



CASEBOOK

CELEBRATING
125 YEARS
OF MPS

CELEBRATING
25 YEARS
OF CASEBOOK

PATIENT PRIVACY vs PUBLIC SAFETY

TREATING PATIENTS THAT WORK IN SAFETY
CRITICAL ROLES

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A FRIEND IN NEED

A patient suffers complications during spinal surgery

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Dr Marika Davies, Editor-in-Chief of Casebook, welcomes you to this edition and comments on some topical issues.

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What did you think about the last issue of Casebook? All comments and suggestions welcome.

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WELCOME

Dr Marika Davies
EDITOR-IN-CHIEF



This year marks a significant anniversary for Medical Protection, as we celebrate 125 years of supporting members. We were founded in 1892 as a mutual organisation to provide members with expert advice, support and protection in their professional practice.

We are also celebrating 60 years of supporting members in New Zealand. We launched in New Zealand in 1957, with over 2,000 members joining in the first year.

Today we're proud that more than 17,000 healthcare professionals in New Zealand are members of Medical Protection.

Though our purpose remains the same as it always has, the world around us has changed dramatically. Life is faster and more complex, presenting healthcare professionals with even greater opportunities and challenges.

The breadth of specialist advice and support, and the education and training we provide, have expanded exponentially, not only to keep pace with advances in medicine, but to stay ahead of the curve – anticipating challenges and risks before they emerge.

This year *Casebook* is also marking 25 years of supporting members with learning from case reports and medicolegal and risk management articles.

While we are proud of the support we have provided through *Casebook* over the years, we must always look to the future. As part of that forward focus, you may notice some changes to *Casebook*, starting with this edition.

Going forward we want to focus *Casebook* on the content that really matters to you – case reports. Each edition will also feature one or two articles that focus on topical medicolegal issues.

In this edition, we provide advice on what to do if you are ever approached by the media, and ask a tricky question: when does a doctor's obligation to protect public safety outweigh their duty to maintain patient confidentiality?

As always, we welcome your feedback. Please let us know what you think of the changes to *Casebook*, and contact us with any questions or comments on the articles and case reports.

I hope you enjoy this edition.

Dr Marika Davies
Editor-in-Chief
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25 YEARS OF CASEBOOK

This year marks the 25th anniversary of *Casebook*, which has been providing medicolegal and risk management advice to members since 1992.

We're very proud to reach this important milestone and look forward to many more years of advising and supporting members.

GOVERNMENT TO REMOVE RESTRICTIONS ON MEDICAL CANNABIS

Doctors will soon no longer need the government's approval to prescribe cannabidiol (CBD) to patients. Associate Health Minister Peter Dunne announced the decision on 2 June 2017.

CBD is extracted from cannabis and has little or no psychoactive properties commonly associated with marijuana. It is currently classified as a controlled substance and doctors needed permission from the Ministry of Health to prescribe it, however this restriction is to be removed by the end of 2017.

Mr Dunne said: "I have taken advice from the Expert Advisory Committee on Drugs (EACD) that CBD should not be a controlled drug and am pleased cabinet has now accepted my recommendation to make this change."

He added: "In practical terms, the changes mean CBD would be able to be prescribed by a doctor to their patient and supplied in a manner similar to any other prescription medicine."

Doctors will be able to prescribe up to a three-month supply of CBD to patients who require it. However, barriers remain in getting access to the drug as many countries have strict limits on importing and exporting it.

To find out more, go to: <https://goo.gl/tj22Eq>



NEW GUIDE FOR PROTECTING HEALTH INFORMATION WHEN OFF-SITE

The Privacy Commissioner has published a new guide for those providing community based health services. It offers advice on how to keep health information secure when you are off-site or on the road.

Rule 5 of the Health Information Privacy Code requires health agencies to keep health information safe. The guide provides tips for planning your visits, what to do while you're there and includes helpful checklists.

To read the guide, go to: <https://goo.gl/7hAEiP>

NEW GUIDANCE ON THE MANAGEMENT OF PRESSURE INJURIES

A new booklet providing guiding principles for healthcare workers to prevent and manage pressure injuries has been published by ACC Clinical Services.

The guide is a foundational document for pressure injury prevention and management in New Zealand and has been developed to support local experience while enabling national consistency. It has been endorsed by the Ministry of Health and the Health Quality & Safety Commission.

To download a copy of the guide, go to: <https://goo.gl/qrfUkF>



DOCTORS IN THE SPOTLIGHT

Dr Pallavi Bradshaw, Senior Medical Adviser at Medical Protection, provides advice on what you should and shouldn't do when approached by the media

READ THIS ARTICLE TO:

- ✓ Learn how to handle media queries about your practice
- ✓ Find out what you should do if approached by a journalist
- ✓ Discover what Medical Protection can do to support you with negative media attention

It's not hard to see why real life stories about alleged poor care and consequent personal suffering make the papers. Readers can relate to experiences of medical care, and doctors are generally held in high regard within society. This perception, and the trust placed in the profession, can be challenged when a patient is harmed or a doctor is caught behaving badly, and is often considered 'newsworthy'. News coverage may result from patients complaining directly to the media if they feel there have been lapses in their care, or if a journalist considers a high profile fitness to practise hearing to be in the wider public interest.

Understandably, it can be very daunting for doctors – who generally have no or limited media training – if they are thrust into the public eye, with criticisms directed at their patient care. Journalists can be inventive when attempting to seek comment, as they can try to catch people off-guard in the hope that it will prompt a response. This could be an unexpected phone call or a reporter 'doorstepping' a doctor at their home or place of work. Journalists may also seek comment through colleagues, friends or family, or make contact via email and social media.

