

Consultation Paper

Enactment of
Apology Legislation
in Hong Kong

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Proposed Apology Legislation: from the Medical Perspective

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The Relevance to the Medical Context

- 4.11 USA “ The earliest apology provisions arose in 1986 in Massachusetts. By 2007, over 30 states had adopted apology-type legislation. Although approximately 20 of these have incorporated legislation to provide full protection for apology, in each case this is limited to apologies given in the context of the provision of health care. ... Four states have legislated to provide partial protection only in the context of the provision of health care.”

Apology: Full or Partial

- Full (including admission of fault or mistake)
- Partial (without admission of fault or mistake)

USA

- Apology covering healthcare only 26/36
- Beyond healthcare 10/36
- Full apology 5/36
- Partial apology 31/36

Australia

- 4.21 ... the call for apology legislation stemmed from an alarming growth rate in litigation on medical malpractice.
- Australian Health Ministers' Advisory Council recommended “ legislation provide that an apology made as part of an open disclosure process be inadmissible in an action for medical negligence.”
- 4.22 Apologies were deemed to be part of healing process

Australia

- Full: 2/8
- Partial: 5/8
- Mixed(full for most civil cases; partial for personal injury claims): 1/8

Canada

- Full: 10/10

The Scottish Consultation Paper

4.66 Summary of Consultation Responses

(d) There was evidence that legal uncertainties inhibited apologies and “there would be multiple benefits as a result of the legislation: to the public who use the health services; to those delivering public services; and to the public purse(though reduced litigation and the cost of other dispute resolution mechanisms)”. (The Royal College of Physicians of Edinburgh).

Chapter 5 and Healthcare

5.6 ..empirical studies which demonstrated that the number of lawsuits decreases following an apology, at least insofar as the health care industry is concerned.

Prof Vines on Full/Partial/No apologies

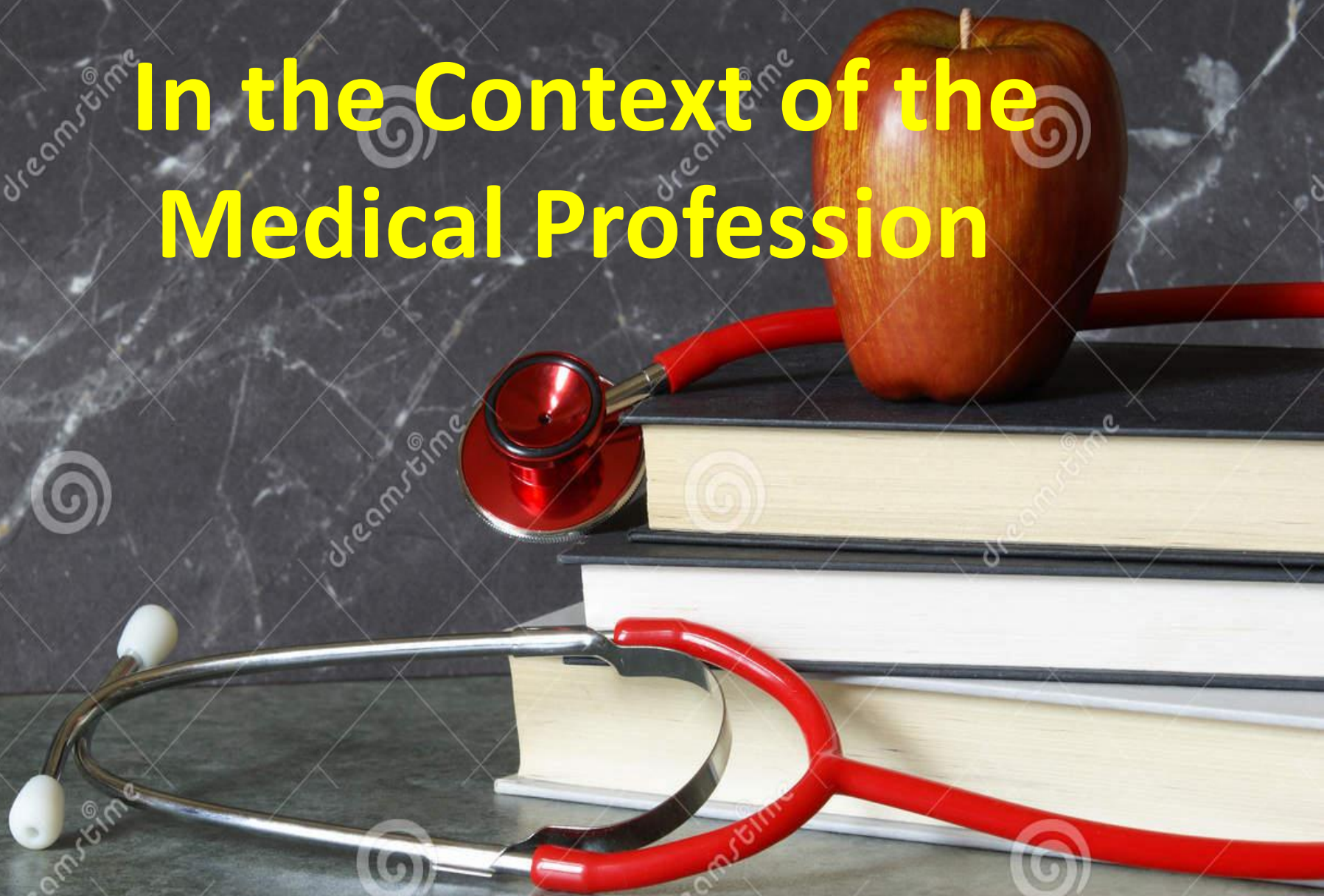
5.20 ... where an injury was severe a partial apology might actually be detrimental and make the respondents more inclined to reject a settlement offer.

