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Medicolegal issues affecting anaesthesiologists in Malaysia: an overview

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Abstract

Medicolegal issues have a significant impact on the practice of anaesthesiologists worldwide. Current trends indicates that although anaesthesiologists are less likely to be sued compared to other specialities, the payouts by anaesthesiologists are huge due to the high cost associated with the long-term management of patients with cerebral palsy and hypoxic ischaemic encephalopathy. The impact on anaesthesiologists is acknowledged, with many societies worldwide taking various steps to address them, such as the Second Victim Programme by the Malaysian Society of Anaesthesiologists. This aims to address some of the potential mental health issues affecting anaesthesiologists facing the aftermath of a poor clinical outcome and subsequently having to deal with the process of litigation. Various solutions have been addressed to acknowledge medicolegal issues in Malaysia, such as mediation as a way forward for dispute resolution. However, solutions such as this will take time for widespread adoption, and as such, the impact will not be immediately felt. It is far better for anaesthesiologists to be proactive in having increased awareness of the challenges associated with litigation via comprehensive medicolegal education.

Keywords: anaesthesiology, legal medicine, Malaysia, medicolegal education, Second Victim Programme

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Introduction

The practice of anaesthesiology and critical care medicine has greatly evolved in Malaysia. From what used to be a basic level of anaesthesia care using a combination of ether and air as anaesthesia with a simple improvised vaporiser in March 1847 in Malacca,[1] anaesthesiologists in Malaysia are now delivering state-of-the-art care at almost 400 hospitals and medical centres nationwide. With the widespread availability of anaesthesia services, complex surgical procedures are being performed.

With this evolution, patients have come to expect high standards of care with good clinical outcomes rather than just routine, adequate clinical care. There are challenging discussions, especially when dealing with unexpected poor outcomes after surgery. The conversation following poor postoperative outcomes breaks down or is misinterpreted, and patients and/or their families tend to express their displeasure toward both the surgical and anaesthesia team taking care of their loved ones.

Most of these disputes are settled within the hospital by virtue of the internal grievance mechanisms. However, there are a few who pursue litigation in the courts. These are the kind of cases that end up causing significant distress to the anaesthesiologists. The impact includes both mental and physical effects to the practitioner, loss of confidence, and potential loss of employment and income.

This paper aims to discuss the trends in medicolegal issues faced by anaesthesiologists in some countries and their similarities to Malaysia. The paper will also look into some of the legal guidelines of medical practice applicable in Malaysia and potential solutions to help anaesthesiologists mitigate risks.

Global trends in litigation against anaesthesiologists

The impact of litigation against anaesthesiologists in Malaysia has been hard to study due to the paucity of data surrounding the subject. Unfortunately, Malaysia does not have a central database of medicolegal cases whereby cases involving anaesthesiologists as well as their specifics can be traced.[2] The problem is further compounded by the dual healthcare system practiced in Malaysia, where public and private anaesthesiologists render their services with different contractual obligations. This has also been highlighted by the late Dato Dr Radha Krishnan in 1991, where he mentioned that statistics or other relevant information of anaesthetic mishaps are often difficult to obtain. Even the limited data available are incomplete, as data collection and methods of reporting such incidents has been scant, especially in the private sector.[3]

Most of the information are available in Malaysia is found in court judgement documents and confidential hospital reports only accessible to Ministry of Health officials. The data that are freely available are currently from a few countries where it is systematically collected, analysed, and published to ensure that anaesthesiologists can learn from the issues and take steps to mitigate risks.

In a comprehensive study on claims involving anaesthesiologists working with NHS England between 2008 and 2018, it was found that, although the specialty of anaesthesia was at low risk of litigation, claims relating to airway management, central venous catheterisation, and cardiac arrest remained severe and costly.[4] This is consistent with what we are seeing in Malaysia as well, with the sum of payouts determined by the courts for these type of cases running into millions of ringgits.