If you find yourself in this situation, the following points may help to prepare you for the experience, and remember, you can always contact Medical Protection for advice.

REMAIN PROFESSIONAL

If approached by a journalist, the first thing you should do is maintain your composure. It is important to appear calm and professional, and not say something that you might later regret.

Avoid saying "no comment", as this can be perceived as you having something to hide. Rather than providing provisional comments or refusing to engage at all, ask the reporter for further details and tell them you will get back to them. It is a good idea to obtain:

- the journalist's name
- the name of the publication or the programme they work for

- exactly what they are asking you to comment on
- their deadline
- who else they have spoken to
- their contact details.

It is important to remember that there is no such thing as 'talking off the record'. If you don't want to see something in print, it is better to say nothing at all.

It is also advisable to discuss the issue with your hospital press office as soon as possible. If appropriate, doctors should inform their colleagues as they may be approached too.

SEEKING MEDIA ADVICE FROM MEDICAL PROTECTION

As most doctors are unlikely to have received media training, informing Medical Protection from the outset is particularly important – even if you feel like you can deal with the query on your own. The medical adviser dealing with your case will be able to proactively engage our press office and any instructed lawyers required to respond to the query.

Our press team has expertise in dealing with the press and will be able to provide specific advice and support relating to your situation. They may also liaise with the journalist on your behalf, assist you to develop a press statement, issue it to the journalist and monitor press activity.

DUTY OF CONFIDENTIALITY

It will, of course, be tempting to tell your side of the story, especially if you feel as though you have been cast in a negative light or if the information that has been provided is inaccurate, incomplete or misleading. However, you must remember that you have a professional duty to protect the patient's right to confidentiality.

Commenting on any specifics relating to your patient's care would be considered to be a breach of confidentiality and could lead to a complaint, disciplinary action or regulatory sanction.

Even if a patient informs you of their consent for you to provide a comment about their care, it is usually not appropriate to do so in a public forum.

It is useful to keep contemporaneous records of all dealings with the press, as they could assist in defending your actions if you receive a complaint about the information you disclose later.

WHAT CAN YOU SAY?

It is a good idea to begin by liaising with others involved in the patient's care, to agree on the approach and key messages. Any comments or statement you provide should be short and factual, while not compromising patient confidentiality. Column inches are limited and lengthy statements are likely to be edited, which could distort the meaning or alter the emphasis. As a guide, statements should be no more than 150 words, using plain language that cannot be misconstrued or taken out of context.

A standard statement may explain in general terms that you have a professional duty to maintain patient confidentiality and cannot comment further. Depending on the circumstances, it may also be appropriate to offer condolences to the patient's family.

You may also wish to make other comments, for example, a reassurance that you always strive to provide the best possible care or that you have learnt from the experience. However, be careful of not breaching patient confidentiality when doing so.

For assistance in drafting a statement, contact one of our medical advisers who can provide advice and liaise with our press team on your behalf.

PHOTOGRAPHERS

It is possible that you may be confronted by a photographer or camera crew outside your home, place of work or at a hearing in which you may be involved. They are likely to obtain an image of you to go alongside any news articles published about you, so it is important to maintain your professional composure. Do not cover your face or appear angry, but avoid smiling as this could also give the wrong impression.

It is also a good idea to alert any colleagues to the presence of photographers as soon as possible, so they can ensure that steps are taken to protect the confidentiality of other patients.

Regardless of why the media is interested in your professional life, it can be a very stressful and traumatic experience. Above all, try to remain professional when dealing with the issue, continue to provide your patients with the best care possible, and remember you are not alone – Medical Protection is here for support.

MORE SUPPORT

For assistance with press enquiries, contact one of our medical advisers on **0800 2255 677** or advice@mps.org.nz

PATIENT PRIVACY vs PUBLIC SAFETY

Dr Rob Griffiths of the Transport Accident Investigation Commission examines doctors' competing responsibilities of maintaining patient confidentiality and protecting public safety

READ THIS ARTICLE TO: 

- ✓ Find out about a doctor's obligation to report possible safety concerns
- ✓ Learn how to make a disclosure

Detection and management of mental illness and substance use disorder is not easy; it leaves no scars and sufferers can be skilled at deception and concealment.

On 24 March 2015, Andreas Lubitz, the 27-year-old first officer of Germanwings Flight 9525, deliberately descended the Airbus 320 under his control into the French Alps, killing him and 150 other people on board.

An investigation found that he had seen 41 doctors in five years, seven in the month before the crash. He was considered to have had multiple serious psychotic episodes with suicidality, and had been certified by two doctors as unfit to work on the day of the tragedy. The investigation report from the Bureau d'Enquêtes et d'Analyses (BEA), speaking about all the doctors involved, stated: "It is likely that breaching medical confidentiality was perceived by these doctors as presenting more risks, in particular for themselves, than not reporting the co-pilot to authorities."

It couldn't happen in New Zealand, of course.

THINK AGAIN...

An ex-military and precision flying pilot, with a lapsed medical certificate for his pilot's licence, flew his aerobatic aircraft into the sea off the Coromandel Coast. The district health board acknowledged that its staff failed to take account of his flying history while under their care, although they were aware of his pilot status.

A number of aircraft accidents investigated by the Transport Accident Investigation Commission (TAIC) and Civil Aviation Authority (CAA) have identified alcohol and other drug problems amongst the flight crew involved. Whether these problems were known to their treatment providers (doctors, mental health services and counsellors) isn't always clear. However, pilots who were known to health professionals as having an alcohol and drug problem have collided with an obstacle while probably impaired.

