Ethical principles for managing financial conflicts of interest in Medicine



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Principles of Medical Ethics

- **Beneficience**
  - Providing benefit to patients
- **Non-maleficience**
  - Minimizing harm to patients
- **Respect for Autonomy**
  - Right of self determination, make informed voluntary choices, providing effective and honest communications
- **Justice**
  - Treating patients fairly and equitably according to medical needs, respecting their rights and laws of the country

Patients' Best Interests

- The foundation of the patient-doctor relationship
- Requires focus on what patients deem their best interests
- **NOT** what doctors think are their best interests
- **NOT** what doctors think would be in their own best interests if they were the patients
- **NOT** doctors' best interests

Sources of Potential Financial Conflicts of Interest

- Managed or contracted care
- Medical assessments for third parties
- Financial relationships with patients and families
- Gifts and bequests from patients
- Doctors in healthcare business
- Doctors in non-healthcare business
- Relationships with medical industry
- Medical Research
- Fees for doctors' services

Managed or Contracted Care

- Managed/Contracted care restricts patients and doctors and may threaten clinical standards or patient's best interests.
- Financial arrangements may impinge on professionalism.
- Ethical managed/contracted care means:
  - Professional independence inviolate (e.g. MCs for injured workers)
  - No payment to be included in panel
  - No guarantee of material returns to any referring company
  - Disclosure of limitations and alternatives
  - Appeal procedures for exceptions to the rule
  - No fee sharing or fee splitting (e.g. 10% "admin fee")
  - No financial incentives for withholding care

Medical Assessments for Third Parties

- Statutory screening, insurance underwriting, insurance claims, employment classification, expert advice in legal cases

- Ethical handling of assessments for 3rd parties means:
  - Patients understand your role –not the treating doctor
  - Competency to fulfill the role
  - No conflicts of interest & impartial – no regard for who pays
  - Ensure sufficient information to make assessment
  - Ensure recommendations are appropriate for purpose
  - Consent for transmission of medical information to payer

Financial Relationships with Patients & Families

- Such relationships may involve:
  - Business partnerships
  - Co-ownership of assets
  - Company directorships
  - Executor or beneficiary of wills
  - Trusteeships

- Ethical handling involves:
  - Not letting such relationships affect or interfere with the patient-doctor relationship.
  - Maintaining patients' best interests at all times
  - Not to abuse trust and confidence nor exploit patient/family for personal gain

Gifts & Bequests from Patients: For Research or Charity

- Patients may make grants, bequests towards healthcare, medical research, charities you are involved in.

- Ethical handling means:
  - No persuasion or pressure on patients to do so
  - Medical care to patients must not be influenced by any offer or withholding of an offer
  - Patients must not feel that care may be compromised by not offering grants/bequests

Gifts & Bequests from Patients: Personal to Doctor

- Patients may make gifts representing appreciation for good care.

- Ethical handling means:
  - Gift is offered after conclusion of care, not before and not during care – may represent attempt to influence care or secure preferential treatment. This would disrupt the patient-doctor relationship
  - Gift does not result in any hardship to patient or family
  - Gift must be disclosed to organization if required.

Doctors in Healthcare Business

- Relationship may be owner, significant shareholder, director, employee with "profit share"

- Ethical business dealings means:
  - Professional independence & clinical judgment preserved
  - No undue influence on patients for transactions you or family members have material interests in
  - You must disclose your interest if availing patient of product or service
  - No over-servicing or over-prescribing for profit
  - Ethical advertising by yourself or the firm

Doctors in Non-Healthcare Business

- Doctors must not engage in any business activity or be related to any business that is incompatible with or detracts from the practice of medicine and brings the profession into disrepute. Examples are:
  - Beautician services
  - Colonic cleansing services
  - Non approved Complementary/Alternative Medicine
  - Immoral or illegal activities
    - Prostitution
    - Pornography
    - Illegal money lending

Doctors in Non-Healthcare Business (2)

- Doctors may engage in legitimate non-medical business. Ethical business dealings means:
  - You do not use your medical qualifications or practice details to mislead the public as to the beneficial nature of the products and services
  - If engaging in talks or advertising platforms, you do not promote your practice & must declare you are speaking/writing in your non-professional capacity
  - If you sell or promote foods, vitamins, tonics, supplements, weight loss or fitness programs using your professional status, there must be good scientific evidence or acceptance by the profession

Relationships with Medical Industry

- Possible relationships include:
  - Industry sponsored research
  - Adviser, director, consultant of company
  - Industry sponsored speaking engagements
  - Industry sponsored attendance at conferences

- You must not allow your relationships to influence or even appear to influence:
  - Your pattern of prescription or dispensing
  - Choice of equipment, devices or procedures
  - Sources of educational material that determine your clinical practice and with which you educate your patients
  - The objectivity and integrity of research/publications
  - The content of any contribution to peer or public education

Relationships with Medical Industry (2)

- Ethical handling as **adviser, director, consultant** to companies means:
  - Your participation is not such as to appear to endorse or promote any company's products or services to peers or the public
  - Fair remuneration of time and expertise and expenses is allowed, but equivalent to lecture, or expert witness fees only
  - All travel/meetings must be for internal work of the company, not general conferences
  - If you have responsibilities to disburse company grants, you must be objective, fair and transparent

Relationships with Medical Industry (3)

