

The Role and Challenges of an In house Legal Counsel in a Healthcare Facility

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The Presenter

1989 – 2000 - Advocate and Solicitor of the High Court of Malaya;

2000 – 2002 - Legal Manager in a Telecommunications company;

2002-2010 - Senior Legal Advisor at Gleneagles Hospital; and

2011- 2018 (till to date) – Senior Legal Counsel & Company Secretary at Prince Court Medical Centre

Approximately 17 years (2002 – 2018) of working experience as Legal Counsel at private healthcare facility / hospital

Hospitals are safe places

Hospitals “soothe” their patients and facilitate recuperation!



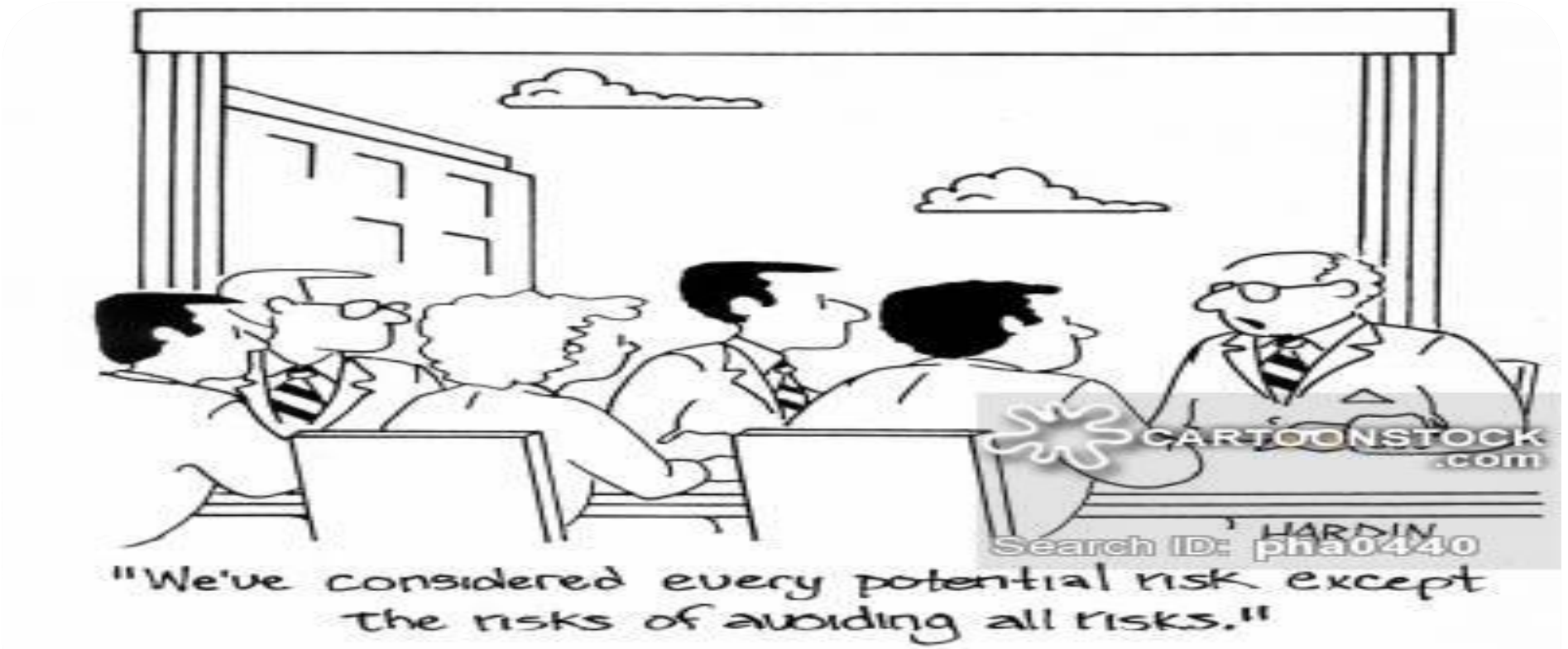
Hospitals intent no harm!!



Hospitals practice at high standards!!



But no one can discount all risks in the hospital!



Murphy's Law: Assumption that if anything can go wrong, it will!



Do we really need an In House Legal Counsel in the Hospital?



In house legal counsel on board its team?

In this era and age, it's becoming a must for any healthcare facility to have an in house legal counsel on board its team !



Highly litigious society



Healthcare systems are complex

In recent years, hospitals and health systems have become complex.



Healthcare systems are complex

- Industry reforms have shifted the healthcare landscape from volume-based models to value-based service, and in this regard, complex regulatory demands have increased the need for legal services.
- CEOs have begun to consider new and perhaps different approaches to many areas of the services, some even considering partnerships. They need advice from legal personnel who can think creatively about the possible outcomes of these new ideas, including the legal ramifications.
- Legal Counsels are employed not only solve current legal issues but to think proactively about future ones.

