

LAW AND MEDICAL DISCIPLINARY SANCTIONS: ENHANCING MEDICAL PRACTICE AND HEALTH QUALITY IN INDONESIA

Hilaire Tegan, Andalas University

ABSTRACT

Background: *In carrying out their professional duties, doctors and dentists are bound by not only medical discipline norms but also and more importantly by ethical and legal norms in Indonesia. The enforcement of these norms has led to the imposition of disciplinary and ethical sanctions on many physicians by the Indonesian Honorary Council of Medical Discipline or MKDKI and the Indonesian Honorary Council of Medical Ethics or MKEK. For public safety and the maintenance of a high level of professionalism, the council is authorized by Law no 29/2004 to investigate and determine medical and dental disciplinary and ethical sanctions.*

Objectives: *This study aims at discussing the laws and policies of ethical and disciplinary sentence for physician felony offenders. It seeks to address the issue as to how physicians are held accountable for their breach of the public's trust.*

Method: *This study relies on the case study method, looking at two professions in depth i.e., Medicine and Dentistry. 287 cases of medical malpractice presented to both MKDKI and MKEK from 2015 to 2017 were examined. The research process included a review of cases while relevant laws and regulations and other data were recorded. Descriptive statistical analysis, cross-tabs analysis, ANOVA and logistic regression analysis was applied to reveal information relevant to the research.*

Findings: *The study reveals that sentencing disparity and the Indonesian Medical Council Regulation No. 32/2015 weaken the position of both MKDKI and MKEK as regulators of medical and dental professions in Indonesia. The study also reveals that when both councils choose to exercise their disciplinary discretion, they often focus on character-related misconduct, including criminal misconduct that bears only a tangential relation to clinical quality and patient care.*

Conclusion: *Despite the existence of laws and disciplinary sanctions, the issue of medical malpractice continues to jeopardize medical and dental professions.*

Keywords: Law and Medical Disciplinary Sanctions, Medical Practice and Health Quality.

INTRODUCTION

Article 66 section 1 of Law No. 29/2004 on Medical Practice stipulates that “any person who suffered prejudice as the result of the action of a physician in carrying out medical practice may file written complain to the Chairman of the Indonesian Honorary Council of Medical Discipline.”

Anyone can make mistakes, exercise poor judgment, or commit criminal offenses or various other indiscretions. Physicians, by virtue of the responsibility assigned to the medical profession, are held to a higher standard than the average person. When a doctor causes harm, either inadvertently or intentionally, criminal charges may apply for violations of the law and civil suits are options for individuals who allege malpractice. The norms and standards to be followed by doctors and dentists in carrying out their duties are set in article 55 sections 1 of Law No. 29/2004 on Medical Practice. This law is furthered by the Medical Practice Law, Government Regulation, Minister of Health Regulation, Indonesian Medical Council Regulation, Provisions and Guidelines of Profession Organization, Professional Code of Ethics as well as general practice in the field of medicine and dentistry. This set of provisions shows how important the protection of the Indonesian people and the maintenance of a high level of medical professionalism are to the Indonesian government. Government intervention can be justified by the fact that medical training generally lacks standards and is improperly oriented toward profits. This influential governmental interference has resulted in the establishment of the disciplinary council to require the licensing of physicians as opposed to merely accepting diplomas as prima facie evidence of competency.¹ The violation of discipline can be grouped into three categories, namely: medical practice with incompetence, improper implementation of the task and professional responsibilities for the patient, and reprehensible behaviour that undermines the dignity and honour of the medical profession. Medical errors and quality improvement have continued as key concerns in medicine during the past decade. Disruptive conduct has been repeatedly cited as an enemy of quality improvement and a cause of medical errors. Disruptive practitioner behaviour is resulting in compromised patient care in hospitals throughout the country, despite laws and accrediting agency standards to address such behaviour. However, despite the existence of laws and disciplinary sanctions, the issue of medical malpractice continues to jeopardize medical and dental professions. This article seeks to fill this gap in the literature, paying attention to medical licensing restriction politics in Indonesia.

RESEARCH METHOD

This is socio-legal research on medical malpractice in Indonesia. The study relies on the case study method, looking at two professions in depth i.e., Medicine and Dentistry. The examination draws upon the punishment of medical malpractice as an offence in the Indonesian criminal justice system. The study performed a considerable analysis of 287 cases of medical malpractice presented to both the Indonesian Honorary Council of Medical Discipline and the Honorary Council of Medical Ethics from 2015 to 2017. The research process included a detailed review of the case while relevant laws and regulations and other data were recorded. Simple descriptive statistical analysis, cross-tabs analysis, ANOVA and logistic regression analysis was applied to uncover information relevant to the research.