Unfortunately, accidents where drugs or alcohol are involved tend to have severe outcomes. For example, a Nomad accident on Fox Glacier in 1993 and the Carterton balloon accident in 2012.

In other cases, a previous episode of severe mental illness, which may or may not have had a role in the mishap, only comes to light when there is an accident. In such cases, a number of health professionals involved in their mental health care did not consult with or notify the CAA. There have also been examples of inappropriate prescribing of opioids for patients who were known to be pilots.

Any pilot or air traffic controller whose health gives rise to possible safety concerns is required to self-report changes in health status. That obligation also extends to those professionals who provide them with personal healthcare, as stated in the Health Practitioners Competency Assurance Act (HPCAA).

In the wider transport sector, there have been maritime and rail accidents and incidents where substance use disorder, or

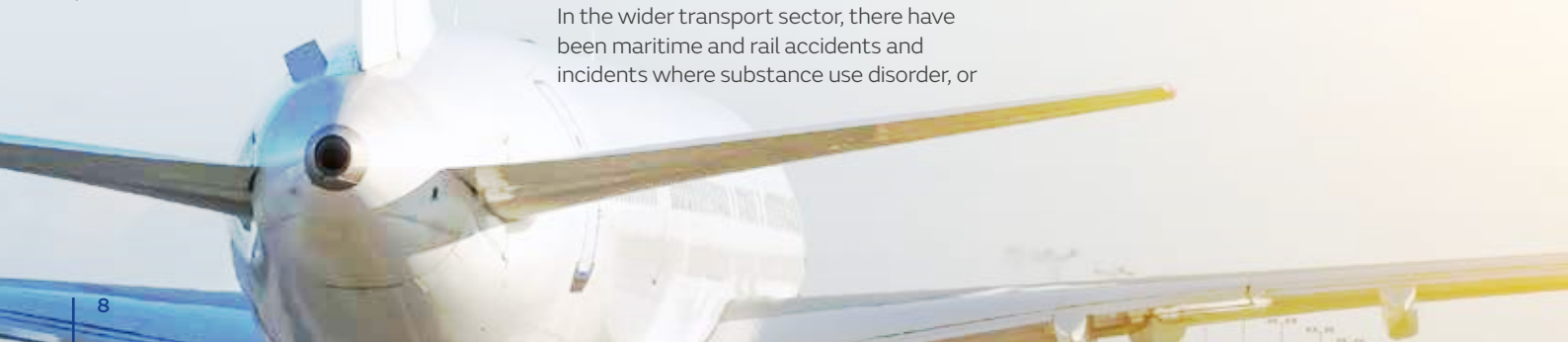
even prescribed medications, have played a causative or contributory role. In one case, a train driver reported to work over the legal alcohol limit for driving a car and went on to roll his train by going too fast around a curve later that day.

SAFETY CRITICAL OCCUPATIONS

It is not just the transport sector, but also anyone in a safety critical role. The term safety critical is not legally defined but it usually means a job involving an activity that, if it would go wrong, could put other people's lives and/or significant investments at risk. Health professionals are regarded as safety critical, and the HPCAA makes it clear that a health professional that is suspected of suffering from a physical or mental health problem, or substance use disorder involving alcohol or other drugs, is subject to statutory obligation to report consequential concerns.

The main concern is whether a patient is in an occupation where he or she is responsible for the health and safety of individuals, communities or the wider public, whatever that occupation might be.

It can be difficult for doctors to juggle their responsibilities of confidentiality to their patient, along with their responsibility to protect public safety. However, if we are to avoid similar tragedies to Carterton and Germanwings in the future, doctors need to be vigilant, conscious of public safety concerns, and prepared to act decisively when they feel that a patient's health imposes wider risks to our community.





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WHAT TO DO

So, what do we do if confronted by a patient who is in a safety-sensitive occupation, whom you suspect has repeated and/or significant impairment by drugs and/or alcohol, or has a mental illness, either of which may lead to unsafe actions affecting the general public? If you, as that patient's doctor, have a 'reasonable belief' that there is a serious threat, the Privacy Act and Health Information Privacy Code 2008 allows that you may disclose your concerns to the appropriate agency, who can act on your concerns.

In the transport sector, doctors must disclose concerns to the appropriate government agency about pilots, air traffic controllers, and commercial drivers about whom they have concern regarding the public safety consequences of ill health, or substance use.

HOW TO MAKE A DISCLOSURE

In the first instance, you should discuss the issue with your patient and encourage them to make the disclosure themselves. Discuss what you hope will happen following disclosure and what help might be available for them. Airline pilots have a Pilot Advisory Group or the Human Intervention Motivation Scheme (HIMS) group to assist with substance use disorder.

If a patient refuses to inform the appropriate agency, you must consider the circumstances and judge whether the risk to public safety outweighs your duty of confidentiality to the patient. Medical Protection has a team of expert medical advisers who can provide advice and guidance when making this decision.

If you deem a disclosure to be necessary, you should tell the patient that you intend to make this disclosure and inform them in writing once you have done so. You should limit the information you disclose to the absolute minimum that is relevant to the threat to personal or public safety.

It is important to keep thorough records and document any decisions you make, whether or not you end up making a disclosure.

The Privacy Commissioner has created a Health Privacy Toolkit that can provide guidance on when and how to make a disclosure. Visit: [privacy.org.nz/news-and-publications/guidance-resources/health-privacy-toolkit/](https://www.privacy.org.nz/news-and-publications/guidance-resources/health-privacy-toolkit/)

MORE ADVICE

If you are considering making a disclosure about a patient and need advice, contact our team of expert medical advisers on **0800 225 5677** or advice@mps.org.nz



BACK TO BASICS

A patient repeatedly attends his GP with worsening back pain

Author: Dr Philip White, Medical Claims Adviser at Medical Protection



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M r B, a 42-year-old builder, attended his GP, Dr S, with a three-week history of back pain and left sided sciatica. Dr S found nothing of concern on further questioning or examination, so made a referral for physiotherapy and recommended ibuprofen. Over the next few weeks, the pain increased and the patient required diclofenac and cocodamol to control his symptoms.