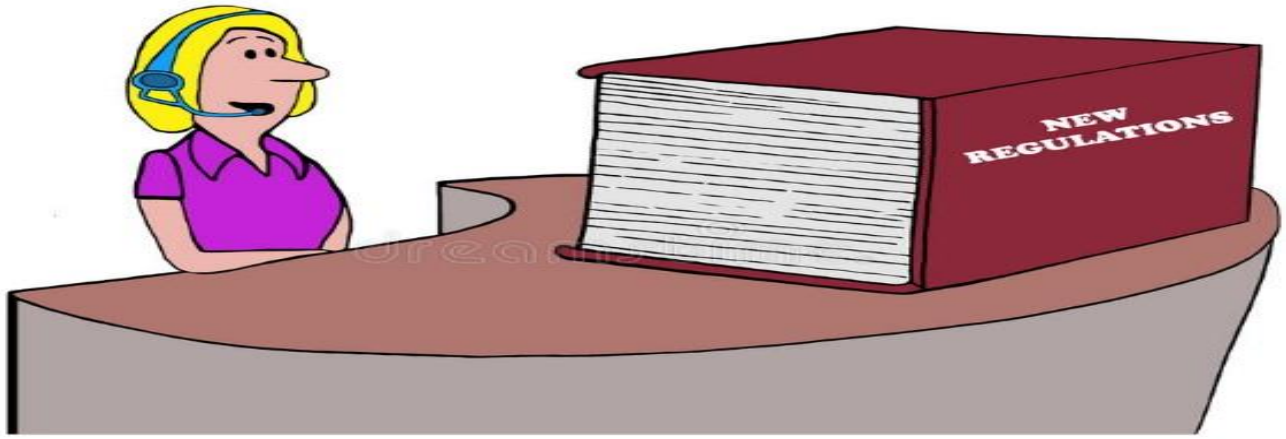
Value –Based Services

Industry reforms have shifted the healthcare landscape from volume-based models to value-based service, and in this regard, complex regulatory demands have increased the need for legal services.



Legal Counsel's Role Increasingly Important

The trend of increasing reliance on in-house counsel is growing especially now that health care is a highly regulated industry.



"Give me a couple years, and I can answer your simple question about the new regulations."

Legal Counsel's Role Increasingly Important



Push for In House Legal Counsels in Healthcare Facilities

- The steady increase in the size of the legal bills and professional disbursements from external law firms has also encouraged more healthcare facilities to look at ways of reducing costs and increasing competitiveness. Legal fees saved may justify the employment of an in-house legal Counsel.
- The amount he/she may save the healthcare facility in legal costs or financial loss, which may even cover the salary for the entire small Legal Affairs Department staff for the year.



Do we really need an In House Legal Counsel in the Hospital



Do we really need an In House Legal Counsel in the Hospital?

YES,

WITHOUT A DOUBT!!!

Skill for In House Legal Counsels in Healthcare Facilities

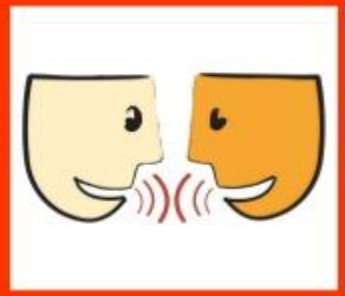
- The legal counsel must be able to recognize the operational requirements of the various departments of the healthcare facility to ensure that such operational requirements are catered without any compromise of the cardinal principle of compliance of the law and safeguarding the interest of the healthcare facility.



Skills for In House Legal Counsels

Special Skills

Communication (speaking/writing):
Lawyers need to be able to communicate effectively in a way that people around them can understand. This is needed especially during courtroom trials.



Time management:
Lawyers must have good time management skills. This is so they can set out certain times for each task that they need to complete.

Use of resources:
Lawyers need to use their resources, such as books and the Internet. Most lawyers spend some time in the library researching when they are not with clients or in the courtroom.

Problem solving:
Lawyers need to figure out reasons for why people are guilty or not guilty, and why they do what they do.

Critical thinking:
This is needed because lawyers must go into specific details, rather than just "hitting the surface" of things. It also requires a higher level of thinking.

Other Qualities of a Legal Counsel

A good in house counsel should be:

- Courageous, but not rash;
- Vigilant in the protection of the company's assets and property, but not inhumane;
- Firm in representing the healthcare facility but tactful when dealing with customers especially patients;
- Learned but not finicky;
- Self-confident but not arrogant; and
- Have pride in the law as a profession, but not to belittle the professions of others!

Significant specialisation

- With the many laws and regulations, the Legal Counsel will require a significant specialization in the area of healthcare law.
- The Counsel should have a good understanding of the health care regulatory landscape, as well as knowledge of the business side of health care.
- Legal counsels in a healthcare setting are expected to combine their expertise and corporate knowledge with healthcare practice and law.
- They must not only “think legal and risk”, they must “think strategy” in addition to addressing the conventional legal areas of the industry.

Combine expertise and corporate knowledge with healthcare practice and law



No Single Recipe on the Role of An In House Legal Counsel

- There is no real single recipe that can define the role of an in house legal counsel within a healthcare facility.

- The actual role will differ from facility to facility and depends on the facility's requirements, services and the issues at hand.

