A dark day for psychiatry?
Balancing the interests of patients and the public

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Our second annual conference for general practitioners and the primary care team – Spotlight on Risk – will put the focus on many of the top risks in practice and offer practical advice on how to manage them.

Today, more than ever before, it is vital for GPs and primary care teams not only to understand the medicolegal and ethical problems they face on a day-to-day basis, but also to be able to quickly and efficiently deal with them when they arise.

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Scandals in healthcare have long been a staple ingredient in the diet of the media – I am sure that everyone reading this will have no difficulty recalling an event or events and the scathing criticism of those deemed to be responsible.

In the UK, the Francis report into the unnecessary deaths of more than 1,000 patients in the care of Stafford Hospital has led to renewed calls for the old days where care, compassion and humanity were the watchwords of professionalism. Have we lost our way by focusing on management and targets, guidelines, regulatory compliance and trying to dodge ambulance-chasing lawyers?

But we know that the issues are certainly not confined to this one hospital trust nor to the UK; in every country where MPS has members, similar themes emerge. Calls for a return to core professional values and strong leadership echo time and again. The case reports in Casebook also reflect that the same errors are repeated – but we have a better understanding now of the predisposing factors: poor communication and lack of empathy, which increase the chance of a claim after a precipitating event, such as an adverse outcome.

In this edition we take a look at leadership from a different direction – the skill of followership. It’s not a term many doctors will embrace immediately – images of sheep certainly came to my mind when I first came across the term, but I am taken by the logical and accurate descriptions of how this skill can influence team behaviours and success.

The media coverage of healthcare recently has just felt like an endless catalogue of horror after horror and can be dispiriting; in Casebook we try not to focus overly on what went wrong, but what learning can be shared – and that not every allegation succeeds. As ever, we hope that this is a relevant and interesting insight into cases we have handled, and stimulates reflection on how to look after yourself and your patients in ever more challenging times.

Medicine has always been quick to adopt and adapt new technologies and many advances in care have been due to utilising advances made in other branches of science.

As we enter the new information age, the phenomenon of social networking is changing the way doctors interact with their patients and wider society. Traditional boundaries between private and professional life are becoming blurred and the potential for members to inadvertently fall into medicolegal traps is increasing.

Professional bodies around the world have recognised both the potential for the good that social networking technologies offer and also the risks for the unwary.

Tweeting to one’s friends after a bad day at work or posting details of what you got up to at a party at the weekend on Facebook can often be seen by patients, colleagues and managers. When comments are posted on the blogosphere all control is lost and they are less private than remarks made on the back of a postcard. The laws of defamation apply to comments that may have been originally designed to amuse your friends or written in the heat of the moment, but which end up being widely circulated just as much as more traditional channels of communication.

In the UK, the General Medical Council has recently published guidance on social media, which states that where doctors identify themselves as doctors in publicly accessible social media, they should also identify themselves by name because any written material by authors who represent themselves as doctors is likely to be taken on trust. This places an onus on doctors to be thoughtful in what they write.

The full impact of new social media technologies will inevitably develop over the coming years. It is important that the way in which the public can become engaged and informed about health issues is not inhibited. However, the regulation of the profession’s use of new media opportunities may struggle to keep up with the pace of technological change and diverging social expectations of the profession.

MPS has always believed that our approach to indemnity allows us to provide the most flexible and adaptive support to our members, especially during times of rapid change in the world of medicine.
Patient ownership of decisions

Patient expectations and ownership of their treatment decisions are commonly at the heart of complaints and litigation. Patients who are well-informed and highly engaged when deciding between treatment options are placed in a stronger position to take ownership of the final treatment decision and outcomes.

The concept of ‘shared decision-making’ includes clearly communicating the pros and cons of treatment options and continuing to engage the patient, end-to-end, in the decision-making process. Shared decision-making is both good practice and good risk management.

MPS’s Mastering Shared Decision Making workshop

MPS’s Mastering Shared Decision Making workshop explores the specific skills that doctors require in adopting shared decision-making. Participants will learn techniques that can be used in practice to assist in reducing their exposure to complaints and litigation.

Take control of your professional development and attend this workshop free of charge – a benefit of your MPS membership.

