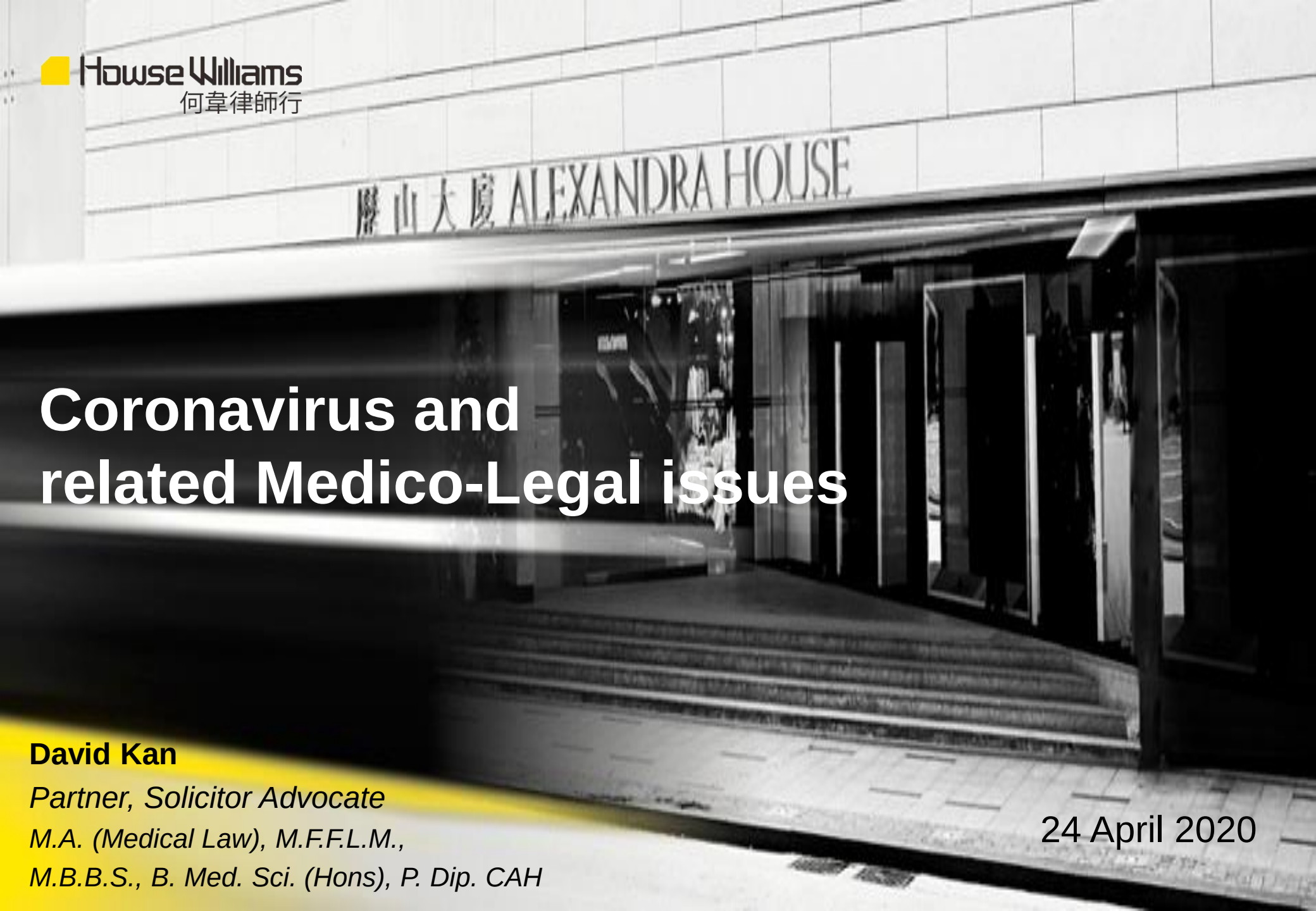


# Coronavirus and related Medico-Legal issues

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# Outline

1. SARS experience
2. Notification requirements
3. Disclosure of patient’s personal data
4. Impact on the Judiciary and new legislation
5. Potential causes of action
6. Refusal to treat during an epidemic

