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Speech by Dr Tanny Chan at the O&Gs And Paediatricians Get-Together Evening

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Event organized by the Obstetrical & Gynaecological Society of Singapore (OGSS) with support from Paediatric Society of Singapore and Perinatal Society of Singapore, with an education grant from Dumex Sciences. Chairman: Dr Lee Keen Whye President of OGSS. Speakers: Dr Tim Hegan, MPS onMedicolegal Update; Ms Sherlyn Quek, Health Prevention Board on 'Sale of Infant Foods Ethics Committee, Singapore'

SIFECS – Code of Ethics; and Dr Tanny Chan, OGSS Member.

Keen Whye, thank you very much for giving me this opportunity to say a few words tonight.

I was a defendant in a medico-legal litigation early this year. The case involved a baby (Vanessa), who was delivered in 1998 with cerebral palsy due to a pre-existing neuropathy, which could not be prevented, diagnosed or treated. Yet, numerous allegations were brought against me, all pointing towards birth asphyxia (perinatal hypoxia) as a cause of the cerebral palsy. Each and every of the allegations were rebutted. The high court judge in his judgment[1] stated that, "in my judgment, Dr. Chan had competently managed the pregnancy of Mdm Chng and delivery of Vanessa. What Vanessa has suffered and unfortunately will continue to suffer was due to developmental cause or causes which Dr. Chan could do nothing about. Dr. Chan had not breached any of the duties of care which have been alleged against her. Accordingly, the plaintiff's claims are dismissed with costs."

With this conclusion, the case is now over. It was a sad case. What it left behind for me is not a sense of joy or victory, but rather a painful experience and an unforgettable memory which I hope none of my colleagues will have to face.

Tonight, I wish to share with you my feelings and concern regarding the threat of medico-legal litigation that we face, and hope that we will learn from my experience on how to avoid a medico-legal litigation and how to face it if it is inevitable.

I will discuss it under the following headings:

1. Maintained a high index of awareness of medico-legal litigation.

Medicine is by no means a perfect science. No matter how careful a doctor is, one cannot ensure a perfect outcome, because there are far too many factors beyond our control eg. the inherent risk and complications associated with every treatment and operative procedures; the biological variation of each patient in their response to treatment; the presence of congenital malformations complicating the outcome, etc. To an obstetrician, even a normal pregnancy and a normal delivery can be disastrous. Therefore, every doctor without exception will have to face the threat of medico-legal litigation.

We have to continuously remind ourselves to be vigilant and careful in our patient management; remind us our professional and ethical duties towards our patients, and to maintain a high index of awareness of medico-legal implications when we treat our patients, without overzealous investigations or performing operations without a valid indication. (not very easy, right?). We must be careful in our comments or remarks towards fellow colleagues when we are approached by a patient for a second opinion. One must avoid passing incriminating remarks or casual comments that may mislead both parties i.e. the defending doctor and the patient down a painful and expensive road of frivolous claims.

2. Ask for help in the preparation of a medico-legal defence.

We cannot deny, malpractice do exist. If a patient is injured due to malpractice, it is only right that he or she should be compensated. However, if the undesired outcome is not due to negligence, we should be brave to stand up against it, though it is never pleasant to have your name flashed across the newspaper headline. By defending a case in court, the doctor can play an important role to curb the rising medical insurance premium and ultimately reducing the health costs.

In my trial, I am most touched by the support and help rendered by my patients and colleagues, many of whom I have not met and do not know before the case. It is your support that gives me the courage to face it.

The importance of preparation in a medico-legal defence cannot be adequately emphasized. Here, I have to thank my good friend, Dr. Edward Pang, for his tremendous help in journal research. With his help, I have collected more than 3 large suite cases of medical journals, textbooks and review articles

related to each step of the management. I borrow his words `in journal research, I will leave no stones unturned.' I also want to thank the OGSS (and also the current president Dr Lee Keen Whye and the immediate past president Dr Kelvin Tan) for standing up as a professional body to clarify the issue regarding informed consent on administration of drugs during labour and performing assisted deliveries in labour management. Even the Kiwi vacuum cup company, The Transmedics, without hesitation, provided evidences to refute the ridiculous allegation of my not using a Kiwi cup in 1998 when that instrument was only available in Singapore 2 years later. This emphasized that to prepare a defence we need a team effort. So do not hesitate to ask for help. The message to bring home is `do not go to court without Edward.'

