

# ANNUAL REPORT 2016

Greetings from MDM Bhd!

The local medical negligence litigation environment is getting from bad to worse. The following factors are aggravating the local environment:

1. The claims settlement is increasing
2. The number of claims is also increasing
3. The implementation of the Private Healthcare Facilities Services Act & Regulations
4. The Judiciary's tendency to adopt Rogers v Whittaker over Bolam,
- 5 The liability of the hospitals (non-delegable duty)
6. The medical expenses paid by insurers or employer can be claimed from the defendants.
7. The expected implementation of compulsory indemnity.

The current typical award for:

1. A brain-damaged baby with slightly reduced life expectancy and full nursing care is RM 3,500,000.00 (including interest) and with costs of RM 600,000.00. There is a recent court award of RM 5,605,254.00 for a brain-damaged baby. The amount is pending appeal in the Federal Court.
2. A quadriplegic young man, a wage owner with two children is RM 4,000,000.00 (including interest) with costs of RM 600,000.00.

**PRIVATE HEALTHCARE FACILITIES & SERVICES ACT AND REGULATIONS** - The implementation of the Act & Regulations in 2006 caused a doctor, who did not register his practice, being jailed. These new laws have a material bearing on the practice of the medical practitioner.

**BOLAM TEST** – The Courts in Malaysia are veering towards the test of Rogers v. Whittaker in warning of risks. This means that it would now be easier for patients to succeed in a medical negligence claim against a doctor. On 7<sup>th</sup> March, 2015 the Supreme Court in England and Wales and in Scotland has approved the test of Rogers v. Whittaker as regards the warning of risks.

**LIABILITY OF HOSPITALS** – There are some decided cases in the Malaysian Courts where hospitals have been found negligent for breach of non-delegable duty of care, with the courts finding them liable despite the position taken that the fault, if any, lay with the doctors who were independent contractors, practising in the hospitals. Some hospitals have a contract with the “independent contractors” that in event the hospital is sued due to the negligence of the doctor the latter will have to reimburse the hospital.

**MEDICAL EXPENSES** – Till recently such expenses which have been paid by the employer or insurer cannot be claimed in the Courts. There have been cases which the Courts have allowed this. This is being appealed.

**COMPULSORY INDEMNITY** – When this is implemented for the medical practitioners it may lead to rules taking away the discretion of medical defence organizations (MDM is one) when deciding

requests for advice and assistance in medical negligence claims from members. Bank Negara Malaysia may then review whether M.D.O's are insurance companies.

With the above developments MDM Bhd has to be very prudent in administering and managing our funds and assets to be able to defend each and every member's claim that may arise. These adverse conditions and our inability to obtain re-insurance from any insurance company have affected MDM Bhd in not being able to continue to provide OCCURRENCE based indemnity. We have managed to source indemnity for our member on CLAIMS made from 1<sup>st</sup> January, 2017. This new scheme is the MDM Medical Malpractice Scheme – please refer to the attached leaflets and premium rates for each specialty.

Rest assured your membership with MDM till 31<sup>st</sup> December, 2016 will provide you with indemnity till the statute period is over. In all specialties, except obstetricians and neonatologists, the statute period is six year from the date of discovery. The statute period for obstetricians and neonatologists is twenty five years.

To assist us in budgeting for every medical negligence suit which may arise we seek your indulgence to provide us with details of any incident that has occurred but not reported to us to date.

MDM Bhd has been successfully managed for the last 15 years. The CLAIM made scheme will be managed by Dr Eddies Soo Fook Man at MDM Bhd's office. He will continue to provide support, advice and management as he has done in the last 15 years. Our current panel of solicitors, Messrs Asbir Hira Singh & Co and Messrs Fernandez & Selvarajah, will continue to be solicitors for the MDM scheme.

We sincerely hope you will subscribe to the new MDM scheme to have continuous indemnity. CLAIM made indemnity also has benefits. Please refer to the leaflet on pros and cons of OCCURRENCE based and CLAIM made indemnity.

Finally we would like to thank you for the support you have given to us all these years to make MDM Bhd such a successful, first local M.D.O. If you have any doubts or queries please contact us.

Happy New Year!



Tan Sri Dato' Abu Bakar Suleiman  
Chairman  
Medical Defence Malaysia Berhad