Two months later, while still waiting for his physiotherapy appointment, the pain got so bad that Mr B called an ambulance and was taken to the Emergency Department (ED), where he was found to have a slight left foot drop and bilateral straight leg raising of 45 degrees. A more detailed examination of Mr B's neurology was not carried out. The ED doctor thought that this was not sciatica but simple back pain made worse by moving Mr B's legs. Mr B was sent home with diazepam.

One week later, the pain was even worse and there was now intermittent numbness in both buttocks. Mr B called the out-of-hours GP service and was seen at home by Dr T. He told Dr T that he was able to pass small amounts of urine, and Dr T also recorded "no saddle anaesthesia." Dr T carried out a very brief examination of the legs which was unremarkable, started tramadol, and advised Mr B to keep active and see his own GP the following day.

Mr B was reviewed by Dr S the next day, who again recorded in the notes: "No red flags, no loss of bowel or bladder function. No saddle anaesthesia."

Dr S gave Mr B a diclofenac injection and arranged an MRI scan. He too only carried out a very brief examination of the back and legs.

Two days later, due to intolerable pain, Mr B was on his way to the ED again when he suffered urinary incontinence in the ambulance. On admission, he had an MRI scan that showed a large L4/5 central disc pressing on the cauda equina.

Mr B underwent surgical decompression the next day but was left with bilateral foot drop, requiring the use of a wheelchair, and bowel, bladder and sexual dysfunction.

Mr B brought a claim against all the doctors involved in his care. He alleged that they had failed to take a proper history and perform an adequate examination, including assessment of perineal sensation and anal tone. The claim also alleged that they did not give proper regard to bilateral and worsening pain and buttock numbness, and did not refer for urgent assessment.

EXPERT OPINION

Medical Protection instructed an expert GP who was critical of the care provided by both general practitioners. She opined that Dr T did not carry out an adequate assessment after the report of intermittent buttock numbness, and that Dr S conducted a "very severely substandard" examination the next day.

Emergency medicine and orthopaedic experts concluded that the ED doctor's assessment had been inadequate and were critical of the delay before decompression. They also stated that, if Drs S or T had assessed Mr B more thoroughly, they would likely have found perineal numbness and/or urinary retention, and the resulting emergency decompression would have left Mr B in a much better condition.

On the basis of the expert opinion, the case was deemed indefensible and was settled for a high sum, shared equally between the hospital, Dr S and Dr T.

Learning points

- Even when referral to physiotherapy has already been made, keep a low threshold for reassessment if things change.
- When Mr B was found to have foot drop this should have mandated a thorough neurological evaluation as this is a 'red flag' symptom for nerve compression or, in this case, cauda equina.
- Issuing analgesia, especially increasing the strength, is an opportunity for reassessment.
- Do not assume that the doctor who saw the patient before you has carried out an adequate assessment, even though nothing might have changed.
- If you ask a patient if they have saddle anaesthesia, make sure they know exactly what that is. It might be useful to ask about rectal function, numbness between the legs or around genitals and anus, and if they have any difficulty getting an erection.
- Any suggestion of perineal numbness or urinary symptoms mandates a thorough assessment of both. Don't forget that urinary tract infections can be caused by retention.
- Giving patients information about the red flags for cauda equina in writing can improve safety netting. However it is no substitute for discussing them with the patient and explaining how the different red flags can present and what the symptoms may mean.

REPORTED ABUSE

A child makes an allegation of abuse

Author: Dr Clare Redmond, Medical Adviser at Medical Protection

Mrs X asked her GP to refer her eight-year-old daughter, Child F, to be assessed by a consultant psychiatrist in child and adolescent mental health. The GP referral letter stated that Child F had reported to her teacher that her father frequently touched her genitalia. The child's parents had recently separated acrimoniously and the mother had reported the matter to the police.

The consultant psychiatrist, Dr B, obtained a history from Mrs X, who confirmed these details. She then took a history from Child F and wrote a report based on these discussions. The report detailed that Child F had reported numerous incidents of touching by her father, and the descriptions provided by the child indicated the father was sexually abusing his daughter.

The police investigated the allegations but no charges were brought against the father, Mr X. However, Dr B's report was used by the mother in custody proceedings, and the mother gained sole custody of Child F.

In the course of the proceedings, Mr X obtained his own expert psychiatric report. Mr X's expert concluded that Dr B had obtained an inadequate history in three areas. The expert said that Dr B had failed to confirm the history with the school directly, had failed to seek an explanation from Mr X, and had failed to consider that Mrs X may have coached Child F in giving her answers. This expert was less certain that this was a case of sexual abuse, but deemed the child was best placed with her mother, with supervised contact with her father.

Mr X brought a claim for negligence against Dr B, alleging a failure to take an adequate history from a range of sources to evidence her conclusion of sexual abuse.

EXPERT OPINION

Medical Protection obtained further expert opinion from a psychiatrist. This expert concluded that Dr B carried out her interview with Child F appropriately, and that there was no evidence of pressure or undue influence by the mother. She concluded that there may have been some shortcomings in failing to obtain collateral history from the school and Mr X, but that the activity that Child F had described to Dr B, if true, would unequivocally amount to child sexual abuse and that Dr B's conclusions to that effect were reasonable.

