

**CITY UNIVERSITY OF HONG KONG**  
**香港城市大學**

**Medical Negligence in Hong Kong**  
**香港醫療疏忽**

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## **ABSTRACT**

Medical negligence has begun an increasing concern recently. In Hong Kong, perhaps the awareness of medical negligence can be explained by the improved education of the general public as well as the increasingly easy accession to medical information. This relatively high degree of awareness inevitably leads to frequent challenges to doctors for their suspected malpractice. This is a striking contrast with the past perception of doctors, whom had been viewed as an elite group of academics with absolute power and knowledge. The rising numbers of tabloid newspapers and magazines like Oriental Daily and Next magazine which like to report medical blunders as attractive stories even increase such challenges. Of course, the increase in compensation after verdict from the court of appeal in 1996 contributes to the complaint culture of Hong Kong public as well.

With the increasing medical blunders, our legal profession will inevitably involve in representing either party in court or, more commonly, giving medical-legal advice to the plaintiffs or defendants concerned. In order to prove medical negligence and claim for compensation, legal profession will have to refer to Tort Law, which forms the foundation for dealing with those issues. When this thesis points out that the three elements for proving medical negligence in a medical litigation should be duty of care, breach of duty and causation, it further points out that the Bolam and Bolitho tests should be considered as the cornerstone in relevant judgments. Through necessary investigations, this thesis further reveals that legal and medical professions in Hong Kong have not properly implemented those principles. This is especially a true case in Hong Kong because some of the Ordinance related to Health Care was made years before and amendments are needed to them in order to keep in pace with the rapidly changing society.

As one of the methodologies apply in this thesis, interviews have been conducted in order to evaluate the different views on medical negligence in Hong Kong and to discover ways of improving the imperfect healthcare system. Both physicians and the public who have been interviewed believed that medical errors are one of the most serious problems in health care today. The issues cited most frequently by physicians were the costs of malpractice insurance and lawsuits. As for the public, however, the most frequently cited problems were the cost of health care in the private sector and the tremendously long waiting list for operations in public hospitals. That could a reason why the public cannot tolerate any medical error.

Ultimately, the saying that prevention is better than cure is true for all problems. This wise statement not only applies to the medical profession, but also to legal profession alike. Even though medical negligence cannot be totally avoided by medical professionals, as legal advisers, we have the responsibility not only defend them but also to advice them the specific ways to minimize medical negligence. One of the contributions of this thesis is to offer many recommendations to doctors after analyzing in depth common causes of errors from cases of medical blunders in Hong Kong. Several of my recommendations are crucial because they could enable medical practitioners to minimize the chance of being complained or even sued for medical negligence.

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## TABLE OF ABBREVIATIONS

Accident and Emergency	A & E
Alternative dispute resolution	ADR
Appeal Cases	AC
Australian Law Journal Reports	ALJR
All England Law Reports	ALLER
Community Health Council	CHC
Community Rehabilitation Network	CRN
Department of Health	DH
General Medical Council	GMC
The Hospital Authority	HA
Hospital Chief Executive	HCE
Health Maintenance Organisations	HMO
Patients Complaints Mediation Committee	PCMC
Public Complaints Committee	PCC
Pharmacy and Poisons Ordinance	PPO
Preliminary Investigation Committee	PIC