

1ST INTERNATIONAL CONFERENCE ON HEALTHCARE TRANSFORMATION:

LEGAL SAFEGUARDS FOR PATIENTS AND HEALTHCARE PROFESSIONALS IN THE REALM OF CONSUMERISM IN MEDICINE

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INTRODUCTION

- > **Features of consumerism in medicine**
- > **Legal safeguards for patients**
- > **Legal safeguards for healthcare professionals**
- > **Summary**

FEATURES OF CONSUMERISM IN MEDICINE

- > **What is consumerism?**
- > **Consumerism in the field of wellness, anti aging and aesthetics**

Some features:

- **Greater patient access to a plethora of medical information**

FEATURES OF CONSUMERISM IN MEDICINE (Cont'd)

- **Decision-making for treatments shifted more onto patients**
- **Patients more proactive**
- **Treatments become more “trivialized”**
- **More competitive environment for doctors**
- **Wider use of drugs and surgery to address ailments and defects**

LEGAL SAFEGUARDS FOR PATIENTS

- > Regulation of drug usage
- > Regulation of treatments
- > Regulation of displayed designations and credentials of doctors
- > Regulation of doctor's methods of promotion of treatments
- > Patient's recourse to legal action against doctor
- > Patient's recourse to the Singapore Medical Council

REGULATION OF DRUG USAGE

- > **Medicines Act**
- > **Medicines (Advertisement and Sale) Act**

REGULATION OF DRUG USAGE (Cont'd)

> (Ethical)

Paragraph 4.1.3 of the Singapore Medical Council Ethical Guidelines:

“A doctor may only prescribe medicines that are legally available in Singapore and must comply with all the statutory requirements governing their use.”

“A doctor shall prescribe ... medicines only on clear medical grounds and in reasonable quantities as appropriate to the patient’s needs.”

REGULATION OF TREATMENTS

> Medical Registration Act

Section 70(2)(f) of the Medical Registration Act:

“The Singapore Medical Council may, with the approval of the Minister, make regulations regulating the professional practice ... of [doctors]”

REGULATION OF TREATMENTS (*Cont'd*)

> Private Hospitals And Medical Clinics Act

Section 22 (2) of the Private Hospitals And Medical Clinics Act:

“The Minister may make regulations for:

- (e) the apparatus, appliances, equipment and instruments to be provided and maintained in a private hospital, medical clinic, clinical laboratory and healthcare establishment*

- (j) the management, control, superintendence and care of a private hospital, medical clinic, clinical laboratory and healthcare establishment”*

REGULATION OF DISPLAYED DESIGNATIONS AND CREDENTIALS OF DOCTORS

> Medical Registration Act

Section 64(1) of the Medical Registration Act:

“No registered medical practitioner shall –

- (a) use or exhibit or publish in any card, letter, stationery, nameplate, signboard, placard, circular, handbill or any notice displayed at the premises used by him for the practice of medicine any qualification other than the qualifications which are entered in any register kept under this Act or which has been approved by the Medical Council; or*
- (b) use any title, addition or designation other than the title, addition or designation which has been approved by the Medical Council.”*

REGULATION OF DISPLAYED DESIGNATIONS AND CREDENTIALS OF DOCTORS (*Cont'd*)

> Medical Registration Act

Section 65(1) of the Medical Registration Act:

“A registered medical practitioner who is not registered under section 22 as a specialist in a branch of medicine shall not –

- (a) practise medicine or that branch of medicine under the style or title of a specialist in that branch of medicine, or under any name, title, addition or description implying that he is such a specialist or has any degree, qualification or experience in that branch of medicine; or*
- (b) advertise or hold himself out as a specialist in that branch of medicine.”*

REGULATION OF DISPLAYED DESIGNATIONS AND CREDENTIALS OF DOCTORS (*Cont'd*)

> (Ethical)

Paragraph 4.4.2 of the Singapore Medical Council Ethical Guidelines:

“In general, doctors may provide information about their qualifications, areas of practice, practice arrangements and contact details. Such information, where permitted, shall have the following standards:

- a. Factual***
- b. Accurate***
- c. Verifiable***

REGULATION OF DISPLAYED DESIGNATIONS AND CREDENTIALS OF DOCTORS (*Cont'd*)

d. No extravagant claims

e. Not misleading

f. Not sensational

g. Not persuasive

h. Not laudatory

i. Not comparative

j. Not disparaging.”