The Role and Authority of the Indonesian Honorary Council of Medical Discipline

Indonesian Medical Disciplinary Board is an autonomous institution that is authorized to receive complaints of alleged violations of discipline, examines complaints and hands down sanctions. MKDKI is not a mediating institution, in the context of mediation of dispute

settlement, but rather is a state institution authorized to impose disciplinary sanction on doctors and dentists guilty of medical malpractice or misconduct. Infractions of medical discipline concerning competence, duties and responsibilities towards patients, and behaviour in maintaining the dignity and honour of the profession consist of 28 forms: (1) Conducting medical practice with incompetence; (2) Not referring the patient to a doctor/dentist who has appropriate competency; (3) Delegating work to certain health incompetent health personnel; (4) Providing a temporary incompetent and unauthorized surrogate physician or dentist, or not making any notices regarding such surrogate; (5) Conducting medical practice under unfit physical, or mental health condition; (6) Doing what should not be done or not doing what should be done, in accordance with professional responsibilities, without valid justification so as to endanger the patient; (7) Conducting excessive examination or treatment contrary to the needs of patients; (8) Not providing honest, ethical and adequate information/explanation to the patient or their family in conducting medical practices; (9) Performing medical treatment without obtaining consent from the patient or their close family/guardian;² (10) Not creating or keeping records of medical records intentionally, as regulated in the law or professional ethics; (11) Performing an act aimed at stopping a pregnancy that is not in accordance with the provisions, as regulated in the law and regulations of professional ethics; (12) Performing acts that may terminate the life of the patient at his or her own request and/or the family's; (13) Conducting medical practice by applying knowledge or skills or technology that are out of the proper medical procedures; (14) Conducting medical research using humans as research subjects without obtaining ethical approval from government-recognized institutions; (15) Not providing emergency help on the basis of humanity when doing so does not endanger the physician on duty; (16) Rejecting or stopping the treatment of the patient without proper and valid reason as stipulated in the law and regulations of professional ethics; (17) Revealing the secret of medicine, as regulated in the law and professional ethics; (18) Falsification of examination results; (19) Participating in acts that include torture or execution of death penalty; (20) Prescribing narcotics-drug class, psychotropic and other addictive substances that are not in accordance with the law and professional ethics; (21) Conducting sexual harassment, intimidation or acts of violence against patients; (22) Usurpation of an academic degree or profession designation; (23) Receiving compensation as a result of a request for examination or prescribing medicine; (24) Advertising incorrect or misleading skill/services possessed; (25) Dependence on narcotics, psychotropic, alcohol and other addictive substances; (26) Practicing with a unauthorized Registration Certificate/License and/or a certificate; (27) Dishonesty in determining medical services; (28) Not providing any information, documents and other evidence required by the Indonesian Honorary Council of Medical Discipline for the examination of complaints of alleged disciplinary violations. Disciplinary Sanctions handed down by the Indonesian Honorary Council of Medical Discipline in accordance with article 69 section 3 of Law no 29/2004 include: a) written warning; b) revocation of registration Certificate, or Practicing License; and 3) obligation to attend education or training in medical and dental education institutions. The Indonesian Honorary Council of Medical Discipline aims to uphold the discipline of doctors/dentists in the conduct of medical practice. The medical disciplinary process is generally reactive, rather than proactive (Randall, 2006). It begins when a member of the public files a complaint, or, in the case of discipline on the grounds of criminal or

civil liability, when a court or law enforcement agency files a report with the medical council (Richard, 1990). The council convenes and, if appropriate, investigates the complaint; if it finds the complaint valid, it may exercise its discretion to pursue disciplinary action against the physician, which can range from oral or written reprimand to license revocation or suspension (Sawicki, 2010). Those sanctioned are health care professionals who “*may be incompetent, impaired, uncaring, or may even have criminal intent,*” and thus were properly the subject of investigation and/or action in order to protect patients from harm (Kohn et al., 2000). The domain or jurisdiction of the council is professional discipline. If the council discovers any violation of ethics from a physician, it will call upon the Indonesian Honorary Council of Medical Ethics. However, according to the Indonesian Medical Council Regulation No. 32/2015, the rulings of the council are not meant for judicial purposes and as such court judges are not bound to follow them. This weakens the position of the council as a regulator.