# 1.1 Major infectious diseases in recent decades include:

- Severe Acute Respiratory Syndrome (SARS)
- H5N1 bird flu
- H1N1 swine flu
- Middle East Respiratory Syndrome (MERS)
- Ebola
- COVID-19

# 1.2 Severe Acute Respiratory Syndrome (SARS)

| | |
|---|---|
| 16.11.2002 | First known case of SARS in China |
| 10.03.2003 | First outbreak in HK |
| 12.03.2003 | WHO issued global alert |
| 31.03.2003 | Isolation order issued for residents of Block E of Amoy Gardens to remain in their flats for 10 days |
| 02.04.2003 | WHO issued travel advisory against HK and Guangdong Province |
| 03.04.2003 | HA implemented no-visiting policy for all acute wards and a restricted-visiting policy for convalescent and psychiatric wards |

# 1.3 Severe Acute Respiratory Syndrome (SARS)

| | |
|---|---|
| 28.05.2003 | SARS Expert Committee appointed |
| 11.06.2003 | Last SARS case confirmed in Hong Kong |
| 12.06.2003 | SARS Expert Committee issued invitation to the general public for written submissions on issues relating to the SARS epidemic |
| 23.06.2003 | WHO removed HK from the SARS list, declaring HK SARS-free |
| 01.06.2004 | DOH set up Centre for Health Protection |

# 1.4 SARS Transmission

- Spread through known contacts
- Healthcare workers getting infected in clinical settings
- Inpatients who were hospitalised for reasons other than SARS getting cross-infected by SARS case-patients
- Community transmission (e.g. contaminated sewage)

# 1.5 Risk Factors for Occupational Transmission

- Awareness and preparedness
- Infection control measures
- Training in infection control
- Compliance with the use of Personal Protection Equipment
- Exposure to high-risk procedures such as intubation and nebulization

# 2.1 Notification of Infectious Diseases

- Currently 51 statutorily notifiable diseases: scheduled infectious diseases as listed in Schedule 1 of Cap. 599
- Doctors to report suspected and confirmed cases
- CHP maintains a document entitled 'Communicable Disease Surveillance Case Definitions' (last updated 4 March 2020)
- Failure to notify is a criminal offence punishable on conviction to a fine

**Note:**

*The term "specified infectious disease" has a wider meaning than "scheduled infectious disease" – It means scheduled infectious disease or a disease caused by a scheduled infectious agent (Schedule 2 of Cap. 599)*

# 2.2 Notification of Infectious Diseases

- "Severe Respiratory Disease associated with a Novel Infectious Agent" added to Schedule 1 on 8 January 2020
- How to notify? Download the appropriate notification form from CHP website or report through the web-based notification system
- CHP publishes monthly notification figures online
- If after notifying DOH, the doctor verifies that the disease did not exist (e.g. upon reviewing the lab results), he/she shall immediately notify the Director.

# 2.3 Reporting Criteria for COVID-19 as of 4 March 2020

An individual who:-

- presented with fever **OR** acute respiratory illness **OR** pneumonia; **AND**
- Either one of the following conditions within 14 days **BEFORE ONSET OF SYMPTOM**:
    1. With travel history to a place with active community transmission of COVID-19; **OR**
    2. Had close contact with a confirmed case of COVID-19

**Note:**

*Case classification if the reporting criteria (above) is met = Suspected case*

*Case classification if the lab criteria is met = Confirmed case (even if it is asymptomatic)*

# 2.4 Giving Information as required by Health Officers

- Health officers may, for the purpose of facilitating the investigation of a case or suspected case of a specified infectious disease, require a doctor to provide information
- Doctors must comply: section 5 of Cap. 599A
- Failure to furnish information as required by a health officer or knowingly giving information that is false in a material particular are criminal offences punishable on conviction to a fine

