for a good set of records and notes. Of course, I also suggest that you seek legal advice and talk with your malpractice insurer as soon as possible after you are notified of a potential lawsuit. You may also wish to explore with your lawyers the possibility of mediating the case. I understand that the Singapore Mediation Centre has been mediating medical negligence cases with good success rates. As at 1 October 2004, they have a settlement rate of 91% for medical negligence cases. I am informed that in many cases that had gone for mediation, the patients just needed to vent their feelings, find out exactly what happened and perhaps hear their doctors say, "Although I did what I know was right at that time and I have given my best, I am nevertheless sorry about what happened and what you have to go through." All these are usually achieved in the mediation chambers with the guidance of the mediators and the lawyers of all the parties. So you see, the courts are often one place where aggrieved patients go to express their grievances, discover what went wrong and seek vindication. But they may be persuaded or invited to do the same at mediation, where disputes are resolved behind closed doors in an informal manner."

"Should all else fail and you find yourself in a situation where you have to defend yourself in court, it is imperative that you get credible experts to give evidence on your behalf. Many cases are fought and won on such expert evidence. It has been my experience that experts from both sides usually come up with different opinions, and not uncommonly, even diametrically opposite views. So what does the judge look for? The judge will naturally look for unbiased evidence that is backed by sound and reputable authorities. It is therefore crucial that your expert's opinion is supported by recognised textbooks, journal publications and research papers."

On the related topic of expert evidence, Mr Chan reminded that medical experts are not agents for the party calling them. Their duty is to the court and to assist the court. The expert medical opinion should be an independent and objective product of the doctor's experience and expertise, unaffected by the exigencies of litigation. A good understanding of this duty will reduce the number of instances where experts can be so far apart in their views. ■