To register for Mastering Shared Decision Making and other workshops offered by MPS, visit: www.medicalprotection.org/ireland/courses-and-events.

Save the date
MPS GP Conference 2013

This September sees the return of MPS’s General Practice conference – Spotlight on Risk – to Dublin, following last year’s sell-out event.

The programme will include:
- MPS’s claims experience in Ireland
- Top risks in general practice
- Competence assurance
- Patient safety and patient experience
- Doctors in the dock.

There will also be a host of interactive workshops focusing on medicolegal dilemmas from the MPS caseload, medical records, challenging interactions with patients, and incident reporting.

The details of the event are:
Date: Thursday 12 September 2013
Venue: Irish Management Institute (IMI), Sandyford Road, Dublin 16

There is a nominal registration fee for attendance at the conference, with discounts for MPS members and practice staff.

Registration is now open and details are available on the MPS website at www.medicalprotection.org/ireland/education-and-events.

A summary report of the 2012 event is also available on the website; alternatively, to receive a copy, email publications@mps.org.uk with your request.
Welcome to Slow Medicine

**Dr Muiris Houston looks at a new concept for Irish medicine**

Medicine is nothing if not fast-moving. It continually embraces new concepts such as evidence-based medicine and narrative medicine. The latest idea to emerge from its chrysalis is that of Slow Medicine.

In a blog earlier this year the former editor of the *British Medical Journal*, Richard Smith, described the proceedings of a Slow Medicine meeting in Bologna titled La Sanità tra Ragione e Passione (Health through Reason and Passion). Slow Medicine is an initiative based on the successful Slow Food movement. Founded in Piedmont, Italy in 1989, Slow Food aims to counter the rise of fast food and fast life and the disappearance of local food traditions. Slow Food wants to reverse what it sees as people’s dwindling interest in the food they eat, where it comes from and how it tastes. Rather than dieting per se, Slow Food steers the person away from last-minute consumption of highly processed food and towards a more thoughtful and planned diet.

The Bologna Slow Medicine meeting heard that the characteristics of health systems are “complexity, uncertainty, opacity, poor measurement, variability in decision-making, asymmetry of information, conflict of interest, and corruption”.

Gianfranco Domenighetti of the Università della Svizzera Italiana said only 11% of some 3,000 health interventions have good evidence to support them. It is time, said Domenighetti, to open up the black box of healthcare. We need to encourage a healthy scepticism about the medical market and to help people understand that medicine is far from being an exact science. Data should be published exposing variations in practice, corruption, and conflicts of interest. We should explain that health depends mostly on exogenous factors, not the healthcare system. And people should be given practical tools to promote their autonomy – tools like access to evidence-based information.

A US proponent of Slow Medicine is Dr Dennis McCullough, a community geriatrician and author of *My Mother your Mother – Embracing Slow Medicine, The Compassionate Approach to Caring for Your Aging Loved Ones*.

“*The practice of Slow Medicine has taught me that it is wise to slow down and moderate the urgent pressures of decision-making that are often pushed prematurely on elders by society, the medical profession, worried friends and family,*” Dr McCullough says.

He is especially critical of our tendency towards polypharmacy in older people. Excessive drug use by the frail elderly may be the result of overdiagnosis. In a “fast medicine” culture patients are more inclined to allow their future be dictated by test results. When these results suggest both curative and preventive medicines, then multiple-item prescriptions are the result.

So how does Slow Medicine work for older people? “First, it requires more listening on everyone’s part,” Dr McCullough says. “Talking helps an older person understand and accept where they are in life and grasp the consequences of their choices. This is especially important when making decisions about living locations and medical treatments.”

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It is wise to slow down and moderate the urgent pressures of decision-making that are often pushed prematurely on elders by society, the medical profession, worried friends and family.
The manifesto says equitable medicine promotes appropriate care, which is appropriate to the person, and proven to be effective and acceptable for both patients and health professionals.

“Second, it means allowing enough time to make those decisions. True emergencies are rare in medical care. Allowing elders and their families days, weeks, or even months to weigh the pros and cons of their choices is very important.