3. Work closely with your lawyers.

To defend a medico-legal case effectively, you have to work closely with your lawyers. Engage someone who is willing and keen to learn the medical aspect of the case. The defending team of doctors must be pro-active in educating the lawyers with a complete set of medical knowledge on the case. Right from the basic patho-physiology to the latest view related to that medical condition. In other words, within the given time frame you have to prepare your lawyers to reach the standard of a medical specialist. He should possess the in-depth medical knowledge of the condition. When he cross-examines the plaintiff's experts, he needs to be as knowledgeable in medical facts as them. I dare to say that after this case, my lawyers can read CTG tracings as good as us.

4. Get a credible expert with an internationally recognised reputation in that particular field.

It is equally important to get an unbiased expert witness who would not hold an extreme medical legal opinion which cannot be substantiated by reasonable scientific evidence. A biased witness will lose his credibility in the court and give a very poor impression to the judge.

5. Careful documentation and accurate recording of the observations and data in the case-notes.

This is very important as the courts ultimately judge the case from the records.

In obstetric litigations all over the world, cerebral palsy due to birth asphyxia or perinatal hypoxia in term or near term babies still holds the record of the highest award.

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The incidence of cerebral palsy is about 2 per 1000 live births. From the epidemiological studies, birth asphyxia only accounts for less than 10% of the cases. The other 90% of cases of cerebral palsy are due to other causes such as infection, drug and pre-existing neuropathy etc., most of which are not treatable or preventable. That is why the incidence of cerebral palsy has not fallen in spite of advancement of medical technology and increase deliveries by LSCS.

A diagnosis of birth asphyxia as a cause for cerebral palsy will render the obstetrician liable for negligence till proven otherwise. This is because it is believed that birth asphyxia is theoretically preventable and its occurrence means mismanagement, though nowadays we know that even birth asphyxia may not necessarily be preventable such as in cases of a sudden sentinel event during labour.

In recognising the serious medical legal implication of the diagnosis of birth asphyxia, the perinatal societies in Australia and New Zealand initiated an international cerebral palsy task force in 1997. This extensive task force was a combined effort of the international professional association of obstetricians, perinatal paediatricians, pathologists, family physicians and midwives from USA, UK, Canada, Ireland, Hong Kong, Australia and New Zealand. The task force was completed in 1999 and they issued a consensus statement[2] to set the essential criteria governing the diagnosis of birth asphyxia. They offer a scientific, evidence-based template of 8 objective evidences that should be fulfilled before labeling a case of cerebral palsy to be associated with birth asphyxia or perinatal hypoxia. Their findings confirmed the initial belief described by Blair and Stanley[3] in 1988, who showed that in the vast majority of cases of cerebral palsy, the origin of neuropathy are antenatal.

The task force members urged the labour management team worldwide i.e. the obstetricians and neonatal paediatricians to strictly adhere to the criteria governing the diagnosis of birth asphyxia. They also reiterated that the term `foetal distress' or `birth asphyxia' are inappropriate and should not be used clinically. They should be replaced by the terms `non-reassuring foetal status', `neonatal encephalopathy' or `neonatal neuropathy'.

In Gleneagles Hospital, we are fortunate to be supported by a team of highly dedicated and competent neonatal paediatricians. I have spoken to their senior members, Dr William Yip and Dr YY Yip regarding this matter, both are very supportive and agree to follow the guidelines set by the International Cerebral Palsy Task Force in the diagnosis of birth asphyxia.

During the trial, nothing can be more convincing to the court than when the managing paediatrician in my case, Dr Thomas Wong, he, as an independent evidence witness, strongly and firmly rebutted birth asphyxia as a cause of the child's cerebral palsy.

I would say, the paediatricians, especially the

neonatal paediatricians, are the obstetricians' best friends. You are an important member in our labour management. It is through your effort that many premature babies are saved. My intention today is not to influence your diagnosis or management of neonatal conditions, but rather to seek your understanding in the importance of us, as a group, following the international guideline in associating birth asphyxia as a cause of cerebral palsy, so that we can continue to work closely as a team for the benefit of our patients.

I thank you for your attention.

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