The Role of a Legal Counsel in a Healthcare Facility



***Quote* by Judge Wyzanki in *United States v. United Shoe Mach. Corp.* 89 F Supp. 357 (D Mass. 1950) *on the role of an in house legal counsel* :**

"The modern in house lawyer almost invariably advises his client upon not only what is permissible but also what is desirable. And it is in public interest that the legal counsel should regard himself as more than a predictor of legal consequences. His duty to society as well as to his client involves many relevant social, economic, political and philosophical considerations"

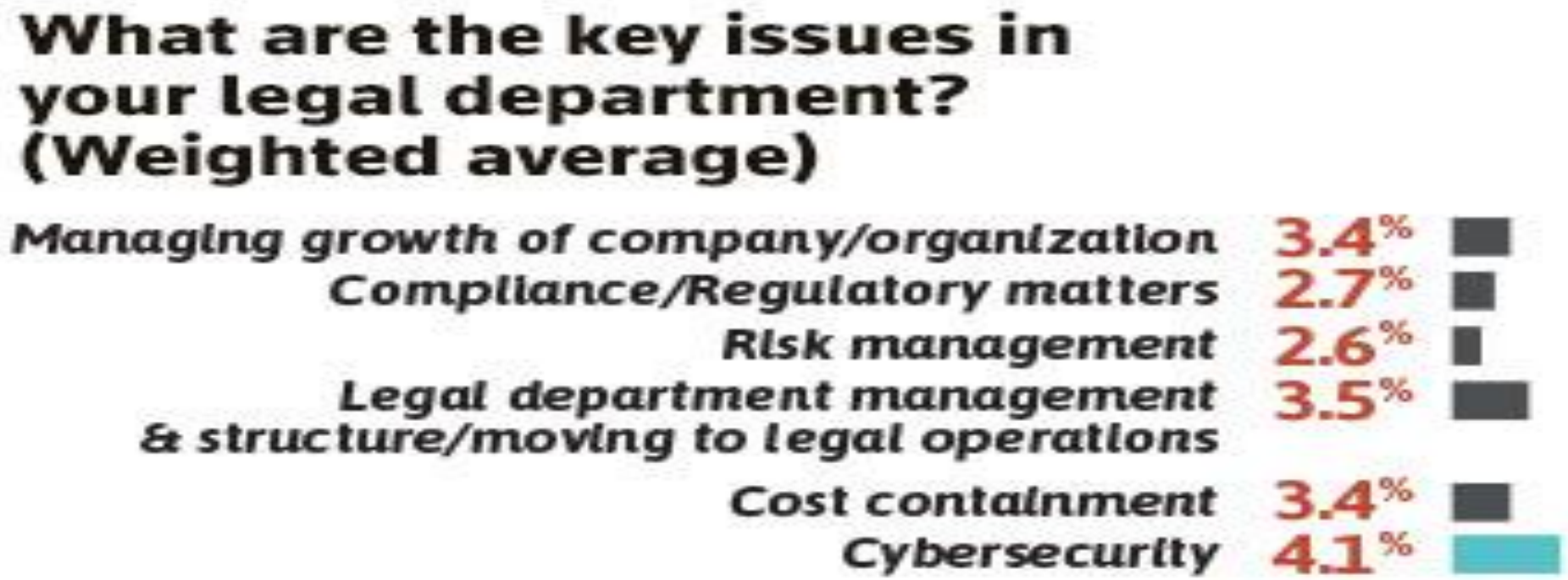
The Role of a Legal Counsel in a Healthcare Facility

- Healthcare Facilities are finding that the benefits of employing an in-house counsel far outweigh the logistical challenges.
- For example, CEOs are assigning their in house legal counsel to serve as liaisons with regulatory bodies, to share expertise, in the wording of new regulations. I recently worked as a member of the APHM Working Group tasked to draft the Personal Data Protection Code of Practice for Private Hospitals.
- The more flexible, creative and broad-minded the legal counsel is, the more effective he can be in helping to navigate these unchartered healthcare waters.
- The legal counsel sitting on the senior management team can also provide the “big-picture advice” by also considering business aspects of the transaction!

Many different hats: the role of the modern legal counsel



Many different hats: the role of the modern legal counsel



The Role of a Legal Counsel in a Healthcare Facility

- It was often thought that an in house legal counsel's role in a healthcare facility was only to handle pre- court hearing matters relating to medico legal cases.
- Therefore, it followed that if a healthcare facility had engaged an in house legal counsel , it was thought that the healthcare facility must have many medico legal issues/cases.
- It is a misconception to think that an in house legal adviser in a healthcare facility is engaged only to advice on medico legal cases. In fact, the legal counsel looks at wider range of legal issues, including conventional legal issues that a legal adviser of any corporation may be asked to advise.

