Medical Responsibility in a Hospital Practice

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When a patient goes to a hospital, three distinct legal relationships are established:
1. between the doctor and the patient;
2. between the hospital and the patient and
3. between the doctor and the hospital.

Historically, hospitals were charitable and were teaching institutions. Well into the twentieth century, the hospital's sole responsibility was "to provide a properly equipped facility"[1]. Over the years the function of the hospital slowly changes from a venue for treatment to a provider of treatment. Today while the courts accept that unless the facts are clearly to the contrary, a hospital's liability is still confined to "purely ministerial and administrative duties"[2]. Doctors are considered professionals and not employees who exercise independent judgement. Hospitals are therefore generally not held liable for doctors' negligent acts. There appears to be a large public policy component in this decision[3]. However, patients today may hold a different view. Hospitals are perceived to be 'value for money' commercial institutions and patients may resort to any 'market remedies' to get redress.
The liability of the hospital is based on a number of legal principles:

I. The hospital as 'master'

A public hospital that employs a doctor and pays him a salary is liable because the hospital exerts control as a 'master' in a 'master and servant' relationship. This is especially so if the hospital officially or unofficially establishes guidelines that affects the doctor's practice.

II. Doctrine of 'captain of the ship'

In private hospitals in Singapore, many doctors employ their own support personnel (nurses, dialysis technician and cardiac-pump technicians). There are specialists who employ other doctors as permanent or temporary assistants. In cases of paramedical personnel, the doctor is considered to be the 'captain of the ship', as he controls the team. However, it may be difficult to apply this when a doctor is employed by another. For example, if the employee-doctor has to make a judgement to start treatment in an emergency, then 'control' by the employer-doctor may not apply as there is an element of independent action. An implied permission to treat in an emergency will apply. It is likely in such a case that joint liability will be found.

A coroner's case (CI 1586/83) in Singapore indicates how the court may look at the problem. A man was admitted to the medical department of a hospital for investigation of an abdominal problem. He had a past history of a reaction to penicillin and this was clearly noted on the case notes. On his last admission to the medical department, he was diagnosed as having a surgical condition and was transferred to the surgical department. The house officer in the medical department did not asked for a history of reaction to penicillin as there was no intention to use penicillin. While in the surgical department during a general ward round, the surgical house officer failed to note the warning about his allergy as it was printed on the folder and was covered by a prescription form. After his surgical procedure, a routine postoperative course of ampicillin (a penicillin based compound) was ordered and the patient died from the reaction. The unfortunate sequence of events hence resulted from the chain of professional command, the protocols adopted by the hospital for allergies, the protocol for assessment of old notes, the protocol of interdepartmental transfers of patients and the duties of the house officers in enquiring for allergies, to review old case notes for such allergies and to present them at ward rounds. The coroner's court clearly applied the principle of the 'captain of the ship' and the surgeon who ordered the drug was found negligent but it was also pointed out that the house officer has 'significantly contributed' to the omission which led to the death of the patient, having
failed to examine the past records and to inform his seniors about this.

III. Doctrine of 'borrowed servant'

In a private hospital, the resident (in-house) medical officer is employed by the hospital. The physician who admits his patients into the hospital is not in full control of the resident medical doctor but the latter will have to deal with his patients, especially in an emergency. The court can apply either the doctrine of 'borrowed servant' or 'captain of the ship'. It will depend on the facts of the case. If the practice acceptable to all admitting physicians is that the resident medical officer can initiate treatment in an emergency, the concept of 'captain of the ship' applies and the admitting physician is liable. However, if the resident medical officer fails to consult or goes beyond what the court accepts as reasonable practice, then the doctrine of 'borrowed servant' applies and the hospital will be liable.

IV. Doctrine of corporate responsibility

Generally, a hospital as a corporation is not held responsible for medical negligence. However, the concept of the independent corporate duty of the hospital is well developed in America where private hospitals are common. A number of situations can arise.

1. The hospital's responsibility to ensure acceptable procedures are followed

A hospital has a responsibility to ensure that acceptable procedures are followed. As a provider of care, it bears a responsibility to a patient to take reasonable steps to ensure his safety while within the institution. The hospital has evolved into a central provider of health services and hence new responsibilities are raised. This will include the need to ensure that standards are maintained. For example, failure of a hospital to provide a system capable of checking falsification of records can subject it to liability.

2. The hospital's duty to ensure competency of medical staff

The hospital is liable if it does not make adequate enquiry into a doctor's qualifications[4]. The hospital's failure to detect an impostor can open it to accountability[5]. Similarly, a hospital's laxity in the pre-credentialling investigation of a doctor's application for hospital privileges makes it equally liable[6]. In Singapore, there have been cases where impostors had gained employment as doctors through falsification of documents. In such cases, it will be difficult for the hospital to deny responsibility if anything adverse should occur.