The Role and the Authority of the Honorary Council of Medical Ethics (MKEK)

The process of ethical trial and professional discipline is done separately from the trial process of civil lawsuits or criminal charges because the domain and jurisdiction are different. Ethical and professional disciplinary proceedings are conducted by the Honorary Council of Medical Ethics, while civil suits and criminal charges are conducted in court institutions within the general judiciary. Doctors suspected of violation of professional standards (negligence cases) can be under separate investigations from the court and MKEK. Consequently, a physician found guilty of violating medical ethics by MKEK may be found innocent by a court and vice versa. In the event that a physician is suspected of violating medical ethics, he or she will be summoned and convened by the council of medical ethics for accountability (ethics and professional discipline). This trial aims to maintain accountability, professionalism and professional virtue. In general, complainants are filed by patients or their families, the community or the hospitals where physicians work. The Honorary Council of Medical Ethics is the only governmental organization authorized to hear cases of alleged violation of ethics and/or professional discipline in medicine. As the decisions of MKEK are not intended for judiciary purposes, much like those of the Indonesian Honorary Council of Medical Discipline, they cannot be used as evidence in court, except in the event of a court order in the form of a request for expert information.³ A member of MKEK may provide expert testimony during a court investigation or hearing. Court judges, therefore, are not bound by MKEK decisions. Unfortunately, this can help intensify medical and dental malpractices in Indonesia.

Definition of Medical Malpractice

Black Law Dictionary defines malpractice as

“Any professional misconduct or unreasonable lack of skills. Doctor or other health care professional, through an error or omission in diagnosis, treatment, aftercare or health management, causes an injury to a patient. The meaning of error or omission is based upon the deviation of the doctor or medical professional from a generally accepted standard of care. It is any professional misconduct, unreasonable lack of skill or fidelity in professional or fiduciary duties, evil practice, or illegal or immoral conduct. World Medical Association (WMA) claims that malpractice involves the physician's failure to

conform to the standard of care for treatment of the patient's condition, or lack of skill, or negligence in providing care to the patient, which of the direct cause of an injury to the patient”.

The American Medical Association (AMA) defined disruptive physician behaviour as,

*“Conduct whether verbal or physical, that negatively affects or that potentially may negatively affects patient care. This includes but is not limited to conduct that interferes with one’s ability to work with other members of the health care team”.*⁴

Acts of Malpractice include but not limited to poor practice, misconduct, harassment, fraud, frank monetary or sexual exploitation, substance abuse, etc. But these practices alone often do not result in a complaint against a physician (Appelbaum & Gutheil, 2008). Rightly or wrongly, complainants may feel that they have been ignored, abandoned, blamed, cheated, shown disrespect, or subjected to private or public humiliation and, as a result, have been dishonoured or have lost face (Appelbaum & Gutheil, 2008). In order to recover for negligence malpractice, the plaintiff must establish the following elements: (1) the existence of the physician’s duty to the plaintiff; (2) the applicable standard of care and its violation; (3) a compensable injury; (4) a causal connection between the violation of the standard of care and the harm complained of.

Some Problems in Medical Disciplinary Sanctions

Disparity in punishing

The policy surrounding disciplinary sanction of medical mal-practicing in Indonesia is built in a way that enables disparity in punishing. Sometimes, judges in different jurisdictions sentence similarly situated offenders differently or judges in the same jurisdiction sentence similarly situated offenders differently. As argued earlier, doctors suspected of violation of professional standards (negligence cases) can be under separate investigations from the court and the Indonesian Honorary Council of Medical Ethics. Consequently, a physician found guilty of violating medical ethics by Honorary Council may be found innocent by a court of law and vice versa. The fact that a violation of a professional rule may be deemed not as a violation of the law and vice versa raises the issue of disparity in punishing as the same offence is dealt with differently depending on the ruling institutions. This disparity in punishing causes not only the inefficiency of disciplinary sanctions but also conflicts between patients and physicians and the hospitals. The amount of trust of the public in hospitals and their doctors often brings disappointment when hope does not materialize.