A great deal of the literature on apology has been developed in relation to medical negligence, and it tends to support these conclusions.

A German study of handling of errors found that, while severity of injury was the major factor affecting patients' choice of action to be taken, in the case of severe injury:

Most patients accept that errors are not entirely preventable, but they expect accountability and clear words. These clear words should include the acknowledgement that something wrong has happened, that measures will be taken to prevent future events... and an expression of sincere regret.

In the Context of the Medical Profession



5.72 To Err is Human

- Institute of Medicine, *To Err is Human; Building a Safer Health System* (Linda T. Kohn et al. eds., 2000)
(44,000 and 98,000 patients die every year in hospitals as a result of medical error, is more than from automobiles, breast cancer or AIDS)
- Interpersonal treatment, communication
- Handling a medical incident affect outcomes

Before Conflict becomes Dispute

- Physicians' failure in communicating diagnoses and affronts to patients' values were significantly related to a patient's decision to consult a lawyer about a medical incident
- The doctor who does not want to be sued will avoid these traps and will face the patient with humble sympathy and courage for the truth

5.73 Emotional dimension

- Upfront management of anger
- A sincere apology serves 3 functions:
 - (1) expresses remorse and non-hostility
 - (2) intent to compensate
 - (3) ameliorates the injured person's hostility
- A Lancet study: “explanation and apology” rather than “ pay compensation” might have prevented litigation

ADVERSE OUTCOME

SORRY 抱歉
KNOWN COMPLICATION
Perceived error / negligence

!!!

Delayed Changed Treatment
Undetected Complication
Multiple Teams
Complex Treatment
Young/Sudden Death