# 2.5 Existing Legislation on Quarantine/Isolation

- Prevention and Control of Disease Ordinance (Cap. 599) and Prevention and Control of Disease Regulation (Cap. 599A)
- Reg. 22 → quarantine of contacts ("contacts" defined as any person who has been, or is likely to have been, exposed to the risk of contracting a specified infectious disease)
- Reg. 23 → isolation of persons infected with a specified infectious disease
- Reg. 32 → criminal offence to expose other persons to the risk of infection

# New Regulations
(gazetted on 7 February 2020)

## Compulsory Quarantine of Certain Persons Arriving at Hong Kong Regulation (Cap. 599C)

- Compulsory quarantine for 14 days
- Applicable to everyone arriving from the mainland or having stayed in the mainland during the 14 days preceding arrival in HK

## Prevention and Control of Disease (Disclosure of Information) Regulation (Cap. 599D)

- Requirement to disclose or furnish information (including travel history) relevant to the handling of a public health emergency to a health officer
- Power extended to medical practitioners
- Criminal offence to provide false or misleading information

# 3.1 Personal Data (Privacy) Ordinance (Cap. 486)

- Data Protection Principle 3 governs the use of personal data (disclosure amounts to use)
- According to DPP 3, use of personal data must be consistent or directly related to the original purpose when collecting the data. Otherwise, the data subject's express and voluntary consent is required.
- However, there are exemption provisions under Cap. 486.

# 3.2 Personal Data (Privacy) Ordinance (Cap. 486)

- Exemption under section 59 if "*… the application of those provisions to the data would be likely to cause serious harm to the physical or mental health of – (i) the data subject; or (ii) any other individual.*"

- Exemption under section 60B if "*the use of the data is – (a) required or authorized by or under any enactment, by any rule of law or by an order of a court in Hong Kong…*"

- Doctors may rely on section 60B to disclose personal data of a patient to the DOH <u>without the patient's consent</u>

# 3.3 Medical Council of Hong Kong Code of Professional Conduct

## Disclosure of Medical Information to Third Parties

1.4.2 "In exceptional circumstances medical information about a patient may be disclosed to a third party without the patient's consent. Examples are: (i) where disclosure is necessary to prevent serious harm to the patient or other persons; (ii) when disclosure is required by law."

32.1 Where it appears that others (spouses, other doctors, etc.) may be at risk if not informed that a patient has a serious infection, the doctor should discuss the situation with the patient and endeavour to obtain the patient's permission for the disclosure of the facts to those at risk.

32.2 Should the patient refuse, if the welfare of other health workers may be properly considered to be endangered, the Council would not consider it unethical if those who might be at risk were to be informed of the risk.

32.3 If the patient refuses to consent to the disclosure of their health to spouses or other partners who may be at risk, the doctor may *"consider it a duty to inform the spouse or other partner"*.

# 4.1 Impact of COVID-19 on the Judiciary

- General adjournment since 29 January 2020
- All hearings (except urgent and essential hearings) were adjourned to a date to be fixed and court offices have been closed
- Matters considered to be urgent and essential include:
  - ✓ Applications to file originating documents where the limitation period may expire during the adjourned period
  - ✓ Urgent bail applications
  - ✓ Coroner's Court - applications for waivers for autopsy and handling pathologist's recommendation for autopsy, etc.

# 4.2 Enhanced measures since 24 Feb 2020:

- Judges and Judicial Officers will deal with applications, in particular interlocutory applications and substantive applications not involving any witnesses, by paper disposal
- Where parties have reached agreement on matters that can be dealt with by consent, the Courts will make consent orders
- Greater use of electronic means (e.g. emails) for receiving documents from parties and avoiding physical attendance at Court premises

# 4.3 Preparation for Court resumption from 2 March 2020:

- Progressive and staggered approach to ensure orderly resumption (e.g. re-opening of Court registries in batches)
- Expanded list of urgent and essential matters effective from 02.03.20
- The Judiciary anticipates week of 23.03.20 to be the end of the general adjournment period (if public health situation permits)
- Appropriate buffer period would be provided before hearings, particularly trials, are to be resumed