In another study on 222 medicolegal claims involving 160 anaesthetist members of Victoria, Australia's largest medical indemnity organization between 1980 and 1999, 35% of anaesthetists had a claim, with 84 relating to dental injury and the rest relating to claims for awareness, complications of epidural anaesthesia, coronial enquiries, nerve palsies, postoperative complications, and circulatory arrest.[5] The Canadian Medical Protective Association analysed closed civil legal cases between 2007 and 2016 involving specialist anaesthesiologists where airway management was the central concern. The analysis concluded that severe patient harm is common when airway management is the focus of the claim. Patients were otherwise typically low-risk cases presenting for elective surgery. Failure to assess or change management based on the airway exam or encountered difficulty were the most common errors.[6]

There have been attempts to improve the financial impact brought upon by litigation to both the injured party and the doctors involved. The Malaysia Medical Council required all its registered doctors to have a Professional Indemnity cover as a requisite to obtain their Annual Practising Certificate for the year 2020.[7] However, due to the different insurance providers and medical defence organizations providing medicolegal coverage, each had their own data that was not released to outside parties. As such, the number of cases as well as the payouts made specifically for cases involving anaesthesiologists are not clearly known.

The Ministry of Health (MOH) Malaysia publishes in its annual reports all medicolegal awards paid out for malpractice allegations against MOH facilities and its staff. In 2023 alone, MOH awarded a total of RM 6,891,879.28 (USD 1,629,863.84) in compensation for 61 ex gratia settlements RM 2,073,591.70 (USD 490,384.70) and 12 litigation cases RM 4,818,287.58 (USD 1,139,479.15). However, no breakdown of the type of cases and the speciality involved were disclosed in the report.[8]

In Malaysia, obstetric cases that end up with complications to the child, such as cerebral palsy or spinal cord injuries, typically include anaesthesiologists who are named as part of the defendants in the medicolegal suit. As expected, the payouts for this type of injuries run into the millions.[9,10] In 2024 alone, there were at least 3 significant judgments released by the courts that had anaesthesiologists determined to be partly or wholly negligent in causing harm to the patients.[11-13] All 3 cases required the anaesthesiologists to respond to patients presenting in an emergency situation. Unfortunately, the outcome of the resuscitation was that the patients suffered from hypoxic ischaemic encephalopathy. This led to a million-ringgit payout in view of the nature of the awards given by the courts, which included cost of care, loss of income, and aggravated damages, amongst others.

The challenges shown above demonstrate the importance of having a central database of national statistics to provide a definitive idea on how exactly anaesthesiologists are impacted. In pushing for more anaesthesiologists to be educated on the ever-increasing medicolegal issues in Malaysia, we cannot rely on international studies or courts highlighting significant judgements alone. The national societies and special interest groups representing anaesthesiologists should do more in ensuring all legal cases are recorded efficiently and available for a detailed analysis so that any shortcomings in anaesthetic management can be identified and managed accordingly.

Legal governance of medical practice in Malaysia

In Malaysia, the legal framework concerning the governance of medical practice falls under a few ambits of legislation. The main legislation is the Medical Act 1971 ("Act 50") and its subsidiary legislation, Medical Regulations 2017 ("2017 Regulations"). Under this act, the role and composition of the Malaysian Medical Council is well established. The Council is given the powers to not only regulate the standards of practice of registered medical practitioners but also to regulate the professional conduct and ethics of registered medical practitioners.[14]

To this end, the Malaysian Medical Council has published various guidelines pertaining to codes of ethical professional conduct, duties of doctors, good medical practice, confidentiality, consent taking, conflicting interests, and many others. These guidelines provide some framework for doctors in conducting themselves ethically and upholding professionalism. Any infringement of the above guidelines may potentially lead the doctors to be investigated by the Malaysian Medical Council or used in the court of law.[15] Moreover, guidelines established by local and foreign societies representing the clinical specialities may also be used by lawyers during court proceedings in addition to the role played by the expert witnesses representing both the plaintiff and the defence when determining whether defendant doctors practised to the acceptable standard of care.[16]

Doctors are also bound by legal principles and precedence determined by the judiciary for medicolegal cases. These judgements are handed down not only by courts in Malaysian jurisdiction, but also from UK and Australia. The Civil Law Act of 1956 formally received the common law of England, rules of equity, and certain English statutes, and applies English law in matters such as tort law subject to local circumstances and necessary qualifications where permitted.[17] As the legal principles are constantly evolving with the times, it is important that doctors keep abreast of the latest developments happening in these jurisdictions.[18]

Impact on anaesthesiologists

It is important to note that the overall increase in the trend of litigation does not represent a deterioration of anaesthetic standard but rather an increase in the number of high-risk cases being performed as well as the improvement in resuscitation skills. However, this has also inadvertently led to patients suffering from complications such as hypoxic ischaemic injuries while in the process of being resuscitated. There is also increased public awareness on the options of pursuing litigation. The media also plays a significant role in highlighting medical negligence cases that are successful in suing negligent doctors or hospitals. The high cost in the care of injured patients suffering from hypoxic brain injury or cerebral palsy also pushes the next of kin to seek compensation via the courts when out-of-court settlements fail to achieve a successful resolution.

