MORE THAN DEFENCE

Medical Protection

AVOIDING EASY MISTAKES

FIVE MEDICOLEGAL HAZARDS FOR INTERNS

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IMPORTANT – PLEASE NOTE

Due to the dynamic nature of medical law we suggest that you access our website at **medicalprotection.org/caribbean-and-bermuda** for the most up-to-date information.

ISBN 978-1-903673-23-2

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Medical Protection is a trading name of The Medical Protection Society Limited ("MPS"). MPS is the world's leading protection organisation for doctors, dentists and healthcare professionals. We protect and support the professional interests of more than 300,000 members around the world. Membership provides access to expert advice and support as well as the right to request indemnity for any complaints or claims arising from professional practice. Highly qualified advisers are on hand to talk through a question or concern at any time.

Our in-house experts assist with the wide range of legal and ethical problems that arise from professional practice. This includes clinical negligence claims, complaints, medical and dental council inquiries, legal and ethical dilemmas, disciplinary procedures, inquests and fatal accident inquiries.
Our philosophy is to support safe practice in medicine and dentistry by helping to avert problems in the first place. We do this by promoting risk management through our workshops, E-learning, clinical risk assessments, publications, conferences, lectures and presentations.

MPS is not an insurance company. All the benefits of membership of MPS are discretionary as set out in the Memorandum and Articles of Association.

INTRODUCTION

WHY ARE MEDICOLEGAL ISSUES IMPORTANT?

It is a cruel reality of fate that everybody makes mistakes occasionally. It is not a question of "will I make a mistake?", but a question of "when will I make a mistake?"

Given that you are bound to make mistakes, how can you try and lessen the chances, and how should you respond when the inevitable happens?

Many doctors are unsure about how medicine and law interact; this may reflect a lack of teaching in medical school, or a lack of understanding of how medicolegal principles translate into practice.

Medicolegal principles underpin every move a clinician makes. In a climate where doctors have to justify their actions more and more to patients and colleagues, an awareness of the medical law and guidance that relates to your practice is essential. Good doctors apply clinical knowledge in a way that is legally and ethically correct. They will also know when to consult senior colleagues and avoid working in a vacuum. Simple things like writing concise and accurate records, getting valid consent from patients and knowing when to seek advice can help you practise safely.

This booklet takes you through five of the top medicolegal hazards for doctors, and includes examples of how problems can arise in practice. If you need any further advice you can contact Medical Protection online or by phone. This should help you go onto the wards more confident that you will be able to practise safely.

Nancy Boodhoo

Head of Medical Services Caribbean

CONSENT

Inexperienced doctors should not feel pressured to do anything beyond their knowledge, experience and competence and this includes being asked to obtain consent for a procedure that they are not familiar with. Interns should not usually be asked to obtain consent unless the procedure is a minor one with which they are familiar. If you are unsure about what is involved in a procedure, even if it is a minor one, you should get a senior to explain or demonstrate it as part of training before ever agreeing to take consent for it from a patient.

Consent is a process, rather than a form-filling exercise. The ethical and legal rationale behind this is to respect patients' autonomy and their right to control their own life and what happens to their own body.

Failure to take consent properly can lead to medicolegal problems including complaints, claims and disciplinary proceedings. If your actions are scrutinised you'll need more than a signature on a consent form to fight your corner.

SURVIVAL TIPS

- Always act in your patient's best interests.
- When you take consent, record in the notes what the patient has been told.
- Use your common sense – consent is patient-specific and depends on the individual's circumstances, including age, lifestyle, occupation, sporting interests, expectations etc. It may well be that you are not in a position to advise fully eg, a professional athlete.
- Patients are presumed competent to consent unless proved otherwise.
- Any competent adult can refuse treatment.
- Where an adult patient is deemed to lack capacity to make decisions, reasonable steps should be taken to find out whether any other person has legal authority to make decisions on their behalf. If so, the team should seek that person's consent to the proposed treatment.
- If no other person has this authority, your senior colleagues will have to decide what action to take, taking the patient's best interests into account.
- A judgement that a patient lacks the capacity to make a particular decision does not imply that they are unable to make other decisions in the future.