“Third, older people benefit from the involvement of family and friends in their decision-making process. When it comes to ageing, the best decisions are made after lengthy consultation with the people someone trusts the most.”

Back in Europe, the Slow Medicine movement offers remedies based on the principles of being measured, respectful and equitable.

On the topic of measured care it says the dissemination and use of new treatments and new diagnostic procedures is not always accompanied by greater benefits for patients. “Economic interests, as well as cultural and social pressures, encourage both an excessive use of health services and an expansion of people’s expectations beyond what is realistic, what the health system is able to deliver...A measured medicine involves the ability to act with moderation, gradually, and essentially, and uses the resources available appropriately and without waste...Slow Medicine recognises that doing more does not mean doing better.

“A respectful medicine is able to acknowledge and take into consideration the values, preferences and orientations of a person in every moment of life... Slow Medicine recognises that people’s values, expectations and desires are different and inviolable.”

The manifesto says equitable medicine promotes appropriate care, which is appropriate to the person, and proven to be effective and acceptable for both patients and health professionals: “An equitable medicine opposes inequality and facilitates access to health and social services. It overcomes the fragmentation of care, and encourages the exchange of information and knowledge among professionals. Slow Medicine promotes appropriate and good quality care for all.”

The idea of Slow Medicine is echoed in Nobel prize-winner Daniel Kahneman’s book *Thinking, Fast and Slow*. Its central thesis is the dichotomy between two modes of thought: System 1, which is fast, instinctive and emotional, and System 2 which is slower, more deliberative and more logical. And Carl Honore, author of *Slow Fix*, says that applied to medicine a slow fix means taking time to work out the root cause of any ailment; learning what we can from the patient; taking a holistic approach to traditional forms of medicine; marrying medical treatment with wider changes in lifestyle; and treating the mind and body together.

What are the medicolegal implications of practising Slow Medicine? Although too new a discipline to have completed much in the way of research, intuitively it would seem to reduce the likelihood of litigation. It is hard to imagine how additional time spent listening to the patient and a greater attention to detail, as advocated by Slow Medicine, could produce a negative outcome.

There is evidence to show that effective communication after an adverse outcome reduces or stabilises rates of patient action against doctors. And poor doctor–patient interactions increase the likelihood of a patient initiating legal action over their care. However, by discouraging or delaying certain treatment options, Slow Medicine may conversely trigger litigation if a person subsequently feels they have been “talked out” of a management plan that included the latest developments in the field. It is possible that, after the event, patients and families may sue over what was not done.

The British Medical Association has backed a “Too Much Medicine” campaign, which shares some of the themes promoted by the Slow Medicine movement. It aims to tackle the threat to health and the waste of money caused by unnecessary care. The initiative hopes to dovetail with the Choosing Wisely campaign in the US, which has created evidence-based lists of medical interventions that may be unnecessary.

Ray Moynihan, Senior Research Fellow at Bond University in Australia, says: “Whether these different streams seamlessly coalesce is unclear, but the prospect of a radically new social contract between medicine and the wider society may not be far off, based on a clear commitment to stop harming so many of the healthy.”

A common emerging theme seems to be for the medical profession to practise medicine in a more transparent manner if current levels of overdiagnosis and overtreatment are to change. Slow Medicine may become part of a wider movement, ultimately driven by the age-old maxim: *Primum non nocere*.

Dr Muiris Houston is a GP and medical journalist.
Hand hygiene compliance improves

The latest HSE national hand hygiene audit carried out in 44 acute hospitals found improved compliance compared with the previous survey. Overall compliance at 84.3% is just short of the 85% target for 2012.

The compliance for different healthcare workers found doctors achieved 71% compared with nurses and midwives who achieved almost 89% compliance. Auxiliary staff scored 84%.

Dr Kevin Kelleher, HSE Assistant National Director, Health Protection, commented: “While the improvement is very welcome, the HSE has set an ambitious target of greater than 90% compliance by the end of 2013. We must continue to work to improve our hand hygiene to all staff. Particular emphasis will be placed on hospitals and medical staff who had a low level of compliance.”

Self-medication: a note from MPS

Doctors have long been warned about the pitfalls of prescribing for yourself in non-emergency situations: a lack of objectivity means you are not assured of safe and appropriate decision-making.