Medical Protection successfully defended the claim.



Learning points

- In the New Zealand environment it would be uncommon for there to be a claim of negligence against Dr B but she may have been vulnerable to a complaint to the MCNZ.
- When writing a professional report, you should take reasonable steps to check the information provided, to ensure it is not false or misleading. A report should make clear where a patient has provided information about events or another party, and this should not be recorded as fact. You must not deliberately leave out relevant information even if requested to do so.
- When writing a professional report, you should set out the facts of the case and clarify when you are providing an opinion. Do not be tempted to comment on matters that do not fall within your area of expertise. In this case, Dr B was assisted by her clear and robust report-writing.
- All doctors have a duty to act on concerns about the welfare of children, and child protection work is recognised as challenging and emotionally difficult.

NO NEWS IS NOT ALWAYS GOOD NEWS

A newborn is referred with a clicking hip

Author: Dr Mónica Lalanda, Emergency Medicine Physician and Medical Writer



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Child J, a one-week-old baby girl, was noticed to have a clicking right hip when she was seen by the community midwife. A referral to the orthopaedic clinic was requested and Child J was reviewed by orthopaedic junior doctor, Dr M, three weeks later. Dr M confirmed that there was no relevant family history and examined Child J. Dr M documented that there was no clicking of the hips, and Ortolani and Barlow tests for assessing hip stability were negative. Dr M discharged the baby back to the care of her GP.

During a routine check-up at eight months, Child J's GP, Dr X, found she had limited rotation of her right leg and immediately arranged for her to have an x-ray. Two days later, following the x-ray, consultant radiologist Dr R described the results as follows: "The left hip is normal. The right hip appears dislocated with associated moderate acetabular dysplasia."

However, due to a failure in the system, the report was simply filed in the hospital record and Dr X did not receive a copy at his surgery.

Three weeks later Child J's mother brought her in with a minor cold and asked about the x-ray results. Dr X reassured her that he had not heard anything so it was a case of "no news is good news" but he promised to check up on it. Unfortunately, the clinic was very busy and he forgot to look into it.

Child J was reviewed at 16 months, when her mother complained that she "walked funny". Child J had an obvious limp, and on examination her right hip was clearly abnormal. Dr X made an urgent referral to the orthopaedic clinic and a consultant paediatric orthopaedic surgeon, Miss B, confirmed the diagnosis of developmental dysplasia of the hip.



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Child J was initially treated with a closed reduction and immobilisation with hip spica, but on follow up at three months, the hip appeared dislocated again. An osteotomy was performed and appropriate immobilisation applied, but unfortunately, months later, the dislocation reoccurred and the dysplasia also seemed to have deteriorated. Child J was referred to a sub-specialist paediatric orthopaedic unit where she was seen by Mr P, a specialist in hip dysplasia. Mr P arranged for Child J to have specialised physical therapy and explained to her parents that it was likely that Child J would require further surgery within the next few years, although it was still too early to predict when and what kind of surgery Child J would need.

Child J's parents brought a claim against all the doctors involved in the management of their daughter's care. They alleged that Dr M should have requested an x-ray to exclude the dislocation on the initial visit to the orthopaedic clinic. They also alleged that Dr R failed to ensure that the report made it safely to the clinic, and that Dr X had not checked the x-ray but had dismissed their concern. The parents also claimed against the orthopaedic surgeon, Miss B, for failing to treat their daughter's hip appropriately.

EXPERT OPINION

Medical Protection sought expert opinions from a paediatric orthopaedic surgeon and a GP.

The orthopaedic expert considered that Dr M, the junior orthopaedic doctor, had demonstrated an acceptable standard of care. The examination of the baby was normal, with no suggestion of a dislocated hip, and was well-documented. There was no family history to suggest higher risk, therefore an x-ray was not indicated at that time.

The expert GP's opinion on the care provided by Dr X stated that the standard of care was below a reasonable standard, since he failed to follow up the investigation that he had rightly requested. The expert expressed sympathy for Dr X, who had diagnosed the abnormality appropriately, but then failed to follow up on the investigation. If the mother's account of the next consultation was right, he missed a second opportunity to review the x-ray report. All this translated into a long delay of several months in the surgical treatment of Child J's hip.

The orthopaedic expert commented that the surgical treatment by Miss B was in keeping with acceptable practice and that the failure was caused by the advanced state of the dysplasia that made the hip very unstable.

The supportive orthopaedic expert's report enabled Medical Protection to extricate Dr M and Miss B from this action. The hospital accepted that there had been a clear administrative error that allowed the system to file the report without it being sent to the clinical team for action. The failings in this case meant it was considered indefensible and it was therefore settled for a substantial sum, with the hospital contributing half the costs.

Learning points

- In the New Zealand environment it would be exceedingly rare for there to be a claim of negligence made against the doctors but they may have been vulnerable to a complaint to the HDC.
- Good history taking and careful documentation of physical examination can make a huge difference if a patient makes a claim against you, which can often be many years after the event.
- When you request a test, you are responsible for ensuring the results are checked and acted upon.
- All systems need a safety net where results are checked so that abnormal results are not missed. It is vital to ensure you have a robust system for acting on tasks that arise from a consultation.
- Poor outcomes are not necessarily the result of negligent medical management. Sometimes poor outcomes are a result of the particular condition. You can help protect yourself from criticism by always ensuring your records outline the rationale for any decision you have taken.

