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Patients Suing Doctors: Jeopardizing the Doctor-Patient Relationship

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The number of patients suing their doctors has been increasing in Thailand. Some cases have been brought to court, others have been brought to the Medical Council of Thailand, and others have been pursued in the media. Accusations of medical malpractice inevitably jeopardize the relationship between health workers and patients. It is currently unclear how the rise in malpractice suits will affect Thailand.

Complaints to the Medical Council of Thailand

According to a Medical Council of Thailand report on January 2006, 258 cases of possible medical malpractice were submitted to the Medical Council from 1993 to 2005. This is 8 cases per 1,000 doctors or 4.1 per 100,000 members of the general public. The issues most frequently raised were professional standards and advertising (see chart).



Medical Malpractice Cases Brought to the Medical Council of Thailand 1993 to start of 2005

Issues	Number	Percentage
Medical Profession Standard	149	57.7
Medical Profession Advertisement	66	25.6
Professional Dishonor	11	4.3
Negligence of Patient's Safety and Unnecessary Loss	8	3.1
Infraction of Laws	8	3.1
Issue of false certification and comments in bad faith	5	1.9
Support of illegal profession	4	1.5
Lack of respect toward professional colleague	3	1.2
Discourtesy to patient	2	0.8
Refusal to provide patient with assistance	1	0.4
Experiment on humans without consent	1	0.4
Total	258	100.0

Source: Medical Council of Thailand.,2006. Issues brought to sub-committee of the Medical Council of Thailand from 1993 to present. Photocopy.

According to Dr. Somsak Lolekha, President of the Medical Council of Thailand, malpractice suits have a number of causes: a decline in professional standards; a deterioration of the relationship between doctors and patients, which results in poor communication; inappropriate promises to patients; unrealistic expectations among patients; treatment costs that are too high for patients to pay; and doctors' failure to seek patients' views. In some cases, doctors intentionally mislead patients, which leads the patient to mistrust the doctor once the truth is known.

In January, 2005 there were 353 complaints pending before the Medical Council 218 from the period before 2005, and 135 from the year 2005. Of the 218 complains from the period before 2005, the Medical Council upheld 76 (36%) and rejected 138 (65%).

Since the establishment of the Medical Council of Thailand in 1968, only 2 doctors have had their licenses revoked. It is easy to understand why people choose instead to pursue their cases through the media.

From the "Case of Dolaporn" to the "Case of Dokrak"

Medical malpractice had a high profile during the year 2005. The Nonthaburi Provincial Court ordered the Office of the Permanent Secretary to pay Mrs. Dokrak Phetprasert 800,000 baht damages plus interest at the rate of 7.5% per year for a 6-year period (2,000,000 baht in total). Mrs. Phetprasert became completely blind after taking drugs prescribed to her by a doctor at Nakhon Sawan Pracharak Hospital.

Even though it was not the first time a patient had been to court to defend his or her rights, the "Dokrak" case received a great deal of attention from medical personnel in Thailand.

Ten years ago, Mrs. Dollaporn Lorsermwattana, President of the Medical Victims Network, filed a lawsuit against Phya Thai 1 Hospital, over a incident during childbirth that caused her son to be disabled. She pursued the case for 13 years, but it was eventually dismissed by the court because too long had elapsed since the time of the incident.

Many victims of medical malpractice are not able to seek justice because of a lack of medical and legal knowledge. Sometimes the legal procedure can add to the suffering of the victim, who therefore chooses to withdraw charges or seek a compromise, rather than reaching the same outcome as the Dollaporn case.

Examples of Malpractice Suits Reported in the Media during 2005

“Pyelic Calculus”—Mrs. Sumali Nikornsaen filed a lawsuit against doctors of Ramathibodi Hospital following the death of Mrs. Rabiab Chuihiran, who had been treated for pyelic calculus. The doctors claimed that the death was caused by excessive blood loss, while Dr. Winit Puapradit, Director of Ramathibodi Hospital, said that there was a misunderstanding between the doctors and the patient’s relatives.

“Nong Dream”—Mr. Poolsawat Pitoontham, a garage owner in Lat Phrao, filed a lawsuit against doctors of Ramkhamhaeng Hospital following the death of his 4-month-old daughter, Pannita Pitoontham, or “Nong Dream.” The girl had been showing symptoms of listlessness and a lack of appetite. The doctors claimed that the death was due to blood infection.

“Death after Delivery”—Mr. Akanit Tempiroj asked the police to bring charges against Lt. Col. Dr. Yanyong Imsuwan, an obstetrician at Ekpathum Hospital, after the death of Mrs. Paijit Mueangtum from intrapartum haemorrhage. The doctor argued that the death was due to placenta praevia.

“Vegetative state due to dental treatment” Mrs. Tiwakarn Onyai sought compensation for malpractice against her son Chanayuth Patangthane, who suffered brain injuries during dental treatment in 2003, causing him to enter a vegetative state. In January 2006, the Nonthaburi Provincial Civil Court ordered the Ministry of Public Health to pay 2,400,000 baht compensation to the son and to pay 1,070,000 baht compensation to the mother, plus 7.5% annual interest and 20,000 baht in lawyer fees.

