

Lessons from the LLA case - *Why You Should Not Avoid Doing Minor Procedures*

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Summary

- Family Physicians are trained in performing minor procedures.
- It is cost effective, offers immediate relief, and saves the patient's time from a referral to the surgical specialist.
- FPs are at the frontline of the healthcare system, and have to constantly upgrade and maintain their skills sets to prevent erosion and deskilling.

The LLA case

In November 2018, a SMC Disciplinary Tribunal (DT) found Dr Lim Lian Arn (LLA), an Orthopaedic Surgeon, guilty of professional misconduct and he was fined \$100,000 under the Medical Registration Act, for failing to advise his patient about the risks and complications of a steroid (H&L) injection to the wrist.

Dr Lim had performed the H&L injection on the patient's wrist on Oct 2014. The patient subsequently developed a "paper-thin skin with discoloration, loss of fat and muscle tissues" in the injected area, and lodged a complaint to SMC.

The DT's grounds of decision was published and made public in Jan 2019. The DT was of the opinion was that Dr Lim should have informed the complainant about the complication, but did not, thereby breaching the relevant section of the 2002 ECEG.

SMC's Ethical Code 2002

"It is a doctor's responsibility to ensure that a patient under his care is adequately informed about his medical condition and options for treatment so that he is able to participate in decisions about his treatment. If a procedure needs to be performed, the patient shall be made aware of the benefits, risks and possible complications of the procedure and any alternatives available to him."

The charge read that Dr Lim's conduct amounted to such serious negligence that it portrayed abuse of the privileges accompanying registration as a medical practitioner.

Dr Lim pleaded guilty, presumably on the advice of his lawyer. SMC pushed for a suspension for 5 months, but Dr Lim's defence counsel proposed that the DT impose a fine of \$100,000 (the maximum allowed) to avoid the suspension. The DT agreed "having regard to the gravity

of the professional misconduct in this case, and the need for a general deterrence sentence, ...the imposition of the maximum amount of fine of \$100,000 would be appropriate".

The release of this decision led to a major outcry from the medical community, which resulted in an online petition that garnered more than 6400 signatures, many of whom thought the penalty was unreasonably high.

Doctors were alarmed that unforeseen complications arising from a common minor procedure, and the failure of covering all aspects of informed consent for such procedures, could result in a censure and a harsh fine of \$100,000. The decision would certainly set an unacceptable benchmark for other future cases.

There was a lot of concern and discussion in particular amongst junior doctors working in hospital wards who perform procedures daily, oftentimes based on implied consent (eg. taking blood samples and giving injections), and for primary care General Practitioners who perform clinic based minor procedures.

Impact on Primary Care

The impact on primary care was immediate with doctors relooking their willingness to perform H&L injections, and their pricing structure with regards to the risks of performing such procedures.

Popular medical blogger known as The Hobbit wrote on his Blog entry dated 25/1/2019, that with the risk doctors face of a \$100,000 fine in a "post LLA era", the H&L injection can no longer be a "cheap, effective and common office procedure". Some clinics charged a price range of \$50-\$150 for this procedure, which is clearly inadequate. [<https://hobbitsma.blog/2019/01/25/about-that-100000-fine-for-an-injection/>]

The Hobbit calculated that the "risk premium" should in fact be \$1000 per procedure, and therefore doctors should charge \$1000 over and above the \$50-\$100 per H&L injection, to cover the risk of having to pay \$100,000 in the event of a complaint and censure by SMC.

CFPS and Singapore Medical Association (SMA) conducted a joint survey (SMA-CFPS study) of its members on the attitudes and charges for H&L injections in Feb 2019. The results of the study were published on July 2019 in the Singapore Medical Journal (SMJ).⁽¹⁾

Of the 1927 doctors who responded to the survey, the number of doctors who provided H&L injections decreased by 14.6%, after the LLA DT decision was published. Pre-decision, doctors who determined their own price for H&L injections charged a median pricing less than \$100. Post-decision, the median charge rose to the band between \$100 to \$200.

The DT decision had affected practice by the increase in doctors practising defensive medicine (avoiding the procedure), and increasing the overall cost of healthcare provision.

Court of Three Judges Overturns Disciplinary Tribunal Conviction of Dr Lim Lian Arn

Prompted by the Ministry of Health (“MOH”), SMC applied to the Court for a review of the Tribunal decision. The High Court published its decision on 24 July 2019, and described the case as the unfortunate result of an ill-judged prosecution, an unwise decision to plead guilty and an unfounded conviction. According to the Court, there was a “*miscarriage of justice, with dire consequences for [Dr Lim]*”.

Setting aside the High Court’s criticism of the SMC complaints process, the entire judgment is worth careful reading and analysis because it made some very important practical points for practising physicians.

2 limbs and 3 stages

Firstly, the High Court stated that a breach of the ECEG “*does not necessarily or inevitably lead to the conclusion of professional misconduct under s 53(1)(d) of the MRA*”

Professional misconduct can be made out in at least two situations –

1. where there is an *intentional, deliberate departure* from standards observed or approved by members of the profession of good repute and competency (commonly known as the first limb), and
2. where there has been *such serious negligence* that it *objectively portrays an abuse of the privileges* which accompany registration as a medical practitioner (commonly known as the second limb)

A three-stage inquiry must also be done to determine professional misconduct, which entails: -

1. establishing what the relevant benchmark or standard is;
2. considering whether the medical professional had departed from the applicable standard; and
3. determining whether the departure was sufficiently egregious to amount to professional misconduct under the limb in question.

