

Private Medical Practitioners and the Law



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As far as I can remember, there was not much taught regarding medical practitioners and the law as well as ethics during undergraduate years. Those were the days where time was spent memorising all the various mnemonics for the various diseases. Then after entering into practice, we were later made aware that there are occasions where the practitioners have to face disciplinary inquiries or court hearings. What types of cases does MMC regulate? How does Bahagian Amalan KKM enforce the law? What perspectives of the cases are taken by the court of law? Those are some of the questions that frequently emerged in professional discussions or forums. Some of us know a little bit more than others. Some do read the medical acts, medical regulations and the various guidelines in MMC website. Some however could not be bothered until the day they were called to face inquiries at the MMC or the court of law.

As law abiding citizens, I am sure we appreciate the need for law and order in our daily life as well as in our profession. As for the profession, it is important to ensure that those who practise medicine are qualified and competent. In Malaysia the medical profession is governed by the Medical Act 1971 and Medical Regulations 1974. The acts and regulations underwent various amendments throughout the years in keeping up with the developments of the different times.

For the private medical practitioners, we are also governed by the Private Healthcare Facilities and Services Act 1998 and has been in force since 2006. Ignorance of the law will not be a strong point of defence. A

doctor coming into the profession must make themselves well versed with the various acts and regulations pertaining to the profession. The medical profession is a noble profession where doctors are expected to practice with integrity and ethics. From time to time we were surprised by severe offences done by medical practitioners. There were cases of deregistrations from MMC register, especially in the cases of abuses of professional privileges in handling dangerous drugs.

Why do some doctors fall into such dangerous trap? Is it the lure of money or lapse of judgement or disillusionment? Doing business in medicine is admittedly getting tougher and tougher with competition getting stronger than ever. I remember during my induction period in the Ministry of Health in the nineties, one of the speakers said that soon there will be a saturation of private clinics and there will be less doctors resigning from government service. The first part of his prophecies has not materialised until now because we can see that private clinics still keep mushrooming at different corners of the nation. Sadly some are doing unethical practices against what is expected of a medical doctor.

The Medical Act 1971 covers the aspect of registration and practice of medical professionals in Malaysia. Anything that involves the practice of a doctor comes under the purview of the medical act. I would like to write a little about convictions in a court of law and disciplinary hearings.

In part 1 of the code of professional conduct of MMC, the statement regarding conviction in a court of law is as follows:

"In considering convictions the council is bound to accept the determination of any court of law as conclusive evidence that the practitioner was guilty of the offence of which he was convicted. Practitioners who face a criminal charge should remember this if they are advised to plead guilty, or not to appeal against a conviction merely to avoid publicity or a severe sentence. It is not open to a practitioner who has been convicted of an offence to argue before the Preliminary Investigation Committee or the Malaysian Medical Council that he was in fact innocent. It is therefore unwise for a practitioner to plead guilty in a court of law to a charge to which he believes that he has a defence."

I am sure it has been written time and again by other writers, but cases of doctors being convicted in the court but later claimed innocence in the MMC keep coming up again and again. I could understand the pressure of going through of allegations at the court of law and how it could influence the doctor to settle to something which seemingly could bring quick closure to the episode. Doctors must remember that the council may exercise disciplinary jurisdiction over any registered person who has been convicted in Malaysia or elsewhere of any offence punishable with imprisonment (whether in itself only or in addition to or in lieu of a fine). Therefore the episode might just not end there.

Both of our codes of professional conducts and good medical practice could be read in the MMC website. Do visit the website to read the guidelines posted there as well. It is alright for doctors to do business, but it must be done under the ethics

and the various laws which govern the medical profession.

In the eighties, private practitioners dealt mainly with cash transactions. Therefore there was not much headaches and issues that private practitioners had to face regarding ethical issues in contracts or payment issues with Third Party Administrators (TPA). Currently there are purely businessmen TPAs and there are doctors who run TPAs themselves. Doctors must be careful when signing contracts with TPAs. All the fine prints must be scrutinised in order to ensure

that the contracts are not going against our ethical guidelines or the law.

I will give an example. I had in the past received a contract where the TPA stated that they have the right to access patient's record at any time. Contracts such as this must be rejected and must not be signed. Any access to patient's record must be with consent and the consent must be current. Some companies insisted that patients had given their consent at the start of their employment. Doctors should not fall

into this trap because patients have a right to withdraw their consent. Current written consent from patients must be there before we allow third-party to access patients' confidential information.

The laws, regulations and guidelines are there to protect the patients and to guide the doctors to practice in a standard that is required by the profession. Medicine is a noble profession where the title "Doctor" carries with it professional obligations which remain respected and trusted by the public.



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Any reports of activities like MMA branch events are encouraged to have more insight on a certain topic held; rather than the mundane line of just reporting the date of event, venue, number of participants or chief guest present.

All articles are in English Language. Contributors of articles should make an effort to vet through their articles or seek assistance from their colleagues to have a minimum standard of language that is acceptable for publication. Plagiarism is frowned upon.

Submitted articles are subject to revisions and minimum language corrections by the editor. We envisage having a diverse range of both articles and contributors. The right to publish is at the sole discretion of the Editorial Board of Berita MMA.

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