- A legitimate **educational/research event**:
  - Primarily dedicated by time effort to the subject
  - Held in an appropriate location (not leisure venue)
  - Devoid of excessive/extraneous provisions, e.g. lavish meals, entertainment or unrelated side travel

- Ethical handling of **speaking engagement** means:
  - No financial reimbursements/honoraria directly from companies, but only through reputable professional organisations
  - Full disclosure of all potential conflicts of interest
  - Non endorsement of products or services
  - Non promotion of your own services

Relationships with Medical Industry (4)

- Ethical limits to receiving **sponsorships for professional meetings** and conferences:
  - **The meeting must be organised by reputable professional organisations, not by companies alone**
  - **The focus must be on content and not meals, entertainment or leisure activities**
  - **Provisions must only facilitate your attendance**
  - **Venues must appropriate and not for leisure**
  - **Greatest proportion of your time must be spent on the content and not unrelated activities**
  - **You must bear costs for unrelated activities & accompanying family members**
  - **Standards of travel/food/lodging must be appropriate**
  - **Avoid levels and frequency of sponsorship that could lead to suspicion that you are beholden to the company**

Medical Research

- Need to uphold high professional standards and ensure integrity of research and results.

- Ethical research which is externally funded means:
  - No conflicts of interests by relationships, finances
  - No benefit linked to number of subjects recruited
  - Ensure best interests of patients – consent, safety, assurance of treatment
  - Write up results with honesty, integrity & objectivity
  - Push for publication regardless of outcome

Fees for Doctors' Services:
One Famous Case



This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Lim Mey Lee Susan
v
Singapore Medical Council

[2013] SGHC 122

High Court — Originating Summons No 780 of 2012
Andrew Phang Boon Leong JA, V K Rajah JA and Tan Lee Meng J
15 January 2013

Professions — Medical Profession and Practice — Professional Conduct — Disciplinary Proceedings — Medical Registration Act

28 June 2013 Judgment reserved.

Andrew Phang Boon Leong JA (delivering the judgment of the court):

Fees for Doctors' Services: Ethical Principles

- Fees must uphold the honour, honesty & integrity of the profession
- Overcharging erodes trust and confidence, brings profession into disrepute
- Knowledge asymmetry/urgency diminishes concept of "*caveat emptor*"
- Fees must be transparent and patients fully advised even before consent
- Fees must not exploit patients' vulnerabilites and ignorance
- No pressure for patients to accept private service over public service
- The ethical responsibility to charge fair and reasonable fees overrides contractual and market forces

Fees for Doctors' Services: "Appropriate Fees"

- There are no scales or guidelines available:
  - Available data is informal, incomplete, aggregates or averages for which wide ranges apply.
  - Sources include published bill sizes on MOH website and informal knowledge of fees charged by peers
  - Such data can only provide an imprecise sense of reasonable fees

- Legitimate considerations include:
  - Nature & complexity of the services rendered
  - Time spent in rendering the services
  - Specific demands made by patients
  - Your special training, skills & expertise
  - Your professional standing & seniority
  - Opportunity & operating costs of rendering service
  - Circumstances of urgency when rendering service

Fees for Doctors' Services: What is "Overcharging"?

- Fees may be deemed excessive if peers providing similar services in the circumstances come to a firm and definite conclusion that the fees are in excess of what is reasonable

- "It is a matter for peer review by members of the medical profession of good repute and competency to opine on the possible range of fees which would be considered fair and reasonable in a particular set of circumstances."

- "Yet not every case of overcharging will constitute grossly improper conduct as invariably there will be some diversity of opinion as to what would or would not be correct in each case and where a line ought to be drawn…***Your peers will be slow to find a breach or to find professional misconduct in marginal cases***."

Fees for Doctors' Services:
Professional Misconduct in Overcharging

- When peers agree that charges are **so grossly unreasonable and unjustifiable** that it is sufficient to bring **disrepute to the profession**. Characteristics (*from SL v SMC*) include:
  - **Intentional, deliberate departure from standards observed or approved by the profession**
  - **Far in excess, grossly disproportionate, bearing no relation to the services rendered in the circumstances**
  - **Undeniably unjustifiable, excessive in the extreme, far beyond any possible reasonable range of charges for the services provided**
  - **Systematic pattern of egregious overcharging**
  - **Clearly opportunistic & taking advantage of patients' ignorance & vulnerabilities**
  - **Evidently indiscriminate, inconsistent, haphazard and arbitrary**
  - **Opaque in construction, so as not to be able to ascertain what charges are for**
  - **Unjustifiable multiple charges for overlapping services or time periods**
  - **Excessive inflation of third party charges, without disclosure or false representation that they are entirely for third parties.**

Fees for Doctors' Services:
Practical Application Principles

- The "Ethical Limit" is not a definable point on a spectrum. It is a subjective, yet firm conviction that a particular fee has well exceeded decency, is outrageous, unacceptable and embarrassing to the profession

- It is not easy to fulfill the characteristics of overcharging that would make it "professional misconduct". It would need to be overcharging of "astonishing proportions"

- Doctors mostly have an innate sense of what range is appropriate and acceptable. This is how we have always practiced and one unique, exceptional, outlier case does not change that.

- *"I shall not today attempt further to define…"hard-core pornography"; and perhaps I could never succeed in intelligibly doing so. But* ***I know it when I see it****."*

  —Justice Potter Stewart, i*n Jacobellis v. Ohio (1964).*

  (One of the most famous phrases in the entire history of the USA Supreme Court)