3. The hospital's responsibility to quality assurance

In Singapore, under the PRIVATE HOSPITALS AND MEDICAL CLINICS ACT[7] a hospital must set up a quality assurance programme which would "improve patient care and... identify and resolve problems." (Part II S29 (1)). In a case in Singapore involving four doctors sitting on an ad hoc review committee for a private hospital, the doctors were called up before the Singapore Medical Council to answer complaints that they had attempted to obscure basic deficiencies and errors in the management and treatment of a patient. The charge was dismissed. A possible civil suit remained against the hospital, but this was settled out of court[8].

In 1986, the Health Care Quality Improvement Act was passed in America. This required the maintenance of a national practitioners' data bank with information about disciplinary actions against physicians. In Singapore, the Council maintains records of disciplinary hearings. The question is whether hospitals are required as part of their credentialling process to obtain such information. More important is whether there is an obligation on the part of the hospital to proactively check the competence of its doctors and ascertain whether they had any past records of disciplinary proceedings. Is there a responsibility on the hospital to take action if it has reason to suspect that the doctor was incompetent? In Singapore, a hospital must ensure that a doctor it grants privileges to is competent and that he will work within the scope of the clinical privileges granted[9]. There have been suits against surgeons for complications of surgery[10] but none against the hospital for failure to ensure the competence of its doctors. It is possible that such a point may be raised in the future. Findings of committee of inquiries on such cases may be subpoenaed in court. A recent change in the Private Hospital and Medical Clinics Act is an attempt to protect doctors sitting on such committees.

A question that concerns doctors is their liability when they sit on auditing committees in hospitals. In a case before the Singapore Medical Council in 1996, an ad hoc committee of doctors was set up to review the management of a case that had an adverse outcome. They submitted a report of recommendations to the hospital. The doctors were asked to appear before the Council to answer complaints directed against them[11]. This decision appears to indicate that advisory committees can be made accountable to the patient. Most private hospitals insure these committees to cover legal expenses. There is hence an implied acceptance that these committees can be made accountable in law.

VI. The hospital's non-delegable duty of care

There are certain activities which the hospital cannot delegate to another and deny responsibility.

1. Maintenance of Emergency Rooms

When a hospital has a duty of care to maintain an Emergency Room (or perform any other 'inherent function' of a hospital) it cannot escape liability by delegating that duty to another, such as an independent contractor Emergency Room group[12]. Who is to determine what is an 'inherent function' of a hospital? The PRIVATE HOSPITAL AND MEDICAL CLINICS ACT suggests that the provision of an Emergency Unit is obligatory in private hospitals. Some private hospitals have subcontracted out Emergency Room services to physician groups but they will remain liable as an emergency service is a statutory non-delegable duty of care.

2. Provision of appropriate equipment and modern technology

The hospital can be held liable for injuries caused by instruments and appliances that it knows or should know, are defective[13]. In the United States, a hospital can also be held responsible for not adopting rapidly the latest in anaesthesia monitoring technology[14]. Cases of litigation where equipment defects were implicated had been reported in Singapore. However, the issue of hospital liability for these has not been pursued[15]. Two cases have appeared in the Singapore Courts in which this issue has been mentioned. One involved a possible defect in an anaesthesia machine[16] and the other in a diathermy machine[17]. Unfortunately, in both cases, the issue was bypassed and the court provided no indication as to how it may be resolved. An issue may arise as to the liability of the physician who admits a patient into a hospital where facilities required for the patient's care are inadequate. Similarly, an issue arises as to the hospital's liability in accepting such a patient. In an Emergency Room setting, this can draw the plea of necessity, but not in an elective admission. The doctor's liability is derived from his responsibility to ensure that the hospital he uses has adequate facilities. The hospitals in Singapore vary in the facilities provided. A 'non-delegable duty' to provide specific facilities is set out in the PRIVATE HOSPITAL & MEDICAL CLINICS ACT. The regulations set out under the Act charges the Audit Unit of the Ministry of Health with its supervision. There is an interesting issue that affects mainly the restructured and government hospitals. Patients request for private ambulances when they go to a private hospital and there is an element of choice. However, in serious accidents, the public ambulance is despatched and the rule is to send the patients to designated restructured or government hospitals depending on the site of the accident. These hospitals do not have equal facilities. Some do not have paediatric facilities while others do not have neurosurgical facilities. If a patient suffers an adverse outcome as a result of being sent to a hospital without the necessary facilities, then a liability can arise for the hospital and the ambulance service.

SUMMARY

The complex legal relationships between hospitals, doctors and paramedical staff lead to issues which the court will find difficult to resolve. However, certain trends have emerged in modern medicine:

1. There is a need to provide competent care based on a national standard.
2. Competent care is no longer predicated on 'locality rules'. The state has to intervene with statutes and regulations to ensure that a 'standard' of practice is established in hospitals.
3. The hospital has both a vicarious as well as an inherent duty of care (corporate obligation) to its patients.
4. The statutory regulations result in doctors being involved directly in setting of standards. This brings a separate liability upon the doctors independent of their professional liability.
5. There is a demand not only for establishing initial standards of care, but for continuous monitoring of these standards and proactive measures to ensure that they are updated.

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