Medico legal area

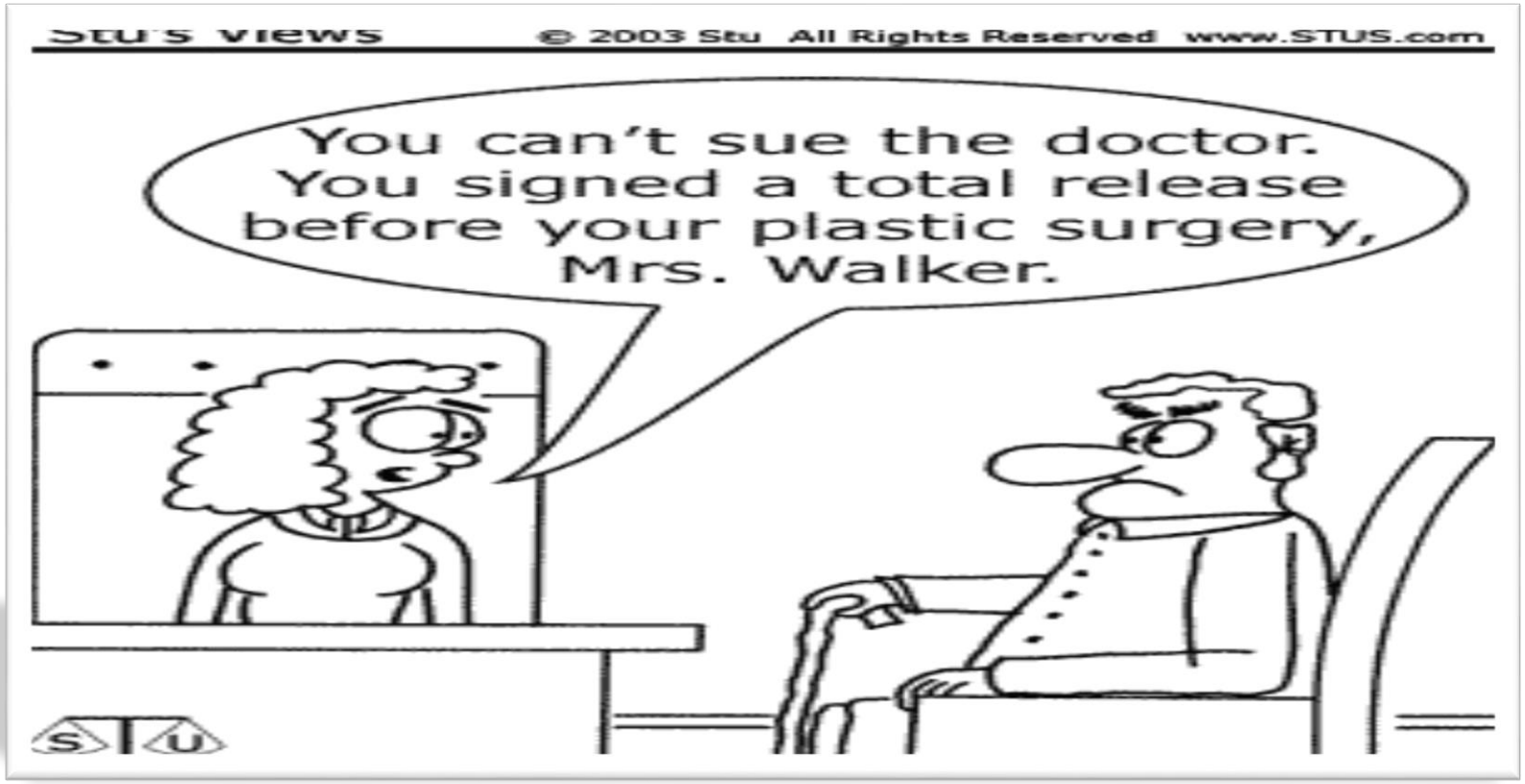
No doubt, the medico legal area of course is one of the areas the counsel will be involved



Medico legal cases



Draft Good Documents to Protect your Hospital!



Compliance is one of the bigger roles for the Legal Counsel!



Compliance is one of the bigger roles for the Legal Counsel!

There are 83 acts / regulations that directly and indirectly govern the healthcare industry.