Scenario

Dr U is in his first week as an intern in surgery. He is sitting at the desk in the ward filling in forms, when a nurse tells him that there is a patient going to theatre within the next few minutes, who seems to have the consent form missing from his notes. She insists that the consultant "will get very cross" if the patient turns up in theatre without all the appropriate documentation. The nurse mentions that the patient's procedure has already been cancelled once, and it would be terrible if it happens again. Dr U explains that he has never consented a patient before, and doesn't think he should do it, but the nurse insists that "it is only a gastroscopy, not rocket science".

Dr U rightly ignores the pressure, and hurries to theatre to ask one of his senior colleagues for advice. His colleague takes the patient's consent himself so that there is no delay and makes sure that the consultant demonstrates the procedure to Dr U so that he understands what is involved.

Consent is implied when taking blood pressure if the patient sticks out their arm

PRESCRIBING

Prescribing is one of the most dangerous areas for all clinicians and can be particularly hazardous for the inexperienced doctor. It is fraught with potential pitfalls ranging from transcription errors and inadvertent dosage mistakes to overlooked drug interactions, allergies and side effects, the consequences of which may be profound both for the patient and the prescriber. It is imperative that you have a good knowledge of the pharmacology and the legislation surrounding drugs, and any protocols and controlled drug routines which apply within your workplace – if unsure, ask.

Always document allergies and take care to double-check names, doses and frequency ensuring that any prescription you write is legible. You should not feel pressured to do anything beyond your competence; always get a senior to do it. If you are unsure about a prescription, or mishear on a ward round, always seek clarification, never guess. If a patient is admitted and there is any doubt regarding their current medication then consult the hospital pharmacists or the patient's GP.

SURVIVAL TIPS

- Prescriptions must be legible, dated and signed. They should clearly identify the patient, the drug, the dose, frequency and start/finish dates.
- Be aware of a patient's drug allergies and be particularly careful when prescribing multiple medications in case the combination might cause side effects.
- Good handovers require good leadership and communication. If you are asked to prescribe a drug or treatment regime with which you are not familiar you should ask for help.
- Verbal prescriptions are only acceptable in emergency situations and should be written up at the first available opportunity. If a telephone prescription is necessary, you should make a note of the call in the patient's notes and records and send a written prescription to the pharmacist without delay. Particular care should be taken that the correct drug is used.

Scenario

Dr S is on duty in the children's ward. He has just admitted Joseph, a two-year-old child with a high temperature. He sits down to write his notes and takes the opportunity to ask one of the nurses to give Joseph 180mg of paracetamol, which would be appropriate to his weight. She asks for it to be prescribed, but Dr S insists that he will write it up as soon as he has completed his entry in the patient's chart. He points to Joseph's bed: "it's for Joseph, the new admission – the little boy at the end of the ward – you cannot miss him", he says. The nurse agrees reluctantly and goes to get the medicine and Dr S concentrates on writing in the chart. He looks up to see the nurse returning from the bed of another new patient who has just arrived on the ward and realises that the paracetamol has been given to the wrong patient, who is also called Joseph.

Dr S tells the family of the second child what has happened and explains that the paracetamol was not prescribed for their son. He apologises profusely and immediately calculates whether the paracetamol could cause an overdose. Luckily he is a bigger child, and has not taken any paracetamol recently, so no harm has been done and Dr S is able to reassure the parents. Dr S makes sure his patient gets his paracetamol, which he properly prescribes. He also fills in an incident form after apologising to the nurse involved. They both agree that it was an easily preventable mistake and an incident from which they have each learned an important lesson. Later that day Dr S discusses the incident with his consultant, who reminds Dr S that he could have caused a patient to suffer avoidable harm but is supportive of the action he has taken to rectify the error that was made.

Prescribing is one of the most dangerous areas for all clinicians

CONFIDENTIALITY

Confidentiality is the cornerstone of a successful doctor–patient relationship. Indeed the word "confidence" derives from the Latin con "with" and fidere "to trust". It is clear that doctors who break a patient's confidence undermine trust in the medical profession and they will be dealt with very seriously. Patients are entitled to expect that information about them will be held in confidence.

SURVIVAL TIPS

Remember that confidential information includes a patient's name and address.