Inconsistency in laws and regulations

Article 62 of the Regulation No. 32/2015 of the Indonesian Medical Council or Konsil Kedokteran Indonesia (KKI) says that the ruling of the Indonesian Honorary Council of Medical Discipline is only intended for professional discipline Medicine and dentistry, not for legal field., so as such, it cannot be interpreted as a violation and/or a mistake in the field of law. This means that the Medical Council, as the regulatory board, admits that its verdict has no legal weight and

that it is up to the judge to decide whether or not it may be used in a court of law as legal evidence. This contradicts article 183 of the Indonesian Criminal Procedure Code which prescribes that legal evidence in a court of law shall consist of the testimony of the witness, information of an expert, letters, guidance and the defendant's explanation. The provision says that judge must at least two of these elements in a reaching his/her verdict in a criminal case. The Indonesian Medical Council is made up of individuals who have great expertise in the field of medicine and dentistry who reach decision after conducting thorough investigations (Ari, 2010). So therefore their decision qualifies as expert's information and should be used accordingly in the court of law. The above regulation of the Indonesian Medical Council also contradicts the 1982 decision of the Indonesian Supreme Court which instructs lower court judges to seek the opinion of the Indonesian Honorary Council of Medical Ethics in prosecuting doctors or other medical personnel suspected of negligence or misconduct in their duties (Michel, 2014). This not only confuses and misguides the Indonesian people but also weaken Indonesian disciplinary sanction policies.

Critics of the medical board

As the governmental agency responsible for the licensure and discipline of physicians, MKDK serve as the gatekeepers of the medical profession. However, critics frequently question whether the council has been living up to its potential in this regard, particularly in the context of professional discipline (Timothy, 1993). When the council chooses to exercise its disciplinary discretion, it often focuses on character-related misconduct, including criminal misconduct that bears only a tangential relation to clinical quality and patient care, as Nadia Sawicki points out (Sawicki, 2010). Such character-related misconducts mainly are: doing what should not be done or not doing what should be done, in accordance with professional responsibilities, without valid justification so as to endanger the patient; not providing an honest, ethical and adequate information/explanation to the patient or their family in conducting medical practices and dishonesty in determining medical services. These misconducts are very hard to prove and so related to the competence of the physician accused of professional misconduct. Though medical license is seen as evidence that a physician possesses the basic tools necessary to practice medicine safely, the license does not ensure that he will actually use these tools correctly going forward. Medical boards that discipline on character-related grounds may not be sending the most constructive signals to physicians trying to confirm their behaviour to the law (Sawicki, 2010). Regularly disciplining on grounds unrelated to quality of care sets a dangerous precedent, suggesting to physicians that the true indicators of professionalism and competency are character-related. Additionally, sometimes the council does not distinguish violation of medical ethics, hospital ethics, and a violation of law and tends to be held hostage by professional and subjective/group interest in assessing a case of violation of the medical code of ethics. There is another significant anomaly that surfaced in examining punishment of physicians: it appears that criminal infractions frequently do not prevent the doctor from a return to practice once punishment is over. Although penalty can hurt doctors, their professional lives do not end with the receipt of disciplinary sanctions. License revocation is not permanent. Most doctors whose licenses are revoked do not reapply; however, of those that reapply most get their licenses back.

Those that do not reapply may be involved in another related profession. Physicians seem to have a kind of second chance in their profession that is not possible for many other offenders in less prestigious fields (Heumann et al., 2008).

Legal protection and the reaction of physicians

Although the complainants see themselves as the party without power in this process, physicians often have the same view of themselves. The perception of being helpless may be fostered by the right of the organization to demand that the physician undergo an independent investigation (Meyer & Price, 2012). Physicians often feel a profound sense of betrayal, both by the complainant and by the investigators. In addition to the sense of betrayal, physicians often feel a loss of status and public face, even though the investigation is confidential (Meyer & Price, 2012). The legal protection of physicians in Indonesia lies in Article 50a of Law No. 29/2004 regarding Medical Practice, which says

"Doctor or dentist, in performing medical practice, has the right to legal protection insofar as he/she performs his/her duties in accordance with professional standards and standard operational procedures".