1	Criminal Procedure Code (Revised 1999) (Act 593)
2	National Archives Act 2003 (Act 629)
3	Akta Perancangan Wilayah Persekutuan 1982
4	Civil Aviation Act 1969
5	Allied Health Act 2015
6	Amendment to the Medical Act 2012
7	Atomic Energy Licensing Act 1984 (Act 304)
8	Basic Safety Standards 1988
9	Birth & Deaths Registration Act 1957
10	Children & Young Persons Act 1947
11	Civil Law 1967
12	Code of Ethics for Dietitian
13	Code of Ethics for Occupational Therapist
14	Code of Professional Conduct for Physiotherapist
15	Code of Ethics for Speech Therapy
16	Communications and Multimedia 1998
17	Consensus Statement on Brain Death 2003
18	Contract Act 1950
19	Control of Tobacco Product 2015
20	Dangerous Drugs Act 1952
21	Dangerous Drugs Regulations 1952
22	Dental Act 1971
23	Destruction of Disease Bearing Insects Act 1975
24	Digital Signature Act 1997
25	Electricity Supply Act 1990
26	Electronic Medical Records Malaysia Policy
27	Employment Act 1955
28	Environment Quality Act 1974
29	Evidence Act 1950 (Act 56)
30	Factories & Machinery Regulations 1970
31	Factories & Machinery Act 1967
32	Federal Gazette on Business License 2016
33	Fees Act 1951
34	Finance Act 2005
35	Fire Services Act 1988
36	Food Act 1983
37	Guidelines on Renal Transplant Registration
38	Guidelines to Obtain Class C License under Atomic Energy Licensing Act 1984
39	GST Act 2014
40	Human Tissue Act 1974
41	Hydrogen Cynanide (Fumigation) Act 1953
42	Income Tax Act 1967
43	Inkeepers Act 1952 (Act 248)
44	Industrial Relation Act 1967
45	Limitation Act 1953
46	Local Government Act 1976
47	Malaysia National Essential Medicines List 4th Edition
48	Malaysian Mental Health Act 2001
49	Manual on Assesable Death
50	Manual on Incident Reporting 2010
51	Medical Act 1971
52	Medical (Advertisement & Sale) Act 1956
53	Medical Assistants (Registration) Act 1977
54	Medical Regulations 2017
55	Midwives Act 1966
56	Nurses Act 1950
57	Nursing Board Malaysia (Code of Professional Conduct) 1988
58	Occupational Safety & Health Act 1994
59	Optical Act 1991
60	Pathology Laboratory Act 2007
61	Personal Data Protection Act 2010
62	PETRONAS Whistleblowing Policy
63	Private Healthcare Facilities Services Compound Offences Regulation
64	Private Healthcare Facilities Services Order 2013
65	Poison Act 1952
66	Poison _Psychotropic Substance
67	Policies & Procedures on Infection Control, MOH 2nd Edition 2010
68	Prevention & Control of Infectious Disease Act 1988
69	Private Healthcare Facilities & Services Act 2006
70	Perintah cukai barang dan perkhdimatan (Pembekalan dikecualikan)
71	Perintah CBP (Pembekalan Berkadar Sifar) 2014
72	Perintah CBP (Pelepasan) 2014
73	Registration of Pharmacists Act 1651
74	Sales of Drugs Act 1952
75	Senarai Ubat Penting Nasional yang Dikenakan GST 23 October 2014
76	Service Tax Act 1975
77	Societies Act 1966
78	Subordinate Court Rules 1955
79	Telemedicine Act 1997 (Act 564)
80	Traditional & Complementary Medicine Act 2013
81	Transfusion Practice Guidelines for Clinical and Laboratory Personnel
82	Trust Companies Act 1949
83	Trustees Act 1949

The Role of a Legal Counsel in a Healthcare Facility

Role can include the following:

(i) **Vetting and drafting legal instruments including contracts, Employee handbook etc**

(ii) **Drafting non-legal documents e.g. policies and procedures, Limits of Authority, By Laws etc**

(iii) **Interpreting laws and policies and procedures;**

(iv) **Responding to legal correspondences :**

(v) **Attending meetings with disgruntled customers & vendors;**

(vi) **Ensuring good corporate governance and compliance to policies & procedures;**

(vii) **Advising the Board of Directors and interpreting the law for the Board;**

(viii) **Providing written legal advise and second opinions to Management on matters where initial legal opinion has been obtained from an external legal counsel;**

(ix) **Attending court matters as corporate representative of the healthcare facility;**

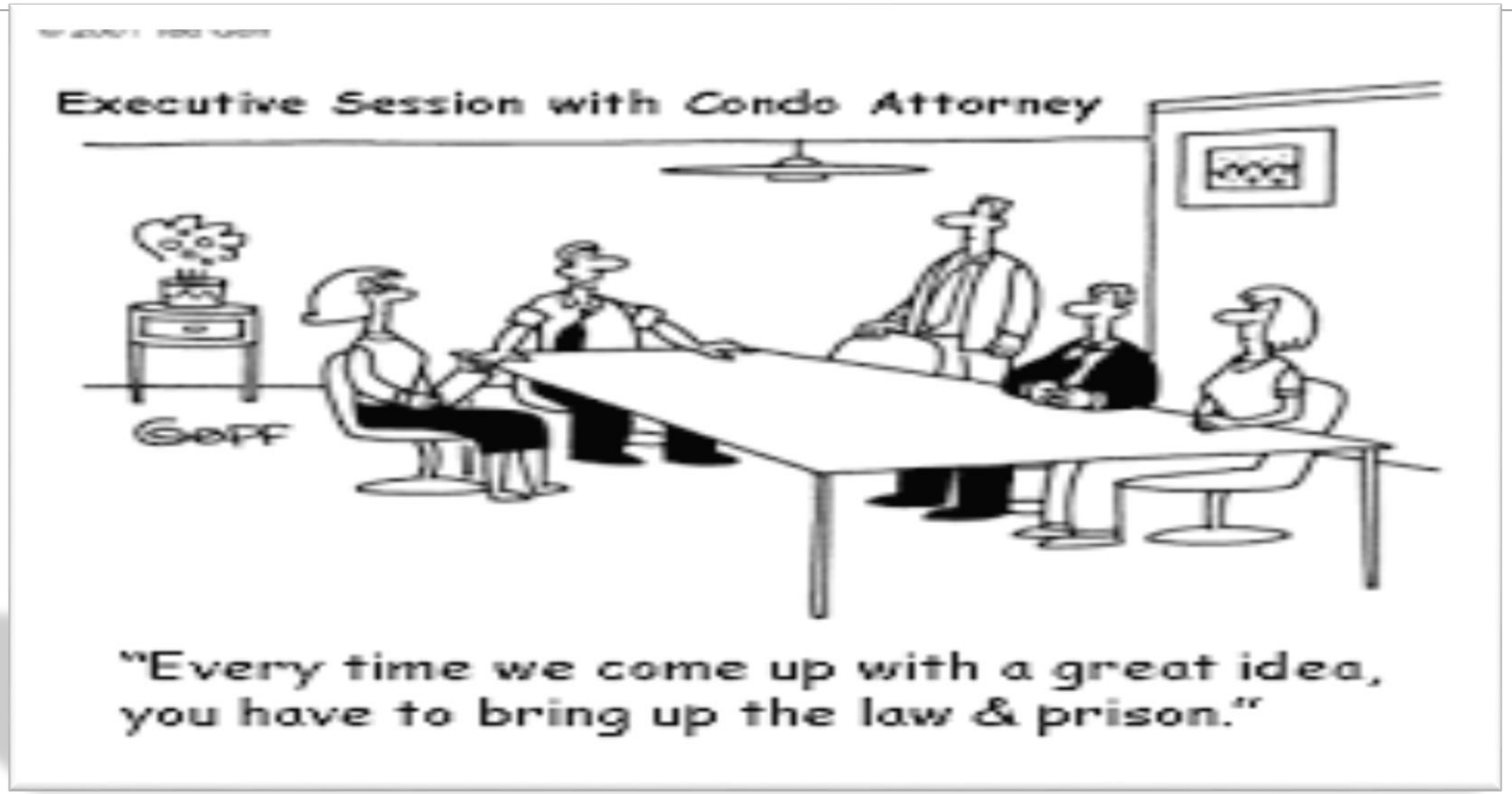
(x) **Attending to internal HR Disciplinary matters;**