A SYSTEMATIC FAILURE

A surgeon fails to act on biopsy results

Author: Dr Andrew Stacey, Medical Adviser at Medical Protection



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M r F, a 50-year-old farmer, visited Dr C, a consultant surgeon, concerned about lesions on his face. Dr C considered that these were basal cell carcinomas (BCCs) and arranged to biopsy them. A week following the biopsy, the histology report was sent to Dr C's rooms and confirmed that the lesions were BCCs. Mr F required further follow-up but was not informed of the results and no follow-up was arranged.

Fifteen months later, Mr F consulted his GP, Dr G, about another issue. During the consultation Dr G noted the lesions on his face and, after a review of the histology reports, made an urgent referral for surgery, which was duly performed.

Mr F made a complaint to the Health and Disability Commissioner (HDC) over Dr C's failure to act on the histology report in a timely manner. He alleged that the surgery may have been more straightforward and less costly if he had been referred immediately. He also anticipated the need for further surgery.

In Dr C's initial response to the complaint, he stated that his practice had no written policies for managing test results, and that he was unable to recall or explain what had happened regarding the patient's results. The HDC decided to open an investigation.

EXPERT OPINION

The HDC sought expert opinion from a consultant surgeon. The expert was critical of the failure to contact the patient and follow up on the histology results. The expert felt that even if written policies had been available at the time, they would not have automatically prevented this omission and the absence of a written policy did not alter the fact that the histology of any excised specimen needed to be reviewed and appropriate action instituted.

If the biopsy result had been actioned at the time, the patient would have required extensive surgery. However, as no documentation regarding the patient's subsequent treatment was provided to the expert, he was unable to comment on whether this surgery would have been less extensive than that required 18 months later.

Following the incident, Dr C worked with his practice colleagues to review their policies and changed their practices in an attempt to avoid a similar event occurring in the future. Some of the changes they made included:

- Copying all test results to the patient's GP or referring doctor.
- Providing all patients with a printed copy of their test results.
- The nurse printed all the test results and stamped them with tick boxes titled "No further action", "Recall", and "Phoned", along with a space to write comments. The results were then given to the relevant doctor to determine whether further action was required.
- Amending the practice logbook that tracked specimens sent for testing to include a further column to document whether the test results had been seen and actioned appropriately.

The expert felt that the modifications, and in particular the fourth, meant that Dr C's practice now met the highest standard of care.

OUTCOME

Dr C was found to be in breach of Right 6(1)(f) of the Code for failing to inform the patient of his abnormal test results. His practice was found to be in breach of Right 4(1) for failing to ensure that the systems for handling patient test results were sufficiently robust.

The HDC recommended that both Dr C and his practice apologise to the patient for their breaches of the Code, and that an audit be conducted on several years of abnormal test results to ensure that patients had been informed of those results and appropriate follow-up organised.

Learning points

- Written policies can assist in ensuring that processes are clear and readily accessible to staff which, in turn, can support clinicians in providing good care.
- Doctors owe patients a duty of care in handling test results, including advising patients of, and following up on, abnormal results. Primary responsibility for that duty lies with the clinician who ordered the test.
- Medical practices have a responsibility to ensure that they have effective systems in place for the handling of incoming patient test results and follow-up. It is essential that those systems are robust and support clinicians in providing good quality care.

A COMPLICATED CLAIM

A surgeon's experience is questioned when he acts as an expert witness

Author: Dr Janet Page, Medical Claims Adviser at Medical Protection



Mr A, an orthopaedic surgeon, was approached by a claimant's solicitors to provide an expert report on behalf of their client. He was advised that the claim related to alleged negligence in the conduct of an L4/5 spinal decompression and fusion with malposition of the pedicle screws, following which the claimant developed right S1 nerve root damage, causing right foot drop. Mr A sent the solicitors his CV – which set out his area of practice – as evidence of his suitability for the role, and agreed to provide the requested report.

In his report, Mr A criticised the conduct of the surgery. His opinion was that the hospital inappropriately allowed a specialist registrar to perform the operation unsupervised, that there was a failure to use an image intensifier and a failure to check the position of pedicle screws immediately postoperatively, resulting in delayed diagnosis of the malposition of the screws and permanent foot drop. A Letter of Claim was served on the hospital based on Mr A's expert opinion.

In their Letter of Response, the hospital's solicitors denied liability. They commented that Mr A “does not claim to have expertise in spinal surgery”. They advised that the operation had been performed by a locum consultant, an image intensifier was used and that foot drop is a recognised complication of spinal decompression and fusion, about which the claimant was warned preoperatively.

Proceedings were nevertheless commenced by the claimant's solicitors. In response, the hospital's solicitors submitted questions to clarify Mr A's expertise in spinal surgery. When answering the questions, Mr A confirmed that he had never held a substantive consultant post in the public sector, that he had last performed spinal surgery 15 years earlier and that he had not operated at all in three years. He also stated

that he had never performed complex spinal surgery and that he had not personally performed the operation in question, because of the high risks associated with it.

Following this, the claimant's solicitors instructed a new expert. She agreed with Mr A's original opinion that there was a failure to check the position of the pedicle screw immediately postoperatively and that there was a delay in making the diagnosis of foot drop. However, the expert also identified new areas of concern, namely that there was a failure to check the neurovascular status of the limb during the procedure, and that there were deficiencies in the consent that had been taken.

She concluded that, on the balance of probabilities, the neurological damage sustained would have been less severe with earlier diagnosis of the foot drop and subsequent correction of the underlying cause (malposition of the screws).

The claimant's solicitors sought financial redress from Mr A for the increased costs incurred by their client in instructing a second expert and revising their claim. They alleged that Mr A was wrong to maintain that he had sufficient expertise in the field of spinal surgery, and to comment on the current public sector standards and operational procedures on the facts of this case. They pointed out that the hospital's solicitors were quick to notice this weakness, as a result of which their client faced an Adverse Costs Order against him.

