

# “Understanding Medico-Legal Risks”

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## INTRODUCTION

- The risk of medico-legal problems can be reduced, but can never be completely avoided
  
- Practical measures can be taken to reduce the risk
  - Change in mindset
  - Good communication skills
  - Understanding the law
  - Good documentation

## **MINDSET**

### ➤ **Doctors ARE NOT God**

- Patients expect God-like perfection from doctors, BUT
- Patients do not necessarily want doctors to play God and make decisions for them
- Therefore, patients are entitled to have a say in what happens to their bodies

## **MINDSET (CONT'D)**

- We live in an age of consumer awareness and consumer rights
- We live in an age of easy access to information regarding treatment on the internet
- Doctors must therefore understand that patients often want to know, and indeed have a right to know and decide, what happens to them

## **MINDSET - CONCLUSION**

- Doctors must therefore understand that patients have a right to know and decide what happens to them
- Doctors must engage their patients in discussions about their treatment
- When the doctor-patient relationship deteriorates, the chances of a suit being filed are high

## COMMUNICATION

- The doctor-patient relationship often deteriorates because of the lack of communication between the doctor and patient , e.g.
  - During the consultation, the doctor spends less than 5 minutes with the patient
  - The doctor does not really take the time to explain the treatment, procedure and risks
  - The patient or patient's family begins to form an unfavourable impression of the doctor

## COMMUNICATION (CONT'D)

- There is an adverse outcome
- The patient or patient's family seeks an explanation
- The doctor becomes defensive and does not explain what happened, how it happened and why it happened
- Patient or patient's family becomes even more agitated
- They consult a lawyer (because EVERYBODY knows a lawyer!)
- A letter of demand is issued
- A suit is eventually filed

## COMMUNICATION - CONCLUSION

- If there had been proper communication from the beginning between the doctor and patient, or at the very least if there had been full and frank communication once the adverse event occurred, the risk of litigation would have been reduced
- The value of a good bedside manner should never be underestimated!



## LAW

- The **Bolam** test for diagnosis and treatment
- The **Rogers v Whitaker** test for consent

## **LAW - DIAGNOSIS & TREATMENT**

- If a doctor follows what the general and approved practice in the situation with which he is faced, he is not negligent
- A doctor is not expected to exercise the highest or a very high standard of care and skill, but only a fair and reasonable standard

## **LAW - D & T (CONT'D)**

- The law does not expect perfection in issues of diagnosis and treatment
- Rationale: “We often enough tell doctors not to play God; it seems only fair that, similarly, judges and lawyers should not play at being doctors”  
**(Gunapathy)**

## **LAW – INFORMATION, ADVICE & RISKS**

- A legal mine-field where the traditional “doctor knows best” mindset no longer applies
- The paramount consideration is that a patient is entitled to make his/her own decision about his/her life

## **LAW – I, A & R (CONT'D)**

### ➤ 3 general principles

- The provision of information and advice is viewed from the patients' perspective
- The adequacy of information is not dependent upon general medical standards or practices
- There is a duty to warn patients of material risks

## LAW – I, A & R (CONT'D)

### ➤ The Federal Court in **Foo Fio Na** (2006)

- “... there is a need for members of the medical profession to stand up to the wrong doings, if any, as is the case of professionals in other professions ...”
- “... the *Rogers v Whitaker* test would be a more appropriate and viable test of this millenium than the *Bolam Test* ... the phrase ‘*Doctor knows best*’ should now be followed by the qualifying words ‘*if he acts reasonably and logically and gets his facts right*’.”

## **LAW – I, A & R (CONT'D)**

- “The practitioner is duty bound by law to inform his patient who is capable of understanding and appreciating such information of the risks involved in any proposed treatment so as to enable the patient to make an election of whether to proceed with the proposed treatment with knowledge of the risks involved or decline to be subjected to such treatment.”

## **LAW – I, A & R - CONCLUSION**

- A patient must sufficiently appreciate what he/she is consenting to, and therefore must have comprehensive information based on which he/she can make an informed decision
- A patient who is aware of the risks, benefits and alternatives is more accepting of his decision, and is less inclined to sue if there is an adverse outcome



## DOCUMENTATION

### ➤ **Good Medical Practice, para 2.4**

- “Investigations and treatment should be recorded in detail, and in the case of invasive procedures, the indications for and the nature of the procedures must be clearly documented.”

## **DOCUMENTATION (CONT'D)**

- “Properly justified procedures can be defended by peers in the event of conflict or litigation, but when the clinical notes are sketchy, poorly made out, illegible, vague, ambiguous and superimposed with deletions and corrections, this may be difficult.”
- “For patients who are at high risk, particularly those who are aged and medically compromised, the possible risks of surgery and anaesthetics need to be explained to the patient or next-of-kin, and recorded in the notes.”

## **DOCUMENTATION (CONT'D)**

- The absence of good medical records can severely compromise the defence of a claim or a complaint
  - Judges expect a decent set of records
  - The MMC expects a decent set of records
  - Even your peers (experts) may not be prepared to support you

## OVERALL CONCLUSION

- UNDERSTAND the role of patients in modern day medical practice
- COMMUNICATE with patients
- UNDERSTAND legal obligations to patients
- HELP YOURSELVES by keeping good documentation
- If all this is done, the risk of medico-legal problems reduces



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