

## Risk Alert

### Risk Management Advisory Notes



## A Duty of Candour

Jardine Lloyd Thompson Asia

### Background

The Stafford Hospital scandal happened in the late 2000s sparked a heated debate and concern regarding poor patient care and high mortality rates in Stafford Hospital, UK ran by the Mid Staffordshire NHS Foundation Trust. Since then, the importance of the duty of candour is emphasized to promote openness and transparency throughout the healthcare system.

The Oxford Dictionary defined candour as “the quality of being open and honest”. In the healthcare industry, the duty of candour refers to the legal and ethical obligations to disclose information when the patient is suffering from harm in the course of receiving medical care. The Chief Medical Officer of England, Sir Liam Donaldson (2003) defined duty of candour as “requiring clinicians and health service managers to inform patients about actions which have resulted in harm”.

### Private Healthcare Facilities and Services Act 1988 and Regulations 2006 (PHFSA)

The Private Healthcare Facilities and Services Act (PHFSA) states that “The licensee or person in charge of a private healthcare facility or service shall take reasonable steps to ensure that a patient is provided with information about the nature of his medical condition and any proposed treatment, investigation or procedure and the likely costs of the treatment, investigation or procedure.” Contravention of this regulation will, upon conviction, lead to a fine not exceeding RM10,000 or to imprisonment for a term not exceeding three months or to both. There are similar provisions in sections 18 and 27 of the Private Health Facilities and Services (Private Medical Clinics and Private Dental Clinics) Regulations. However, there are no such statutory provisions for government health care facilities and services. information regarding their treatments confidential. Privacy also extends to the remote location where the patient is receiving the service. However, the clinician providing the consultation may have limited control of this environment and thus potentially compromising the patient’s confidentiality.

#### IN THIS ADVISORY WE WILL OUTLINE THE FOLLOWING:

- What is meant by Duty of Candour
- A suggested risk management approach

#### CODES OF CONDUCT

Healthcare professionals have an ethical duty and are bound by their Codes of Conduct which require them to be open and honest. By working within these codes clinicians are bound to act where someone in their care has suffered harm, to explain what has happened and possible consequences, and to cooperate with any subsequent investigation. By doing so and following local policy and procedure the likelihood of mismanagement of a situation and a potential liability will be reduced.

Note: Currently in Malaysia, there are no statutory provisions of duty of candour for government health care facilities and services. However, doctors have an ethical duty to inform their patients if anything goes wrong and to provide an explanation and apology.

#### A SUGGESTED RISK MANAGEMENT APPROACH

- Follow the relevant professional Code of Conduct
- Attend training provided by the organisation
- Report incidents promptly
- Keep clear and contemporaneous records of actions and communication

## Code of Professional Conduct

Under the code of professional conduct by the Malaysian Medical Council, 1986, section 1.1, the responsibility for standards of medical care to patients, “ The public is entitled to expect that a registered medical practitioner will provide and maintain a good standard of medical care.

This includes:-

- a. conscientious assessment of the history, symptoms and signs of a patient’s condition;
- b. sufficiently thorough professional attention, examination and where necessary, diagnostic investigation;
- c. competent and considerate professional management;
- d. appropriate and prompt action upon evidence suggesting the existence of condition requiring urgent medical intervention; and
- e. readiness, where the circumstances so warrant, to consult appropriate professional colleagues.

A comparable standard of practice is to be expected from medical practitioners whose contributions to a patient’s care are indirect, for example those in laboratory and radiological specialities. Apart from a practitioner’s personal responsibility to his patients, practitioners who undertake to manage, or to direct, or to perform clinical work for organisations offering private medical services should satisfy themselves that those organisations provide adequate clinical and therapeutic facilities for the services offered. The Malaysian Medical Council is not ordinarily concerned with errors in diagnosis or treatment, or with the kind of matters which give rise to action in the civil courts for negligence, unless the practitioner’s conduct in the case has involved such a disregard of his professional responsibility to his patients or such a neglect of his professional duties as to raise a question of infamous conduct in a professional respect.

A question of infamous conduct in a professional respect may also arise from a complaint or information about the conduct of a practitioner which suggests that he has endangered the welfare of the patient by persisting in independent practice of a branch of medicine in which he does not have the appropriate knowledge and skill and has not acquired the experience which is necessary.

Good Medical Practice (2013) also states the doctor’s duty to be honest, “You must be honest and trustworthy in all your communication with patients and colleagues. This means you must make clear the limits of your knowledge and make reasonable checks to make sure any information you give is accurate”.

## Dealing With An Adverse Event

When an adverse event happens, there is an ethical duty of disclosure, however, it is less clear whether there is a legal duty of disclosure. When dealing with adverse events, the Harvard School of Medicine takes this approach:

Immediately after the event

- Acknowledge the event.
- Express regret.
- Take steps to minimize further harm.
- Explain what happens next.
- Commit to investigate and find out why the adverse event occurred.

Later follow-up

- Disclose the results of the internal investigation.
- Apologize if there is an error or systems failure
- Make changes to prevent the failure from recurring.
- Provide continuing emotional support to the patients and health professionals involved.

- Seek advice from a superior or professional body
- Follow local policy, procedure and guidance

### TIPS TO CONSIDER

Familiarise yourself with and follow key risk management policies including:

- Risk Management Strategy
- Incident reporting policy
- Complaints and Claims policies
- Health record keeping policy

(Source: Lucian L. Leape, MD, The Power of Apology, presented May 11, 2006, at the NPSF Patient Safety Congress).

## Conclusion

The duty of candour is not new. It is designed to promote good communication and improve care. To err is human so this must be acknowledged and supportive risk management systems be implemented to direct those working in professions with inherent risks.

### Further sources of information and advice:

- Definition of Candour  
<https://en.oxforddictionaries.com/definition/candour>
- Good Medical Practice  
[http://www.gmc-uk.org/Good\\_medical\\_practice\\_\\_\\_English\\_1215.pdf\\_51527435.pdf](http://www.gmc-uk.org/Good_medical_practice___English_1215.pdf_51527435.pdf)
- Private Healthcare Facilities and Services Act 1998  
<http://www.mma.org.my/images/pdfs/Link-LawOfMsiaAct/private-healthcare-facilities-and-services-act-1998.pdf>
- Malaysian Medical Council - Code of Professional Conduct  
<http://www.mmc.gov.my/index.php/tester?id=320>
- Malaysian Medical Association and Malaysian Dental Association, (2006) Memorandum To The Honourable Minister of Health Malaysia Dated 13th July, 2006; Kuala Lumpur.

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