EXPERT OPINION

Mr A remained of the view that he had the appropriate expertise to report on the case, relying on the elements of spinal surgery in his training in general orthopaedic surgery and his efforts to keep up to date with developments in this area.

Medical Protection advised that he should seek to settle on the basis that whilst there was no suggestion that Mr A deliberately misrepresented his expertise, he did not make explicitly clear the limits of his knowledge and personal experience. Additionally, although he clearly stated an interest in spinal surgery outcomes, he did not advise that he had not carried out a spinal decompression in 15 years, nor did he advise that he had never carried out the decompression and fusion that was the subject of the original claim.

The matter was settled with Mr A's agreement for a low sum and without admission of liability.

Learning points

- In the New Zealand environment, there would be no claim against Mr A, but he could be vulnerable to a complaint to the MCNZ for unprofessional behaviour. Doctors providing expert opinions to the HDC, Coroner, HPDT and ACC, could find themselves in such a situation if they misrepresent their experience.
- Be clear and explicit about the limits of your expertise to avoid misunderstandings.
- Your credibility is likely to be undermined if you are providing an opinion about an area of practice in which you have no (or no recent) practical experience.
- This case highlights the importance of having understanding and experience appropriate to the location of a claim (for example, private or public sector) in order to avoid making incorrect assumptions about personnel or protocols.

A FRIEND IN NEED

A patient suffers complications during spinal surgery

Author: Mr Ian Stephen, Consultant Orthopaedic Surgeon (Retired)



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Ms N, a 33-year-old accountant, presented to Mr X, a consultant orthopaedic surgeon, with severe lower back pain radiating to both legs. A clinical diagnosis of a central disc protrusion at L4/5 was confirmed on MRI scan. Mr X advised laminectomy with discectomy, to which Ms N consented. Mr X did not record the details of the consent process, but has since stated that he would have warned of potential complications.

Mr X recorded the operation as uneventful, but Ms N rapidly became hypotensive postoperatively and an ultrasound scan revealed a large retroperitoneal haemorrhage. Mr X requested an opinion from Mr Y, a consultant general surgeon, who assessed the patient and advised an emergency laparotomy.

During the laparotomy by Mr Y, retrocolic exploration revealed a clot adjacent to the abdominal aorta. Removal of this clot caused a gush of blood and haemodynamic collapse. The aorta was found to have been transected just below the left renal artery. Mr Y clamped the aorta above the renal artery which controlled the bleeding, and the patient's condition then improved.

Mr Y then attempted to perform an end-to-end anastomosis of the aorta, but this failed. There was then bleeding from the left kidney, which proved uncontrollable, so Mr Y took the decision to remove the kidney. Miss Z, a consultant vascular surgeon, was called in and successfully repaired the aorta with a synthetic graft.

Ms N subsequently made a good recovery. She later brought a claim against the orthopaedic surgeon, Mr X, alleging that there had been an indisputable act of gross negligence in damaging the aorta and in causing the left kidney to be removed.

EXPERT OPINION

Medical Protection's medicolegal experts considered the case carefully and concluded that it would be difficult to defend the fact that the aorta was transected during an otherwise straightforward laminectomy procedure. The decision was made to negotiate settlement of the claim as swiftly as possible in order to minimise costs.

The case was therefore settled on behalf of Mr X for a substantial sum.



Learning points

- Work within the limits of your competence. Doctors must recognise and work within the limits of their competence and refer a patient to another practitioner when this serves the patient's needs. If an emergency arises in a clinical setting you must take into account your competence and the availability of other options for care. Specialist input was sought in this case, which helped to avoid a more serious outcome for the patient.
- Make clear and detailed notes. When things go wrong during a surgical procedure, the absence of any documentation of the consent process makes a claim very difficult to defend. Patients must be given clear, accurate information about the risks of any proposed treatment, and this must be clearly documented in the medical records.
- Vascular and visceral injuries are a recognised complication of surgery for herniated lumbar disc disease, and frequently result in the death of the patient.
- In this case there were clear vulnerabilities and it was considered unlikely that it would be possible to successfully defend the claim. Medical Protection's legal team therefore made every effort to avoid incurring unnecessary legal costs and focused on achieving a satisfactory settlement of the claim as soon as possible. As well as saving costs this also reduced the stress and anxiety to Mr X by shortening the time it took to resolve the matter.

UNFORESEEABLE COMPLICATIONS?

A patient undergoes corneal graft surgery for deteriorating keratoconus

Author: Dr Anusha Kailasanathan, Ophthalmologist



Mr M, a 45-year-old lawyer with a substantial income, consulted Dr L, an ophthalmologist, for the management of deteriorating keratoconus. He had become intolerant of contact lenses and was experiencing visual difficulties. His right eye had a corneal scar secondary to severe keratoconus, and he had keratoconus forme fruste in his left eye. Visual acuity was 6/20 in the right eye and 6/12 in the left eye.

Dr L offered Mr M corneal graft surgery in order to improve his symptom of deteriorating vision. He was counselled regarding complications, specifically that eye infections were a possibility, but he was not told about the rare risk of loss of the eye. Dr L performed uncomplicated corneal graft surgery on the right eye, and before discharging Mr M, provided him with his mobile phone number and a postoperative information leaflet, which informed patients that they should contact him immediately if they experienced any pain or poor vision.

