

CASE REPORTS FOR 2007

CASE 1

Dr A attended to a 37 year old G₃P₁A₁ tourist for vaginal bleeding. She was investigated and confirmed to have a missed abortion of ten weeks gestation. Patient requested for evacuation as she had to fly back to her country the next day.

Evacuation of uterus (D&C) was done on the day of presentation under general anaesthesia. Dr. A realized at the end of the procedure that $\frac{3}{4}$ inch of the tip of the Karman plastic curette was missing. The curette was provided by the hospital. Dr. A could feel the broken tip embedded around the region of the internal os and lower segment of uterus. Attempted removal failed. Dr A did not inform the patient of the mishap. Patient flew home the next day. Dr. A contacted MDM Bhd two days after the event for advice.

MDM's advice to Dr. A:

1. Contact patient as soon as possible and explain the mishap and tender an apology.
1. Arrange for patient to see Gynaecologist in her country recommended by Dr. A.
2. Dr. A should inform this Gynaecologist of the sequence of the events.
- Patient was contacted.
- Consulted Gynaecologist was recommended by Dr. A.
- The broken tip was removed
- Dr. A paid for the expenses incurred.

COMMENTS

1. Always inform the patient of any mishap immediately.
2. Disposable item should not be "recycled", to avoid such an incident.
3. Hospital management should be informed of the incident to implement risk management.
4. Hospital should have contributed to the expenses in removing the broken tip; as a 'recycled' item was used.
5. This case illustrates the problems encountered in 'Health Tourism'
6. Dr. A is to be commended for bearing the expenses for the removal of the broken curette to avoid a legal notice of demand or a negligence suit.

CASE 2

Member writes to MDM Bhd to seek advice on his Terms of Contract with the Hospital he practices at.

“PROFESSIONAL INDEMNITY INSURANCE” – (as taken from the contract:)

1. The Consultant shall at his own costs and expense take out an adequate Professional Indemnity Insurance Policy to cover himself and to indemnify the Hospital against any claims or actions which may be brought by any patient/persons against himself or the Hospital in respect of his negligent acts or omissions or that against his employees and/or servant and/or agent.
2. The Consultant shall be personally liable for any acts of negligence or omission committed by himself personally or by his agents in the conduct of his professional practice at the Hospital. The Hospital shall not be responsible for any tortuous acts of the Consultants and the Consultant undertakes to fully indemnify the Hospital against any losses or damages suffered or incurred by the Hospital in respect of any claims or actions brought against the Company and/or the Hospital by any persons arising from any tortuous or negligent acts or omissions of the Consultant or his agent. (emphasis by MDM Bhd).

COMMENTS

- A doctor has no control on how an aggrieved patient or his or her solicitors may wish to proceed.
- The hospital should take its own insurance cover and should not try to take a free ride on the doctor.
- If the hospital has been wrongly sued by the patient, then the hospital should recover its costs from the patient and not from the doctor.
- Liability and apportionment of liability is a mixed question of fact and law. So, too, is the question of an indemnity or a contribution.
- MDM's members should not enter into any agreement which will unreasonably cause to widen the extent of MDM's liability so as to provide an automatic indemnity to the hospital.
- MDM will only bear liability of its member's medical negligence.
- MDM's members should read the all the clauses in their agreement before signing. If there is any doubt, MDM should be contacted

CASE 3

Dr. A, one of the four doctors in a group practice did a laparoscopic surgery on a 35 year old female patient for investigation and treatment of infertility as a day surgery operation. Patient was discharged the same day.

Five days later, the patient admitted herself to another medical centre for left sided abdominal pain. She was investigated and treated for an ischaemic 3 cm of the left ureter at the region of the left ovarian fossa, resulting from a thrombus in the artery supplying that part of the ureter. Implantation of the left ureter to the bladder was done. The patient recovered uneventfully.

Dr. A wrote for advice and on further discussion, it transpired that:-

1. The 35 year old female patient was seen by another partner, Dr. B!
2. The consent was taken by Dr. B!
3. Dr. A -
 - a. did not examine patient
 - b. did not discuss and explain the operative procedures with its attendant risks and complications to the patient.

COMMENTS

1. CONSENT
 - a. The consent taken is not valid. Under section 47 of the Private Healthcare Facilities and Services (Private Hospitals and other Private Healthcare Facilities) Regulation 2006 “VALID CONSENT” Dr. A “shall be liable on conviction to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding three months or to both.
 - b. Dr. A can be sued for “battery”.
2. Since Dr. A did not examine the patient nor did he explain to the patient that he will be the operating surgeon he can be sued for “misrepresentation”.
3. The possibility of a medical negligence suit can arise.
4. Consent is a process. The signing of the consent form does mean that consent has been given. It is only when a patient has been provided material information for him/her to make an informed decision that consent can be said to have been obtained.

CASE 4

Dr. B, otorhinologist, attended to a patient with scalp laceration, 20cm x 10cm, extending from frontal to occipital area. The injury was sustained in a motor vehicle accident. Patient has hypertension, diabetes and ischaemic heart disease. He was on ticlodipine. Laceration was sutured under general anaesthesia, in a very bloody field.

Six days later, the sutures were removed.

On a subsequent visit, patient complained of swelling and pain on the scalp. Otorhinologist reassured him all was well.

Seven months later, otorhinologist received solicitor's notice of demand for a settlement. Patient has sought treatment at another medical centre where 17 pieces of glass were removed from the scalp!

COMMENTS

1. In view of the laceration which was sustained in a motor vehicle accident, an x-ray of the skull should have been done, more so with a laceration.
2. X-rays would have detected the glass pieces, (being radio-opaque) and fractures; if any.
3. Since the procedure was done under general anaesthesia, it would have been easy to explore the wound to rule out fractures and foreign bodies.
4. On the patient's subsequent visit when he complained of pain and swelling of the scalp, he should have been investigated further. X-rays would have shown the radio-opaque pieces of glass.
5. At the time of the incident, otorhinologist's indemnity has lapsed – he had no cover! He was advised to negotiate a settlement with the patient out of his own pocket.

CASE 5

Dr. A, paediatrician in a peripheral hospital whilst in Government Service, treated a newborn for birth asphyxia and intracranial bleed. He wrote a Medical Report on the newborn. Fourteen years later Dr. A, who is in private practice in KL, has been subpoenaed to attend court as a witness in a Civil suit filed by the patient's parents

Dr. A wants advice on his –

- a. rights – whether he has to attend court?
- b. claim for compensation for loss of income, time and travel

COMMENTS

- a.1 Dr. A has treated the newborn and wrote a medical report. The court wants him to verify the contents of the medical report. He has to attend court.
- a.2 Dr. A should liaise with solicitor who subpoenaed him to attend court, to arrange for a suitable date; if the date is inconvenient.
- a.3 Do not sign the subpoena if the cited date is not suitable or if Dr. A is not happy with the fees.
- b.1 Generally, Dr. A will be compensated for the loss of income, reimbursement for traveling expenses and lodging if applicable.
- b.2 Witness fees will depend on whether Dr. A has been subpoenaed as an expert witness or whether to verify the medical report.
- b.3 Dr. A should again liaise with the solicitor on the fees, traveling expenses, etc.