# Potential Causes of Action
# 5.1 Healthcare Workers

1. Employees' Compensation
   - COVID-19 is not an "occupational disease" under the ECO (Cap. 282), unlike SARS and Avian influenza A
   - But may claim under s.36 if it is a personal injury by accident arising out of and in the course of employment

2. Negligence: Failure to provide safe system of work
   - Case from SARS: Nurse contracted SARS whilst working at a hospital; alleged negligence against the hospital for (i) failing to provide adequate protective gear and (ii) having insufficient facilities (e.g. no segregated toilets)

# 5.2 Non-SARS Patients/Visitors

1. Occupiers' Liability

2. Negligence
   - Failure to notify P when there is an infectious disease such as SARS present on the same floor
   - Failure to advise P of precautions to be taken in order to ensure that the disease would not spread to members of the patient's family
   - Failure to provide a good isolation system
   - Failure to inform the public about suspected cases so that Ps would not have attended at the premises in the first place

## 5.3 Plaintiffs must:

1. Plead all the circumstantial facts in order to support their case on causation

2. Formulate their case clearly by reference to the route(s) of transmission so as to avoid confusion

3. Avoid “embarrassing” pleadings

4. Obtain expert evidence to establish matters such as possible route of transmission, appropriate measures that should have been taken, etc.

# 5.4 Negligent treatment

- Treatment driven by “best guess” and/or anecdotes
- Use of steroids and Ribavirin (an antiviral agent)
- Delayed or missed diagnosis due to the lack of a real-time diagnostic test
- Some Ps were misdiagnosed and given steroids
- State of knowledge at the material time as a defence

## 5.5 UK Clinical Negligence (Swine Flu) Case

- P felt unwell at a time when the swine flu was pandemic.
- She attended at local health centre where a nurse examined and advised her to return home and go to bed.
- Two days later, P was admitted into A&E where she suffered a cardiac arrest. Investigations showed she had swine flu complicated by pneumonia.
- P resuscitated but sustained hypoxic ischaemic brain damage, leaving her profoundly disabled with some cognitive impairment.
- Held, measurement of the P's peripheral oxygen saturation was mandatory under the national and local guidance. The nurse's failure to do so was a breach of duty.
- Had the nurse followed the guidance, P would have been admitted and would have avoided the collapse.

# 5.6 Coroner's Court

## Natural Causes

- Where a person is suffering from a potentially fatal condition and medical intervention does no more than fail to prevent death
- Pathogens transmitted by natural, including normal social, means, without intending to cause or create a risk of transmission, leading to a disease which kills

## Accident/Misadventure

- Where a person is suffering from a condition which does not in any way threaten his life and such person undergoes treatment which for whatever reason causes death
- Accidental and non-natural ingestion of pathogens leading to a disease which kills

# 6.1 Refusal to Treat during an Epidemic?

- Public vs Private?
- Hippocratic Oath is silent on the issue of doctors helping people in times of plague and epidemics
- MCHK Code

  30.1 – Doctors should take adequate precautions when contacting patients and medical specimens to ensure that the risk of spreading infection to themselves and to others is minimized.

  31.1 – All patients, including those with serious infectious disease, are entitled to timely and appropriate care, including those whose own lifestyles have caused the infection.

# 6.2 Refusal to Treat during an Epidemic?

- GMC Good Medical Practice

  Para. 58 – "You must not deny treatment to patients because their medical condition may put you at risk. If a patient poses a risk to your health or safety, you should take all available steps to minimise the risk before providing treatment or making other suitable alternative arrangements for providing treatment."

- World Medical Association Medical Ethics Manual

  Page 41 – "… medical codes of ethics make no exception for infectious patients with regard to the physician's duty to treat all patients equally."

# 6.3 Refusal to Treat during an Epidemic?

- World Health Organization Guidance for Managing Ethical Issues in Infectious Disease Outbreaks

  "… some workers may have a duty to work during an infectious disease outbreak. However, even for those individuals, the duty to assume risk is not unlimited… Frontline workers should not be expected to expose themselves to risks that are disproportionate to the public health benefits their efforts are likely to achieve."

# Conclusion?

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# Thank You


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