As such, it is not surprising to see that anaesthesiologists are inevitably exposed to the threats of litigation. It is thus of paramount importance that an attempt should be made to further reduce the incidence of errors by the improvement in techniques and monitoring as well as adopting best practices. All these factors will influence the courts to take a more balanced view that anaesthesiologists have met the standard of care.

Second Victim Programme

Dr. Albert Wu coined the term “second victim” to highlight the impact of unanticipated adverse events, medical errors, or patient-related injury on healthcare providers who suffer alongside the primary victims, who are the patients and their families.[19] Many of the anaesthesiologists who are already facing mental anguish as a result of an adverse clinical event describe worsening feelings when faced with a legal situation. The fear is not only about the prospect of facing a lengthy battle in court where their clinical acumen, judgments, and decision-making comes into question, but also the potential financial catastrophe in the event the court awards are beyond what they are insured for.

Recognising this, a Task Force from the Malaysian Society of Anaesthesiologists and College of Anaesthesiologists, Academy of Medicine Malaysia in collaboration

with the Malaysian Society of Clinical Psychology produced a guide called A-SHIELD Peer Support After Adverse Events: Guide to Establish Second Victim Programme.[20] Although there is no data on the prevalence of second victims in Malaysia, international studies suggest that almost half of all healthcare providers involved in an adverse event will become second victims.[21]

Although the programme has just been launched, it will be interesting to see whether a structured response and support mechanism put in place will potentially help anaesthesiologists involved in medicolegal lawsuits to be better prepared to face them. However, the onus will be on the anaesthesiologist to not only seek support from their trusted peers but to also look at other potential solutions to equip themselves to navigate the complex world of medicolegal lawsuits.

Potential solutions

Among the proposed solutions are increased awareness by providing better medicolegal education for doctors at undergraduate or postgraduate levels. Despite recognising the potential pitfalls faced by the doctors, many programmes do not currently provide adequate medicolegal modules. Although it is well known that understanding health law plays a crucial role in the field of medicine as it dictates appropriate practices, regulations, and rights and responsibilities for healthcare professionals and patients, many do not realise the importance of actually paying attention to this area.[22] In a research article, Professor Puteri Nemie concluded: "Educating future medical professionals with the fundamentals of law and ethics would ensure greater accountability, knowledge and personal commitment in providing medical services to the society. The ideals of professionalism not only require them to have the necessary expertise, dedication, respect, compassion, empathy, honesty, altruism, responsibility, integrity, self-improvement and accountability but also adherence to the demands of law and highest ethical standards."[23]

Another proposal that is currently being explored is to investigate mediation instead of court litigation as a way forward for dispute resolution. On February 6, 2025, the Legal Affairs Division of the Prime Minister's Department announced the proposed implementation of the Madani Mediation Centre that will look into strengthening the country's mediation landscape while at the same time achieving fair, effective, and harmonious conflict resolution for the greater good.[24] This is a welcome announcement by the majority of healthcare professionals, as it is well recognised that mediation provides a more effective, compassionate, and lasting resolution that benefits healthcare institutions, practitioners, and patients.[25] Mediation would offer patients and their families a path toward quicker conflict resolution and allow them to focus on the recovery of their loved ones rather than fighting a protracted battle in the courts where the outcome may not be satisfactory to all parties involved.

Conclusion

The rising incidence of litigation against anaesthesiologists in Malaysia is of serious concern to the fraternity. There is no doubt that clinical governance plays a crucial role in ensuring patient safety as well as upholding professional accountability and fair outcomes in medicolegal lawsuits. However, the impact of litigation on anaesthesiologists, who face both professional and emotional stress, cannot be denied. As such, support mechanisms such as the Second Victim Programme are vital to mitigate the effects of litigation and encourage resilience amongst practitioners. Finally, Malaysia's anaesthesiology leaders should focus on finding the right balance between safeguarding patients from harmful negligent practices and protecting the wellbeing of anaesthesiologists. Given that the practice of anaesthesiology requires safeguarding, a monumental effort involving all stakeholders will be required sooner rather than later.

Declarations

Ethics approval and informed consent
Not required.

Competing interests
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