In addition to this, the legal protection of physicians can be found in many other laws, i.e., Article 24 paragraph 1, Article 27 paragraph 1 and Article 29 of the Health Law, and Article 24 paragraph 1 of Executive Order on Medical Staff. However, there are reports of cases of physicians sued and sanctioned despite the fact that they performed their medical duties "*in accordance with professional standards and standard operational procedures*" (Michel, 2014). Some complaints often may not be related to the actual malpractice of the physician. Rightly or wrongly, complainants may feel that they have been ignored, abandoned, blamed, cheated, shown disrespect, or subjected to private or public humiliation and, as a result, have been dishonoured or have lost face, as Donald J. Meyer and Marilyn Price observe (Meyer & Price, 2012). The complainant's conscious motivation typically derives from wanting to right or avenge what that individual perceives as an injustice or an offense, (Meyer & Price, 2012) and this does not necessarily prove that the physician has violated any rule of his/her profession. Although the complainants see themselves as the party without power in this process, physicians often have the same view of themselves. Furthermore, Health care agency investigators and reviewers are often individuals for whom investigation and peer review is a very small part of their overall job description. They often lack legal/medical expertise. In health care organizations, the persons involved with peer investigation and peer finders of fact may have little familiarity with such matters as due process and confidentiality, as they arise in a legal context. The individuals who investigate complaints against licensees are usually not health care providers. (Meyer & Price, 2012). They may be trained for legal investigations. The board in general tends to attract individuals who are identified more with the policing of health care and with public safety than with the practice of health care and its practitioners. Both judging and its decisions have political ramifications within the organization. Longstanding intra-institutional conflicts may contaminate what should be a process that aspires to objectivity and justice. Members may lobby or attack an organization's officers, investigators, or adjudicators in an effort to influence the review process.

It is well for investigators to be reminded of the Athenian Senate's death sentence for Socrates, a man whose infraction was the public intellectual humiliation of persons in power (Meyer & Price, 2012).

CONCLUSION

We live in an era in which there has been a public loss of confidence and security in the people and institutions that are designated to protect us. Medical malpractice is an enemy of quality improvement and a cause of medical errors and compromised patient care in hospitals throughout Indonesia, despite laws and accrediting agency standards that require facilities to address such behaviour. The state interest in regulating doctors is “*especially great*” in that the physician is in “*a position of public trust and responsibility.*” Thus, state medical boards engage in gate-keeping and supervision for the putative purpose of protecting the public. In this respect, institutional providers such as hospitals have historically reserved disciplinary authority. Disruptive behaviours can foster medical errors, contribute to poor patient satisfaction and to preventable adverse outcomes, increase the cost of care, and cause qualified clinicians, administrators and managers to seek new positions in more professional environments (Meyer & Price, 2006).

ENDNOTE

1. Altschuler, supra note 24, at 193.
2. Article 1365 of the Civil Code, and Article 351 of the Criminal Code about persecution. Law No. 8/1999 on Consumer Protection.
3. See also Article 62 paragraph 2 of the Indonesian Medical Council Regulation No. 32/2015.
4. Opinion E-9.045: Physicians with disruptive behavior. Report on the Council of Ethical and Judicial Affairs 2-A-00. Chicagoan American Medical Association. Available at <http://www.ama-assn.org/resources/doc/ethics/ceja-3i09.pdf>. Accessed April 14, 2012.

REFERENCES

- Appelbaum, P., & Gutheil, T.G. (2006). *The Clinical Handbook of Psychiatry and Law (Fourth Edition)*. Baltimore: Williams and Wilkins.
- Ari, Y. (2010). *Hukum Pidana Malpraktik Medik*. ANDI, Yogyakarta.
- Heumann, M., Brian, P., & Jennifer, L. (2008). Prescribing justice: The law and politics of discipline for physician's felony offenders. *Public Interest Law Journal*, 17(1), 1-38.
- Kohn, L.T., Corrigan, J.M., & Donaldson, M.S. (2000). *To err is human: Building a safer health system*. National Academies Press.
- Meyer, D.J., & Price, M. (2006). Forensic psychiatric assessments of behaviourally disruptive physicians. *Journal of the American Academy of Psychiatry and the Law*, 34(2), 72-81.
- Meyer, D.J., & Price, M. (2012). Peer review committees and state licensing boards: Responding to allegations of physician misconduct. *Journal of the American Academy of Psychiatry and the Law*, 40(2), 193-201.
- Michel, D.M. (2014). Perlindungan hukum terhadap dokter dalam memberikan pelayanan medis. *Lex et Societatis*, 2(8), 14-21
- Randall, R.B., Pablo, A., & Josephine, G. (2006). State discipline of physicians: Assessing state medical boards through case studies. *The Urban Institute*, 33(1), 44-45.
- Richard, P.K. (1990). State medical boards and medical discipline. *Public Law*, 89(1), 95-452

- Sawicki, N.N. (2010). Character, competence and the principles of medical discipline. *Journal of Health Care Law and Policy*, 13(2), 285-323.
- Timothy, S.J. (1993). Consumers, complaints and professional discipline: A look at medical licensure boards. *Health Matrix*, 3(1), 309-345.