(xi) **Determining, litigation costs & assisting the Procurement team to negotiate prices with vendors and external lawyers;**

(xii) **Carrying out budgeting & costing for the Legal Dept.: and**

(xiii) **identifying legal risks that may affect operations.**

Persuasion; not coercion!



Persuasion; not coercion!



In the Driver's Seat: The Changing role of the Counsel

- Legal Counsel can take the lead in :

  - Review of potential medico legal cases;
  - Training:

  ➢ Fellow employees e.g. on code of conduct and business ethics, on law relating to Medico Legal issues and legal recovery process;

  ➢ Doctors on hospital policies.

  ❖ Such training can be cost-effective in the litigation it can prevent.

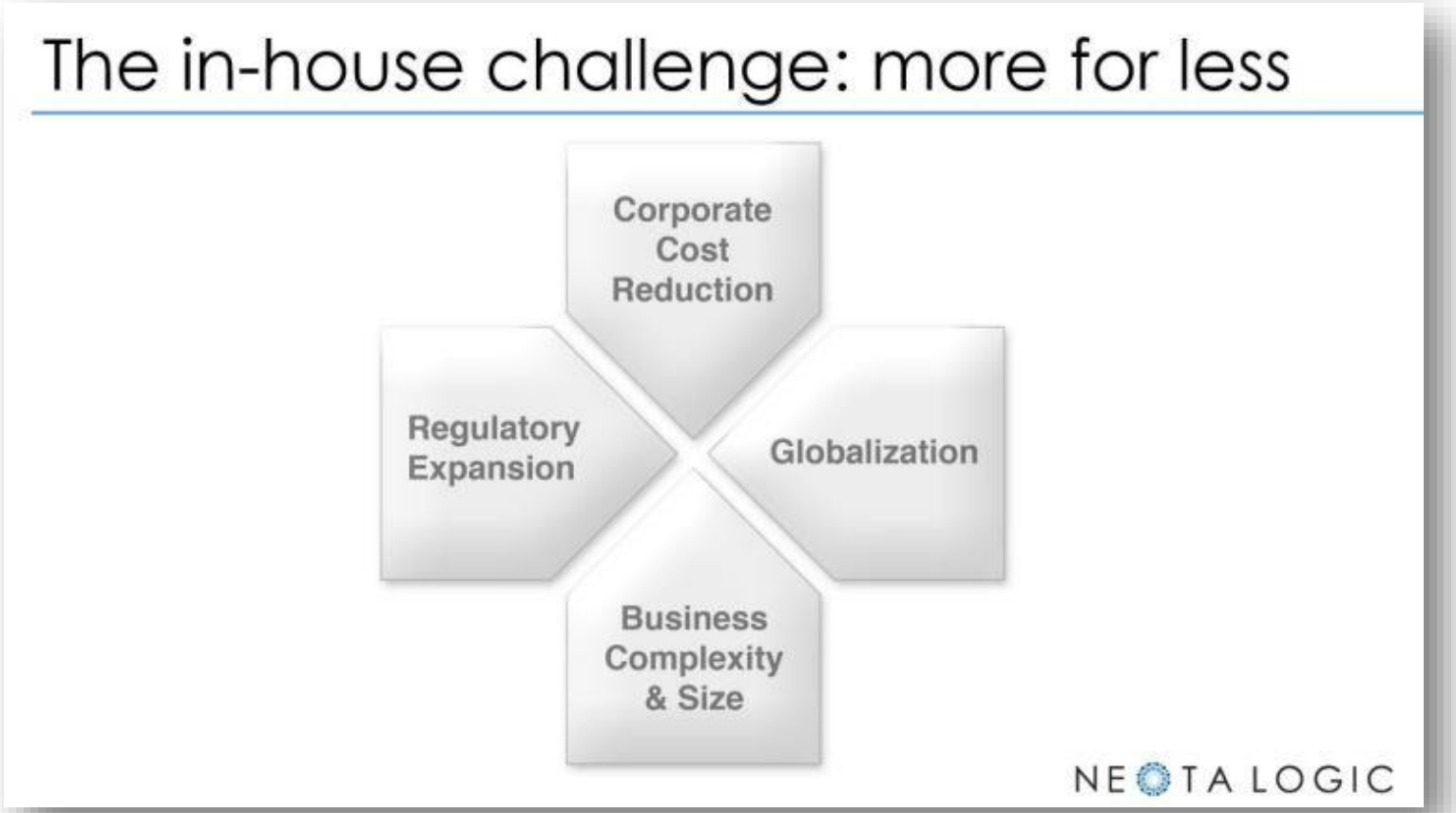
  ❖ These sessions also bring the legal counsel and the other employees of the healthcare facility closer, give the employees some sense of who the legal counsels are, if they do not already know them well, and make the legal counsels more accessible.