The “Nong Sen” Case: Conflict between the Minister of Public Health and the Medical Council of Thailand

A recent case clearly showed the doctors’ professional organization to be protecting its members rather than patients. In 2005, doctors at Samut Prakan hospital twice refused to admit a patient named Pirachat Chanarawee, or “Nong Sen,” who was suffering from a 41°C fever. Nong Sen subsequently died. Mr. Phinij Charusombat,

the Minister of Public Health, stated that the death was due to the medical malpractice. The Medical Council of Thailand asked for a meeting with the minister to clarify the issue. The meeting was followed by a seminar on “The Crisis in the Relationship between Doctors and Patients” on January 13, 2006.

Dr. Cherdchoo Ariyasriwattana, secretary of the Medical Council’s administrative subcommittee, stated that the Medical Council did not necessarily disagree with the substance of the minister’s comment. Rather, the Medical Council was worried that the comment might threaten morale among doctors, who had to work under conditions of shortage and limited budgets. Moreover, all medical care carries some risks, no matter how careful the doctor.

Dr. Ariyasriwattana stated that civil and criminal lawsuits against doctors had already caused some district hospitals to suspend operations or deliveries, especially in complex cases. Instead, patients are sent to provincial or regional hospitals, which are better equipped. She suggested that the government set up a compensation fund to assist patients suffering from complications from treatment. Compensation need not depend on whether the doctor was responsible, especially when the doctor had complied with professional standards.

The Medical Council’s Proposal

The Medical Council of Thailand has released a Draft Statement announcing that its members (which means all doctors in Thailand) have the right to choose whether to perform examinations and treatments in non-urgent cases, for the patient’s benefit. This statement can be interpreted as protecting doctors from being sued for negligence.

The Medical Council has stated that it will release a revised statement in 2006. The revised statement may clarify patients’ rights, to improve the relationship between doctors and patients.

A Compensation System—The Solution?

Medicine and public health undeniably have a commercial dimension. In many cases, the doctor

is “service provider” and the patient is a “customer,” and there is more to the relationship than curing people or saving lives. If there is no effective damage management system for the medical service, then lawsuits against the doctor will increase enormously. This will inevitably hurt the general public.

In the United States, there is a compensation system called “Financial Medicine”, whereby doctors buy indemnity insurance with high premiums and carry out excessive examinations and treatment, which is known as defensive medicine. Dr. Sanguan Nittayaramong, Secretary-General of National Health Security Office, states that in the USA, 25% of all public health costs, or 4% of GDP, are used for legal procedures or insurance instead of treatment.

In the United Kingdom, New Zealand, Canada, Finland, and France, there is compensation system that does not try to establish guilt, but instead to establish whether the illness or injury really was caused by medical intervention. Compensation funds provide assistance to victims, and central committees investigate problems in the health system. The advantages of this approach is rapid compensation of victims and a dramatic reduction in lawsuits, which are generally 3-4 times less common than in the United States.

In these countries, it was doctors who campaigned for compensation systems, to protect themselves from being sued. In contrast, in Thailand, it has been the victims rather than the doctors who want a compensation system. Doctors are preoccupied with protecting themselves in court.

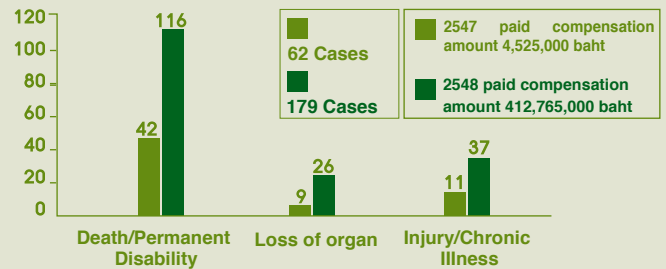
In Thailand, under Article 41 of the National Health Security Act 2002, compensation is provided only to families covered by the government health insurance system. This is nevertheless a first step towards reducing health system inefficiencies and avoiding conflict between doctors and patients. If legal measures are used for prosecuting physicians for malpractice, conflicts between doctors and patients will be worsened. Even more importantly, legal measures may harm the health system, since people will have to pay more, and doctors may refuse to carry out treatments.

In 2004-2005, the National Health Security Office paid compensation amounting to 17 million

baht under Article 41 of the National Health Security Act 2002. Of this amount 4.5 million baht was paid in 2004, and 12.7 million baht in 2005.

In 2004, there were 85 requests for compensation, of which 62 were successful. In 2005, there were 218 requests, of which 179 were successful. The majority of cases (66%) were related to death, disability, and loss of organ. (See chart).

The number of those suffering from medical treatment and receiving primary grants in the fiscal year of 2004-2005



Source : National Health Security Office, 2005

Thailand appears to be following the American model. Insurance companies have begun offering malpractice insurance to medical professionals. Lawsuits against doctors have become a new source of business for some law firms. If these trends continue, then ordinary people will be the ones to suffer because:

- (1) People will have to pay the costs of doctors’ malpractice insurance and excessive treatment due to defensive medicine, including over-use of medical technology.
- (2) Unnecessary treatment not only wastes resources, but can also cause harm. According to a US Institute of Medicine report, medical mistakes cause 50,000 –100,000 deaths yearly in the US, which is more than the numbers of deaths from accidents.
- (3) The relationship between doctors and patients deteriorates. Doctors and patients trust medical treatments, but patients and their families lose faith in the medical system.

