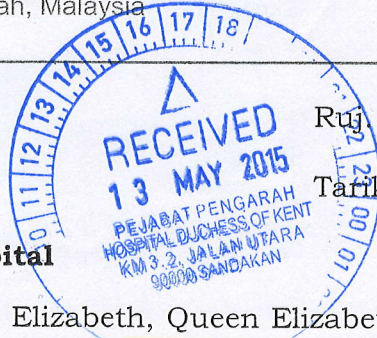


**JABATAN KESIHATAN NEGERI SABAH
BAHAGIAN PERUBATAN**

Tingkat 3, Rumah Persekutuan
Jalan Mat Salleh
88590 Kota Kinabalu
Sabah, Malaysia



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Ruj. Kami: (72)JKN(SB)S/2608/236(C)

Tarikh : 29 April 2015

Pengarah Hospital

Hospital Queen Elizabeth, Queen Elizabeth II, Mesra Bukit Padang, Wanita dan Kanak-Kanak Sabah, **Duchess Of Kent Sandakan**, Tawau, Lahad Datu, Keningau, Beaufort, Papar, Sipitang, Ranau, Kota Belud, Kota Marudu, Semporna, Kinabatangan, Beluran, Kudat, Tenom, Tambunan, Pitas, Kunak, Kuala Penyu dan Tuaran.

Tuan/Puan,

EDARAN MAKLUMBALAS ISU-ISU MEDIKOLEGAL

Adalah saya diarah merujuk kepada perkara tersebut di atas.

- Bersama-sama ini disertakan isu-isu medikolegal susulan daripada hasil perbincangan dalam Seminar Medikolegal yang telah berlangsung pada 12 April 2015 di Auditorium, Hospital Queen Elizabeth. Turut dilampirkan bersama adalah maklumbalas berkenaan isu-isu tersebut untuk makluman dan tindakan pihak tuan/puan selanjutnya.
- Kerjasama pihak tuan/puan amat dihargai dengan ucapan terima kasih.

Sekian.

“BERKHIDMAT UNTUK NEGARA”

Saya yang menurut perintah,

(DR WILLIAM GOTULIS)

Timbalan Pengarah Kesihatan Negeri Sabah (Perubatan)
b/p Pengarah Kesihatan Negeri Sabah

- s.k. - Pengarah Kesihatan Negeri Sabah
- Timbalan Pengarah Kesihatan Negeri (Pengurusan)
 - Timbalan Pengarah Kesihatan Negeri (Kesihatan Awam)
 - Timbalan Pengarah Kesihatan Negeri (Pergigian)

Untuk Tindakan	
<input type="checkbox"/>	Unit Sumber Manusia
<input type="checkbox"/>	Unit Kewangan & Akaun
<input type="checkbox"/>	Unit Pentadbiran
<input type="checkbox"/>	Unit Latihan
<input type="checkbox"/>	Unit Pembangunan & Aset
<input type="checkbox"/>	Unit Perolehan
<input checked="" type="checkbox"/>	Dr Paul


Elsan to all

Read + discuss with all the doctors + nurses + MA's.

20

13.5.15

DR. FRANCIS PAUL
MB, BCh, BAO (Ireland)
MMC Reg. No. 33087
Hospital Director
Duchess of Kent, Sandakan

No	Issues	Suggestion	Action
1.	Is informed consent needed from the spouse of the patient in relation to elective operations?	<p>What the law says:</p> <ol style="list-style-type: none"> From the "MMC Guideline CONSENT FOR TREATMENT OF PATIENTS BY REGISTERED MEDICAL PRACTITIONERS - Guideline No. 16g : Consent for sterilisation, hysterectomy and orchidectomy <p>"Consent for sterilisation procedures in a woman or man should be given by the patient concerned. Similarly, hysterectomy and orchidectomy should also involve consent by the patient. Any discussion between the spouses in this respect does not and should not deny the rights of the patient concerned in making the final decision and giving consent"</p> <ol style="list-style-type: none"> However, case laws decided from the Malaysia Court held that the husband's consent should also have been obtained. This is because of the nature of the consent form ("Agreement by Husband/Wife) and the fact that the nature of the operation meant that the wife could no longer conceive. With the new development of decisions as held in the Courts, therefore for cases involving the consent for operations related to reproductive tract, it is suggested that the husband's consent is obtained as well especially if the 	<p>All Hospital Directors to inform all the medical practitioners.</p> <p style="text-align: right;">  DR. WILLIAM GOTULID MRBS (Malaya), MHA (University of the Philippines) Timbalan Pendaah Kesihatan Negeri (Perubatan) Jabatan Kesihatan Negeri Sabah 88000 Sandakan </p> <p style="text-align: right;">15/12/2015</p>

		<p>consent form stated clearly the column on ("Agreement by Husband/Wife).</p> <p>4. In cases whereby the next-of-kin is the person in authority to make any decision pertaining to the treatment for the patient, case laws seem to suggest that the duty of the doctor has extended to that particular person, and not only to the patient himself or herself. Therefore, medical practitioner may need to explain to the relative or next-of kin in obvious cases whereby the patient SPECIFICALLY mentioned to the doctor "Please ask/explain to my husband or "Tanyalah anak/suami saya".</p>	<p><i>Handwritten signature</i></p>
2.	Can house officer take consent from patient?	<p>What the law says:</p> <p>According to Guideline No. 11 on Responsibility of Medical Practitioner Taking Consent:</p> <p>"It is generally required that only fully registered medical practitioner may take consent for a procedure, examination, surgery, or treatment - from a patient, and also perform the procedure, examination, surgery or treatment - for which that consent has been taken."</p>	<p>All Hospital Directors with Houseman training</p> <p><i>Handwritten signature</i></p>