Legal Guardian of the Hospital!



- ✓ **The in house "legal eagle" serves as a gatekeeper of the Company's various legal needs!**
- ✓ **While he "soars high", he is expected to always keep a wide view on all legal and ethical matters and issues.**

Challenges of a Legal Counsel in a Healthcare Facility



Some challenges that a Legal Counsel in a Healthcare Facility may face

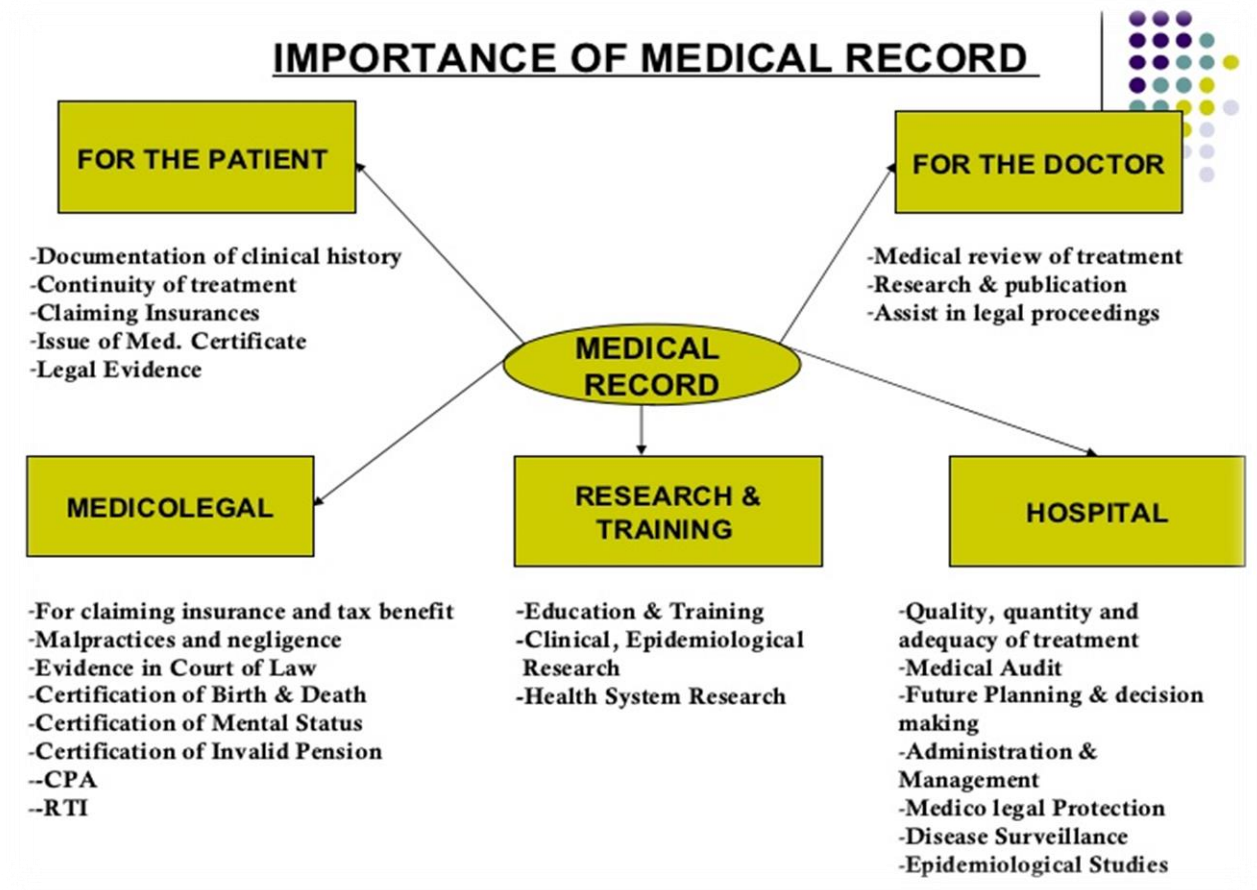
Corporate Cost Reduction: Legal Depts. are Cost Centers – hence, to contribute to the success of the business, other than by minimizing risks, the Legal Counsel is always under pressure to keep the depts. costs as low as low;