APOLOGY 對不起
PREVENTABLE ERROR

- Disclosure
- Apology
- Offer

SUCCESSFUL OUTCOME

NEAR MISS

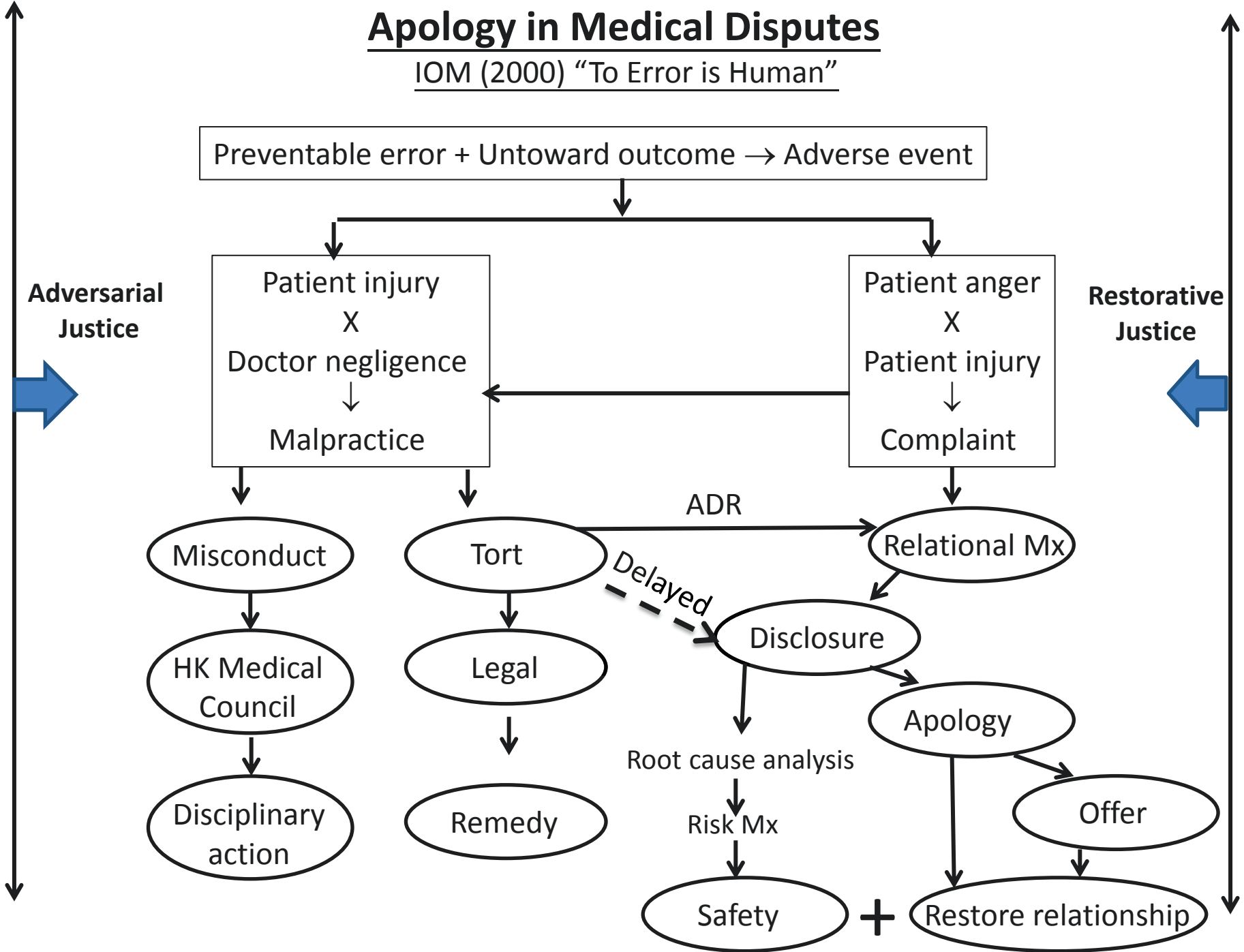
- ? Disclosure
- ? Apology
- X Offer

ERROR (Human / System)

Apology in Medical Disputes

IOM (2000) "To Error is Human"

Preventable error + Untoward outcome → Adverse event



Disclosure

5.74 Timely apology:

Facilitates communication and disclosure,
Preserve trust and improve relationship, and
Healing after an adverse event

5.75 Disclosure, Apology and Offer (DAO):

Improving safety culture.

5.76 Law as symbolic value to help medical customs evolve.

Full disclosure does not lead to more litigation.
Improved patient care and future errors

Barriers to Apologies and Disclosure after Medical Error

(Clin Ortho Relat Res 2009; 467:376-382)

- Beliefs about the relationship between disclosure and litigation; tend to overestimate the risk of being sued
- Norms, values and practices that constitute the culture of medicine, desire for and history of self-regulation and expectation of perfection; self-esteem
- Lack of certainty and skill about how to disclose

Disclosure and Safety: legal aspects

(J Pub Health Res 2013; 2:231: 182-185)

- Laws can accompany or facilitate societal or professional changes; make medical customs evolve
- Disclosure laws or apology laws may be helpful in making medical customs evolve
- Disclosure with offer program
- Improve organisational performance rather than on individual blame

The Healthcare Practitioner

5.77

Internal benefits: alleviate guilt and maintaining self-esteem; forgiveness from the patient help lift the burden of self-reproach

External benefits: demonstrate to public their commitment to enduring principles of medical ethics (telling truth, charity and kindness)

Better and Safer Care