Written records show that Dr L reviewed Mr M on the first day post-surgery. He was satisfied with the eye and prescribed a topical corticosteroid and a topical antibiotic. On the morning of the second day following the surgery, written and telephonic records show that Dr L gave Mr M a courtesy call and that Mr M did not inform Dr L of any pain during this conversation. Twenty-four hours later, Mr M called Dr L and complained of severe, worsening pain in the right eye, that started shortly after Dr L's phone call the previous day. Dr L saw Mr M immediately and observed a fulminant endophthalmitis.

Mr M was referred to Dr G, a vitreo-retinal surgeon, who arranged immediate treatment with intra-vitreous and systemic antibiotics. A posterior vitrectomy and lensectomy were performed, but B-scan ultrasonography later showed a retinal detachment. Bacterial culture of the vitreous revealed a *Serratia marcescens* infection, sensitive to the

antibiotics being used. As a result of the retinal detachment Mr M lost all vision in the right eye. His corrected visual acuity in the left eye was 6/36.

Mr M made a claim against Dr L, alleging that he had failed to inform him of the risks of corneal graft surgery or of the significance of pain postoperatively. He further alleged inadequate postoperative care, which led to Mr M developing an uncontrolled infection and subsequent blindness in that eye.

EXPERT OPINION

Medical Protection sought expert opinion from an ophthalmologist. She was supportive of the care provided by Dr L and concluded that the postoperative patient information leaflet had sufficient information about warning signs. She also noted that Dr L did warn that eye infections were a possible complication and opined that loss of vision due to an infection was such a rare complication that the patient did not need to be warned specifically about the risk.

The expert made the additional point that, in Mr M's case, there was a real risk that the natural course of the disease may have led to blindness through the complications of keratoconus itself, in the long term.

The case was considered to be defensible and was taken to trial. The court was satisfied that Dr L's management was appropriate and that there was no evidence of a failure to provide adequate informed consent or negligent after care. Judgment was made in favour of Dr L.

Learning points

- Doctors must ensure that patients are given information that a reasonable person in that patient's position would expect to receive. Serious adverse events (such as irreversible loss of sight) must be discussed, even if they are rare.
- When providing important information in a written format the patient must be made aware of its importance. Consider providing verbal information as well as written information for important matters. When giving written information to sight-impaired patients, the format and font should be suitable for their visual ability. When applicable, consider adjunctive methods to deliver information such as audio or video formats.
- Although the primary purpose of medical records is to ensure continuity of patient care, they are also used as evidence of care when dealing with complaints and medicolegal claims. Therefore, clear and detailed medical records are in both the patient's and the doctor's best interest.

A space for your comments and opinions on what you've read in Casebook

TURNING A BLIND EYE

To summarise this case: two specialists – a virologist and an ophthalmologist – diagnosed a dangerous but treatable disease. They apparently made no attempt to contact the patient, and neither did they phone to discuss the case with the GP, who simply received another letter among the mountain of mail that a GP receives daily. The GP (who had not seen the patient at all) wrote to the patient saying an appointment was needed, but the patient did not respond.

The regulatory advice is that the doctor who does the test is the one who should follow up the result. In this case that is clearly not the GP, but the specialists, and yet the GP is the one who is found to be at fault, with no fault laid at the door of the specialists. What did you expect the GP to do – write about a diagnosis of syphilis in a letter that could be opened by anyone at the address?

This issue needs to be debated.

Dr Ted Willis,
UK

Response “ ”

Looking back at the details of the case, it may help to clarify that the ophthalmologist contacted the GP by telephone to inform the GP of the result and the need for urgent treatment, as a result of which the GP agreed to take on the responsibility of arranging for specialist referral. In this case, the ophthalmologist could perhaps have done more, but did not breach his duty of care as he informed the GP who accepted the responsibility of referring the patient. By not taking appropriate timely action (for example with a phone call or by stating that an urgent appointment was required) the GP breached his duty of care and caused irreversible harm.

With regard to your comment on responsibility for following up a test result, doing so includes reviewing the result and either taking action personally or referring the patient to an appropriate person to do so, which the ophthalmologist did in this case.

The outcome of a case will always depend on the individual facts and specific circumstances (including local arrangements). It is often difficult to convey all of the detail of a case in the limited word count we have, and I do hope this explanation helps to clarify your queries.

A HIDDEN PROBLEM

In this case, there is again the increasing problem of GPs being burdened with extra work that is not always appropriate. It is not clear from the report if Mr T had any symptoms at the time of the 'private health check'. However, the regulatory guidelines are clear that the clinician who initiates investigations is obliged to complete the entire treatment pathway that he/she has embarked upon; therefore the person providing the 'health check' should have been the one to make the referral to the nephrology services for the patient.

I opine that, regardless of subsequent omissions Dr W made in documenting the urine abnormality, it was negligent of the healthcare professional conducting the private health check to hand Mr T a letter and wash his/her hands of the renal failure; at the very least a phone call to Dr W should have been made.

Could a GP who receives an unsolicited report on his/her patient such as this, return it to the sender with a brief reply asking them to ensure complete follow up?

Dr Colman Byrne,
Ireland

Response “ ”

I note your concern that GPs may be burdened with extra work that may not be appropriate, and we are very aware that this is a cause of concern for primary care doctors. I agree entirely that a phone call to notify the GP of a significant result would have been of assistance. Unfortunately, in this case, I have not been able to establish if there was such a call given the time that has passed since the incident.

In general it is in the best interests of the patient that the overall management of their health is under the supervision and guidance of a general practitioner. Although a GP may not have initiated a test, and there is an obligation on the doctor who did to follow it through, a GP may find it hard to justify not taking action on significant information that they have been sent, and could face criticism if an incident were to arise and a patient come to harm.



We welcome all contributions to Over to you. We reserve the right to edit submissions.

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