- A breach of confidentiality may be justifiable when a doctor's duty to society overrides their duty to the individual patient and it is deemed to be in the public interest. For example when there is a threat of serious harm to the patient or others. Before breaching confidentiality, always consider obtaining consent. Take advice from senior colleagues.
- Disclosure of patient information may be required by law, for example to comply with infectious disease regulations. The courts can also require doctors to disclose information, although it would be a good idea to contact MPS if you find yourself presented with a court order.
- Patient information remains confidential even after death. Consider the purpose behind any request for disclosure and the possible effect on the reputation of the deceased.
- Patient privacy should be maintained at all times; accidental disclosure of confidential information should not occur. High-risk areas where breaches can occur are lifts, canteens, computers, printers, wards, casualty departments, bars and restaurants. Be careful not to leave memory sticks or handover sheets lying around.
- Patient information should be held securely and in compliance with data protection legislation.

Scenario

Dr A is a first year intern working in accident and emergency. He has just completed his first Saturday night shift, which was very busy. Several of the patients who attended were treated for bruises and lacerations to their hands. Dr A suspected that most of these injuries had been caused by fighting, although this was not always the history given by the patient. One of his more senior colleagues complained that it is "the same every weekend".

Just as Dr A is due to leave the hospital a police officer comes to casualty enquiring about any men who may have attended with cuts to the hands. He asks for a list of the names and addresses of any such patients who have been seen during the course of the evening. A young man had broken into an empty property, through a glass window, and stolen some goods. The officer suspects the man was injured in the process. There were no victims and no suggestion of a threat to public safety – it was a simple case of burglary.

Dr A is unsure whether he can provide the information requested. He calls his consultant, who advises him that in these circumstances, where there has been a blanket request for information and where there is no obvious risk to the general public, he would be unlikely to be able to justify breaching the confidence of all of the patients concerned even if one of them might be the burglar. The consultant agrees that this is a matter for him to deal with and speaks to the police personally.

Converse with colleagues carefully

RECORD KEEPING

Legible notes must be kept primarily to assist the patient when receiving treatment. But, secondly, should there be any future litigation against your hospital the notes will form the basis of the hospital's defence. Notes are a reflection of the quality of care given so get into the habit of writing comprehensive and contemporaneous notes.

Adequate records enable you or somebody else to reconstruct the essential parts of each patient contact without reference to memory. A colleague should be able to carry on where you left off.