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		<p>That means a house officer who is on temporary registration is not allowed to take consent.</p>	
<p>3.</p>	<p>Other issues related to consent taking</p>	<p>3.1 Guideline No. 3 Necessity To Warn Patients About Material Risks:</p> <p>“Every patient as an individual has a choice whether or not to undergo a proposed procedure, surgery, examination or treatment.</p> <p>A medical practitioner is obliged to disclose information to the patient and to warn the patient of material risks before taking consent. Failure to obtain a patient’s consent or disclose material risks may be interpreted as a failure of the standard of care resulting in a disciplinary inquiry by the Medical Council or may even be construed as a breach of duty of care and legal action instituted.”</p> <p>3.2 Guideline No. 11 Responsibility of Medical Practitioner Taking Consent:</p> <p>If consent was taken by another practitioner – “...the final responsibility and liability will rest on the practitioner who performs the procedure, who should, before performing the procedure, confirm the nature of the information given to the</p>	<p>All Hospital Directors to inform all the medical practitioners.</p>


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patient by the other practitioner in the course of taking consent..."

3.3 Guideline No. 16a

Additional Special Aspects On Consent:


"a. Period of Validity of consent

It is generally believed that for an acceptable standard of care, the consent for an invasive procedure has to be taken a reasonable period before the procedure. A reasonable period would be not more than 7 days. If during this period there is a change in the circumstances or condition of the patient requiring a review of the procedure initially planned, for which consent had been taken, then it is incumbent on the practitioner to obtain a fresh consent."

3.4 Guideline No. 16c

Consent for photographs and audio-visual recordings

"Prior consent must be obtained if the practitioner is planning to take clinical photographs or to make audio-visual recordings before, during or after an invasive procedure."


DR. WILLIAM SOTOLUIS

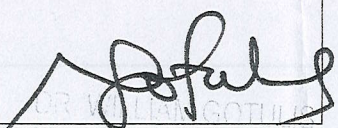
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Tribunals of the National Medical Commission (Perubatan)

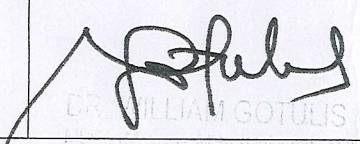
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MOC 31/15

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4.	Can patient or relatives get a copy of the case notes?	<p>According to "Pekeliling KPK Bil. 17/2010, perenggan 9 Garis Panduan Pengendalian dan Pengurusan Rekod Perubatan Pesakit Bagi Hospital-hospital dan institusi perubatan"–</p> <p>"RPP secara fizikalnya adalah hak milik hospital manakala maklumat di dalam RPP adalah hakmilik pesakit. Sebarang kes-kes yang melibatkan atau berpotensi menjadi kes medico legal hendaklah disimpan berasingan di tempat yang selamat. RPP berkenaan tidak boleh diserahkan kepada mana-mana pihak tanpa kelulusan Pengarah Hospital. Walau bagaimanapun, sekiranya terdapat perintah mahkamah untuk pihak hospital menyerahkan salinan RPP kepada mana-mana orang, pihak hospital hendaklah mematuhi perintah mahkamah tersebut."</p> <p>Therefore, patient or relatives can only get a copy of the case notes after obtaining a court order.</p>	All Hospital Director
5.	What about the Home-Based Card that is being practised in all the government clinics in the whole State of Sabah and Sarawak?	<p>Referring to the same Guidelines "RPP berkenaan tidak boleh diserahkan kepada mana-mana pihak tanpa kelulusan Pengarah Hospital". Hospital here applies to all health facility. In terms of medico legal issue, when the case notes are kept with the patient, in the event if there is any tampering of the information inside the case notes, the liability lies on the Doctor. Also, if the defending team has no copy of the case notes, it is as good as no documentation and in other words no defence for us. Therefore, the practice of home-based card should be balanced with any</p>	TPKN (P) – to bring this up for attention of PKN


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		<p>existing guideline. The suggestion is that at least a copy of the case notes should be kept in the clinic. Another suggestion is that for any new patient coming to the clinic, all case notes should be kept by the clinic and not given to the patient.</p>	
6.	<p>In the event of adverse outcome, should the Doctor involved apologize to the patient and is apologising amounts to admitting liability?</p>	<p>According to MMC Guidelines on GOOD MEDICAL PRACTICE</p> <p>“If a patient has suffered serious harm for whatever reason, the doctor should act immediately to put matters right. The patient must receive a proper explanation and the short and long term effects. When appropriate the doctor should offer an apology.”</p> <p>The Court determines fault, not the parties. An admission of fault is merely the opinion of the defendant and whether this admission is correct or not is based on facts and not by what was said. Generally, it is not determinative of the legal outcome but in certain circumstances, the apology may have bearing on the Court’s determination. This is because in some cases, the Courts in Malaysia have treated an apology as an admission in certain circumstances.</p> <p>Therefore, open disclosure should still be practised and should be handled carefully i.e:</p> <ol style="list-style-type: none"> a. Phrase the words appropriately b. Be conscious of the non-verbal communication c. Document all discussion. 	<p>All Hospital Directors to inform all the medical practitioners.</p> <p style="text-align: right;">  DR. WILLIAM GOTULIS <small>Associate Professor, University of the Philippines Timor-Leste, Bilogian Resihalan Negeri (Perubatan) Pusat Kesihatan Negeri Sabah 84000 11/15</small> </p> <p style="text-align: right;">15/1/15</p>