Globalization: We have international laws that may be extra territorial – meaning that although they are overseas laws, they may be applicable to a hospital in Malaysia . For example the EU GDPR *(General Data Protection Regulation) may apply to a hospital in Malaysia if the hospital is treating a European patient* - this may happen if the medical information is being sent back to the EU MCO / insurance - Breach of GDPR fines can go up to €20 million. Legal Counsels has to keep up their knowledge on such laws.

Regulatory Expansion: There are 83 regulations that govern / affect various areas of the healthcare industry. With governance being made the forefront of any good business entity, more laws may follow suit and the Legal Counsel will have to continue to be on top of it all!

Business Complexity: With loads of transformation, healthcare has become as complex an industry as any, and is becoming even more so. The expanding role of the organization amid financial pressures, health systems form numerous committees to set and monitor various KPIs, examine where to cut costs, develop protocols around care, technology decisions which sometimes expose organizations to risks in other areas. The healthcare organization has become even more complicated. On the other hand, increasing regulations can also result in higher costs to the healthcare facilities in complying to the regulations. This is where the Legal Counsel may be asked to wear the “hot strategic thinker hat” in assisting the Management to make good decisions!

Other Challenges
Ensuring Complete Medical Records

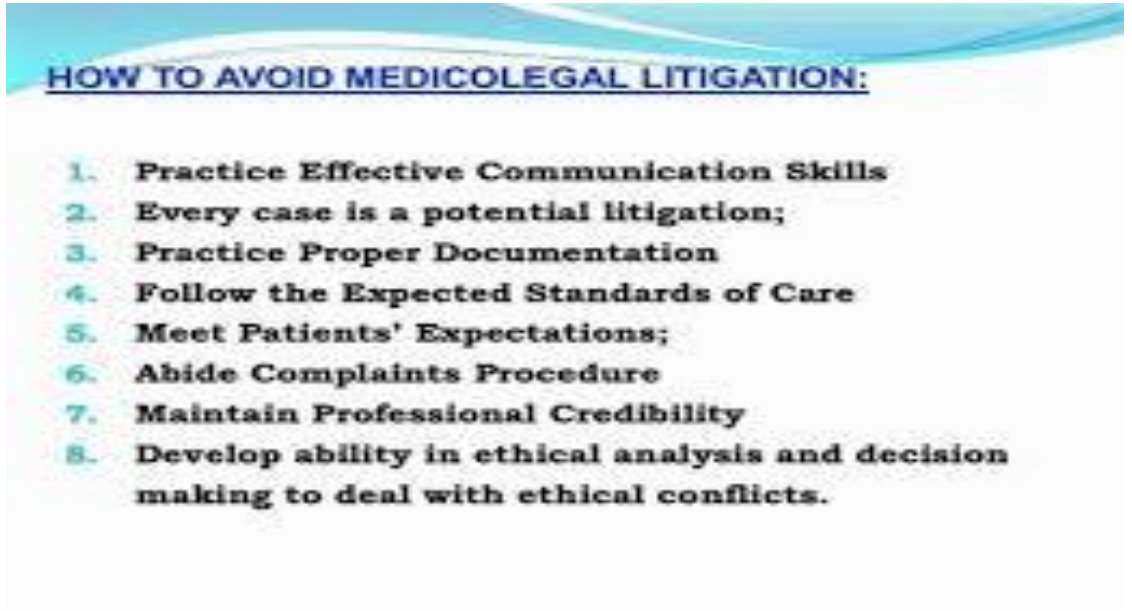


Other Challenges

- Insisting of full and proper documentation.
- Documentation is essential, as the chances of ever knowing what really went on should not be dependent on a ‘memory’.
- Contemporaneous documentation carries weight over a memory that may be recalled and told to a complaints body two years later or required at a court hearing four years after the clinical incident.
- As the saying goes ‘if it’s not written down it didn’t happen’. What is not documented may be deemed by a court of law or disciplinary body as not done. This may work against the person who is the subject of a disciplinary complaint or a legal case.

Other Challenges

- Getting clinical people to communicate with disgruntled patients.
- Communication is all you need sometimes to alleviate concerns of disgruntled patients. It is on top of the list!



My Challenge this Year

For me in 2018, my challenge was to keep up with additional duties as a company secretary in addressing matters related to a corporate exercise.

This sure kept me on my toes for the first half of 2018!



Conclusion

Legal Counsel are always there to HELP you!!!



THANK YOU!