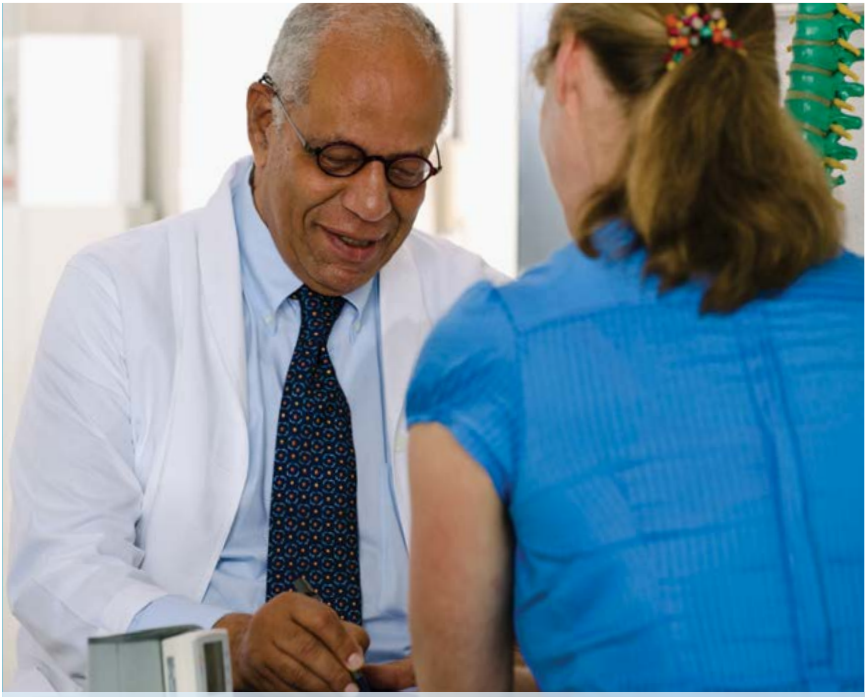
SURVIVAL TIPS

- Always date and sign your notes, whether written or on computer. Don't change them. If you realise later that they are factually inaccurate, add an amendment. Any correction must be clearly shown as an alteration, complete with the date the amendment was made, and your name.
- Making good notes should become habitual.
- Document decisions made, any discussions, information given, relevant history, clinical findings, patient progress, investigations, results, consent and referrals.
- Medical records can contain a wide range of material, such as handwritten notes, computerised records, correspondence between health professionals, lab reports, imaging records, photographs, video and other recordings and printouts from monitoring equipment.
- Do not write offensive or gratuitous comments – eg, racist, sexist or ageist remarks. Only include things that are relevant to the health record.

Scenario

Dr P is working in a medical ward when she sees Mrs G, a patient referred from casualty, after she suddenly collapsed. She takes a comprehensive history, and does a complete examination. Dr P then notices that some blood samples were taken from her in casualty, and checks on the results on the hospital intranet. She finds out that the samples "have clotted" and new samples need to be sent. Dr P plans to do this straightaway, but is called to another patient and does not get a chance to send the results until towards the end of her busy shift. Dr P finishes her shift by writing the history, examination findings and results; she also writes "bloods", followed by a tick, meaning that they have been sent. During the handover she doesn't tell the next doctor that the blood results need checking. Mrs G becomes unwell within the next few hours, and the registrar on duty comes to see her. He is reassured by the notes that recent blood results were normal, and checks on the results himself. It is only at this stage that it is discovered that the patient is severely anaemic.

Dr P failed to ensure that the documentation was clear indicating what had and what had not been done. Luckily Mrs G came to no harm.



Notes should be comprehensive and contemporaneous

PROBITY

The fundamental partnership that exists between patient and doctor is based on honesty, trust, confidentiality, mutual respect, responsibility and accountability.

Doctors must be honest and trustworthy when signing forms, reports and other documents. You should make sure that any documents they write or sign are not false or misleading. This means that doctors must take reasonable steps to verify the information in the documents, and must not deliberately leave out anything relevant.

You may encounter families who don't want certain information visible on the death certificate, but doctors have a legal and professional obligation to complete the certificate truthfully.

SURVIVAL TIPS

- Probity means being honest and trustworthy and acting with integrity.
- Be honest about your experiences, qualifications and position.
- Be honest in all your written and spoken statements, whether you are giving evidence or acting as a witness in litigation.
- You must be open and honest with any financial arrangements with patients and employers, insurers and other organisations or individuals.
- Never sign a form unless you have read it and you are absolutely sure that what you are saying is true.
- If you are uncertain double check your work with a senior.
- Assume that all records will be seen by the patient and/or others, eg, a court.

Scenario

Dr T is in the second week of his surgical training. Following an uneventful cholecystectomy at which he assisted, Dr T is delegated the responsibility of writing up the postoperative plan on the consultant's instructions. He sets off to do this but is distracted when a colleague speaks to him about another patient. In his haste to get back to theatre he unfortunately forgets to write up the postoperative instructions for hourly urine output monitoring before the patient returns to the ward.

Some hours later Dr T is called to see the patient who is complaining of abdominal pain. When he assesses her Dr T realises that the patient has not passed urine since the operation. Dr T quickly alters the chart to include the instructions that he had previously omitted. Dr A, a registrar, saw Dr T alter the record.

Dr A confronts Dr T about his actions, but Dr T pleads with him not to say anything. Meanwhile, the patient has come to no harm. Dr A calls MPS for advice. A medicolegal adviser suggests that Dr A raise the matter with Dr T's consultant or supervisor. Dr A does this, and Dr T receives firm advice from his consultant, who addresses it as a training issue, but makes it clear that if his actions were to be repeated, Dr T could face disciplinary action.

Doctors must fill in forms truthfully

NOTES

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Details of your medicolegal contact can be found at: **medicalprotection.org/caribbean-and-bermuda/contact-mps**

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In the interests of confidentiality please do not include information in any email that would allow a patient to be identified.

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