> Note: Circular dated 21 April 2008 from the Singapore Medical Council

REGULATION OF DOCTOR'S METHODS OF PROMOTION OF TREATMENTS

> Private Hospitals And Medical Clinics (Publicity) Regulations

Regulation 4(1):

“The licensee of a healthcare institution shall ensure that any publicity of the services of the healthcare institution conducted by him or any other person on his behalf complies with the following requirements:

(a) the information contained in the publicity must be factually accurate and capable of being substantiated, and must not be exaggerated, false, misleading or deceptive;

REGULATION OF DOCTOR'S METHODS OF PROMOTION OF TREATMENTS (Cont'd)

- (b) *the publicity must not be offensive, ostentatious or in bad taste such as to undermine the honour and dignity of the medical, dental or nursing profession;***
- (c) *the publicity must not contain any information that:***
 - (i) *implies that the healthcare institution can obtain results from treatment not achievable by other healthcare institutions or create an unjustified expectation from the treatment provided; or***
 - (ii) *compares and contrasts the quality of the services of the healthcare institution with those provided by other healthcare institutions or deprecate the services of other healthcare institutions;***

REGULATION OF DOCTOR'S METHODS OF PROMOTION OF TREATMENTS (Cont'd)

- (d) the publicity must not contain any laudatory statements (including statements of prominence or uniqueness) or superlatives to describe the services of the healthcare institution;***
- (e) the information contained in the publicity must not contain any testimonial or endorsement of the services, including the services of any employee of the healthcare institution; and***
- (f) the publicity must not provide information to the public in such a manner as to amount to soliciting or encouraging the use of the services provided by or at any healthcare institution.”***

REGULATION OF DOCTOR'S METHODS OF PROMOTION OF TREATMENTS (*Cont'd*)

> (Ethical)

Paragraph 4.4.2 of the Singapore Medical Council Ethical Guidelines

[as above]

PATIENT'S RECOURSE TO LEGAL ACTION AGAINST DOCTOR

- > If there has been medical malpractice by the doctor, the patient may take legal action (civil suit) against the doctor for:**
 - negligence**
 - breach of contract**

PATIENT'S RECOURSE TO LEGAL ACTION AGAINST DOCTOR (Cont'd)

- > Question: is the Consumer Protection (Fair Trading) Act applicable?**

Section 4 of the Consumer Protection (Fair Trading) Act:

“It is an unfair practice for a supplier, in relation to a consumer transaction:

- (a) to do or say anything, or omit to do or say anything, if as a result a consumer might reasonably be deceived or misled;***

PATIENT'S RECOURSE TO LEGAL ACTION AGAINST DOCTOR (Cont'd)

- (b) to make a false claim;**
- (c) to take advantage of a consumer if the supplier knows or ought reasonably to know that the consumer:**
 - (i) is not in a position to protect his own interests;
or**
 - (ii) is not reasonably able to understand the character, nature, language or effect of the transaction or any matter related to the transaction; or**
- (d) without limiting the generality of paragraphs (a) to (c), to do anything specified in the Second Schedule.”**

PATIENT'S RECOURSE TO LEGAL ACTION AGAINST DOCTOR (Cont'd)

- > Second Schedule of the Consumer Protection (Fair Trading) Act:**

“Specific Unfair Practices

- 2. Representing that ... services are of a particular standard, quality, grade, ... if they are not.***
- 14. Making a representation that appears in an objective form such as an editorial, documentary or scientific report when the representation is primarily made to sell ... services, unless the representation states that it is an advertisement or a promotion.”***

PATIENT'S RECOURSE TO THE SINGAPORE MEDICAL COUNCIL

- > If there has been a breach of medical ethics by the doctor, the patient may lodge a complaint to the Singapore Medical Council.
 - Paragraph 4.1.4 of the Singapore Medical Council Ethical Guidelines:

“A doctor shall treat patients according to generally accepted methods and only use licensed drugs for appropriate indications. A doctor shall not offer to patients, management plans or remedies that are not generally accepted by the profession, except in the context of a formal and approved clinical trial.”
 - Other relevant provisions of the Singapore Medical Council Ethical Code and Ethical Guidelines

LEGAL SAFEGUARDS FOR HEALTHCARE PROFESSIONALS

- > **Comply with relevant legislation and all Ministry of Health and Singapore Medical Council regulations and guidelines**
- > **Standard of care and breach under the tort of negligence**
- > **Obligations under contract law**

COMPLIANCE WITH LEGISLATION, REGULATIONS AND GUIDELINES

- > **Non-compliance may result in regulatory sanction or disciplinary proceedings against doctor**

STANDARD OF CARE AND BREACH UNDER THE TORT OF NEGLIGENCE

- > **What is the proper standard of care?**
 - **Bolam test: for medical negligence for diagnosis, treatment and advice to patients**

STANDARD OF CARE AND BREACH UNDER THE TORT OF NEGLIGENCE (Cont'd)

- > Informed consent – 3 elements:**
 - Person giving consent is legally competent to give consent (competence / capacity)**
 - Consent is freely given (voluntary)**
 - Knowledge - person giving consent possesses sufficient information about patient's medical condition, treatment options, and benefits, risks and possible complications of treatment options**

OBLIGATIONS UNDER CONTRACT LAW

- > **What is the agreement / bargain? What has been represented to the patient?**
 - **Terms of the contract**
 - **Cannot exclude or restrict liability for personal injury due to negligence**
 - **Cannot exclude or restrict liability for other loss due to negligence unless the term or notice satisfies the requirement of reasonableness**

- > **Consequences of breach**

SUMMARY

- > **Be aware of the changing landscape and its implications for you.**
- > **Doctors - risk of not examining own practice and simply waiting for Ministry of Health or Singapore Medical Council to issue regulations or guidelines before acting**

THANK YOU

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