Negligence vs Misconduct

We can see that simply breaching the ECEG, for example by not taking consent, does not automatically mean that a doctor is guilty of professional misconduct. There is a place for technical and minor breaches, and even one-off honest mistakes, to be addressed at the complaints committee level instead of being escalated to a formal disciplinary inquiry.

In the LLA case, the DT had pursued the second limb of serious negligence amounting to misconduct. This is a judgment call that involves a sliding scale from mere negligence on one end, to professional misconduct on the other. In other words, there must be some *threshold* of wrongdoing that has to be determined before misconduct can be found and *disciplinary action* warranted. Mere negligence or incompetence on the part of the doctor will not be enough to demonstrate misconduct.

The court gave examples –

- Serious negligence portraying an abuse of the privileges is when the doctor showed *indifference* to the patient’s welfare or to his own professional duties, or where his actions *abused the trust and confidence* given him by the patient.
- Misconduct would not typically cover one-off breaches of a formal or technical nature where no harm was intended, and isolated and honest mistakes, as long as the doctor had not abused his professional duties.

Application to Family Physicians

The provision of minor procedures such as H&L injections is a basic and fundamental component of the services that primary care physicians offer. If done competently for the appropriately medical condition, such procedures offer immediate relief for patients, saves them a referral to the surgeon and therefore saving time and further duress, and benefits the entire system by reducing healthcare costs.

We are reminded that one of the objectives of the College is -

- *To preserve the right of the family physician to engage in the practice of Family Medicine, including engaging in medical and surgical procedures, for which he is qualified by training and experience.*

The LLA case and the initial DT decision was therefore of particular significance to the primary care community. The SMA-CFPS study found that there were significant numbers of doctors who stopped providing H&L injections post LLA, and some even increased their charges as to effectively price themselves out of the market. The survey recorded 65 doctors who raised their charges to > \$1000 for the procedure post LLA (up from just 8).

(continued on Page 16)

(continued from Page 11: Lessons from the LLA case - Why You Should Not Avoid Doing Minor Procedures)

The High Court ruling to overturn the DT decision should hopefully address the concerns of GPs, and stem the tide moving towards defensive medicine.

Specifically, the three High Court judges stated that:

- A breach of the SMC's ethical code and ethical conduct does not automatically equate to professional misconduct.
- Doctors should not fear isolated errors and honest mistakes.

Family Physicians should therefore be relieved and reassured that such essential services as H&L injections can continue to be offered to patients in the primary care setting.

Informed Consent

The DT's basis for the charges against Dr Lim was that he failed to obtain informed consent from his patient.

On this issue of informed consent, the High Court referred to its previous stand on adopting the modified-Montgomery test, which stated that a doctor is not under obligation to convey every conceivable risk to a patient. However, informed consent must include reasonable and relevant information that a doctor has knowledge of (contextualized to the patient), and to give justification if important information were to be withheld.

The LLA case did not change the requirement to take informed consent before performing minor procedures. However the DT's charge was that Dr Lim had not even talked to the patient about the risks and had not recorded any consent being given.

The take home message is that there must always be some discussion about the risks and benefits before any procedure, and it would be prudent to record that this discussion took place.

Resist Deskillling

The SMA-CFPS study was enlightening as it showed the breakdown of respondents who did not provide H&L injections.

Of the 934 GPs in private practice who responded to the survey, 236 (25%) did not give H&L injections (this increased to 377 after the LLA case was published).

There could be various reasons why GPs do not provide H&L injections in their practice, but it would be disheartening if the reasons were because of lack of time, financial disincentives, or inadequate training. The problem with minor procedures is that it can sometimes be a chore to set up the equipment, and the extra time involved to get

it done. The GP may find it far easier to refer the patient rather than doing it himself.

This sets up a negative cycle whereby the doctor becomes less experienced in minor procedures and as a result less and less confident in performing it, preferring to refer such cases to the surgical specialist. This is a kind of *voluntary deskilling* and it has to be recognized and resisted.

Any lack of training has to be addressed, and this is one area that CFPS must continue to provide - training courses to allow doctors to upgrade and refresh their skill sets.

Establish a Standard of Care

Finally, as a fraternity of primary care Family Physicians, we need to clearly establish a standard of care with regards to minor procedures such as H&L injections.

As noted in the High Court judgment, the legal system employs a three-stage inquiry to determine whether a doctor is guilty of professional misconduct. The first step being: *establishing what the relevant benchmark or standard is*.

It is therefore imperative that we continue to perform common minor procedures, and to set the standard that such procedures are usually done in the primary care setting by Family Physicians who have received the required training and are therefore fully competent to do so.

References:

- (1) Wong CY, Surajkumar S, Lee YV, Tan TL, A descriptive study of the effect of a disciplinary proceeding decision on medical practitioners' practice behaviour in the context of providing a hydrocortisone and lignocaine injection. Singapore Med J. 30 Jul 2019. <https://doi.org/10.11622/smedj.2019086>. [Epub ahead of print]

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