UNIVERSITI TEKNOLOGI MARA

DUTY OF CANDOUR IN THE HEALTHCARE: A COMPARATIVE STUDY OF MALAYSIA, THE UNITED KINGDOM AND AUSTRALIA

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ABSTRACT

The duty of candour emphasises openness, honesty, and transparency with patients following adverse events. It involves acknowledging errors, explaining what occurred, apologizing, and detailing remedial actions to prevent recurrence. Jurisdictions such as the UK and the Australian state of Victoria have codified organisational duty of candour in legislation along with professional codes, reflecting the importance and its role in enhancing patient safety and rights. In contrast, Malaysia lacks a formal framework, relying solely on ethical codes and fragmented non-explicit legal frameworks in both private and public healthcare organisations. This gap raises concerns about transparency and highlights the need for a clear legal and ethical framework to guide open and transparent communication in healthcare. This study examines legal and ethical duty of candour frameworks in Malaysia, the UK, and Australia, addressing three research questions: analysing their structures, comparing frameworks across jurisdictions, and proposing reforms for Malaysia. Findings reveal that Malaysia's framework partially aligns core element of duty of candour through the Private Healthcare Facilities and Services Act 1998 (PHFSA 1998), guidelines by Ministry of Health (MOH) and ethical code, mainly the Code of Professional Conduct (CPC) and Good Medical Practice (GMP). These frameworks lack a structured mechanism to operationalize transparency and ensure consistency in practice. By contrast, the UK's and Victoria statutory framework ensures consistency and enforceability, while Australia Open Disclosure Framework approach offers flexibility and systemic readiness. Both systems emphasise structured disclosure, apology protections, and learning from adverse events. The comparative analysis identifies significant gaps in Malaysia that underscoring the need for reform. A hybrid model is proposed, beginning with a voluntary open disclosure framework under a central authority and transitioning to a statutory system. Recommendations include updating ethical guidelines on professional duty of candour, codifying organisational duty of candour, introducing apology protection laws, establishing standardized protocols, and fostering a culture of transparency through education and training. These reforms aim to enhance patient trust, accountability, and safety, aligning Malaysia's healthcare system with global best practices and ensuring a transparent, patient-centred approach in the future.

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CHAPTER 1
INTRODUCTION

1.1 Research Background

1.1.1 Basis of duty of candour

The duty of candour, derived from the Latin word ‘candour’ meaning purity and openness, emphasises transparency in healthcare delivery. Defined as openness and honesty by the Oxford English Dictionary, the duty of candour upholds the ethical principle of respect for autonomy (Shekar, Singh, Shekar, & Brennan, 2011). It requires healthcare professionals to be transparent with patients, particularly in instances where adverse events or medical error has occurred (Beauchamp & Childress, 2019). The World Health Organisation (WHO) defines adverse events as harm caused by medical management, whether due to a failure in diagnosis, treatment, or even system errors. Errors, on the other hand, refer to mistakes in carrying out a planned action or using an incorrect plan, which can happen unintentionally (World Health Organisation, 2024).

Globally, this duty is known by different terms, including "open disclosure,” “honest disclosure," and “full disclosure”. However, the essence remains similar; a commitment to transparency as a subset of the duty to disclose that upholds ethical principles and legal duty (Harrison et al., 2019). At its core, the duty of candour is built on three principles, namely openness, honesty, and sincerity. Openness means direct and clear communication with the patients about their care. Honesty refers to the obligation of providing truthful information. While sincerity expands beyond just explaining what went wrong but involves genuine empathy in the sense of apologising when necessary, providing thorough explanations, and reassuring patients that measures will be taken to prevent similar incidents. These principles form the core elements of duty of candour, shown in the Figure 1.1. below (Quick, 2022):

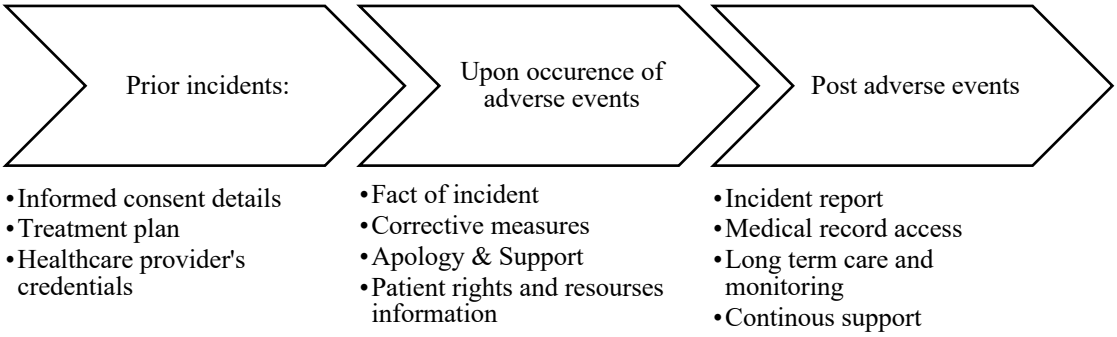

Figure 1.1: Core elements of duty of candour