Worse still is stealing medication from your hospital or practice stores. It has recently come to the attention of MPS that the attitudes of both the law and medical regulators are hardening against medication theft, even common drugs such as paracetamol. Once seen as a fairly trivial matter, stealing medication has been seen by MPS to be treated as a criminal investigation.

The Medical Council says, in paragraph 51.2 of its Guide to Professional Conduct and Ethics for Registered Medical Practitioners: “If you become ill, you should seek advice and help from another doctor rather than treat yourself. Even as a doctor, you should have your own general practitioner.”

Abortion legislation due

The government has said that it will legislate by July 2013 to allow abortion to be performed in limited circumstances in the Republic. It announced in December that its preferred option for giving effect to a 1992 court judgment on abortion was a combination of legislation and regulation.

The decision follows the recent publication of the report of an expert group tasked with advising on how to respond to a ruling of the European Court of Human Rights that found that Ireland had failed to provide for abortion in circumstances where a mother’s life was at risk.

The Institute of Obstetricians and Gynaecologists welcomed the government’s decision on the form of action to be taken. “The implementation of this judgment by way of legislation with regulations is also our preferred option, a decision that we reached following an in-depth review of the details provided by the expert group,” it said in a statement. “This option is, in our opinion, the best way to protect women and health professionals, and it also allows for the necessary flexibility to cater for future advances in obstetrics.”

DNR guidelines drawn up

The Health Service Executive’s Director of Quality and Patient safety has formulated new guidelines on do not resuscitate (DNR) orders, which will be implemented across the health service.

DNR orders cover areas such as when to offer cardiopulmonary resuscitation (CPR) in certain clinical situations. The lack of regulation was highlighted in a nursing home report published by the Health Information and Quality Authority (HIQA) earlier this year. It found that some patient files had been marked DNR but without evidence that the issue had been discussed with the resident, their relatives or the health professionals involved in their care.

The new guidelines have been developed as part of a national policy on consent.

MEDICAL COUNCIL FILLS VACANCIES

Following a ballot of doctors on the medical register, five contested vacancies for medical members of the next Medical Council have been filled.

The doctor who attracted the highest number of votes was Dr Audrey Anne Dillon, who secured the seat reserved for non-consultant hospital doctors.

Dr Ruaidhri O’Hanlon, a GP in Drogheda with 1,377 votes of the 2,883 ballots cast, attracted the highest number of votes in the category for doctors working in primary care. In the section devoted to pathologists and radiologists, consultant radiologist Dr Sean Curran secured the vacancy.

Consultant obstetrician and gynaecologist Dr Colm O’Herlihy had a narrow victory over his colleague Dr David Walsh for the obstetrics seat, while Dr Anthony Breslin pipped Dr Alis Quinlan for the public health medicine vacancy. The sixth vacancy for medical practitioners was filled by Dr Bairbre Golden, who took the anaesthetics division unopposed.

Health Minister Dr James Reilly will now nominate five lay members to the 25-member Council. The remaining vacancies will be filled by various bodies specified in the 2007 Medical Practitioners Act.
“Psychiatry is not an exact science.”
Hale LJ in R (B) v Ashworth Hospital Authority (2005)

A dark day for psychiatry?

Last year a French psychiatrist was found guilty of involuntary homicide after failing to recognise the danger posed by her patient. Sara Williams investigates how to balance the interests of risky patients and the public.

Last year a French psychiatrist was found guilty of involuntary homicide after failing to recognise the danger posed by a schizophrenic patient, who went on to kill the elderly partner of his grandmother. This judgment was the first of its kind in France and potentially sets a precedent for future cases.

The psychiatrist, Dr Daniele Canarelli, was sentenced to a one-year suspended sentence as the court found that she had committed the “grave error” of failing to recognise the public danger posed by her patient, Joel Gaillard.

Gaillard, 43, escaped from a hospital consultation with Dr Canarelli in February 2004 and 20 days later he carried out his killing. Gaillard was a paranoid schizophrenic, who had been seeing Dr Canarelli for four years; he had already been committed to a secure hospital on several occasions for a series of increasingly dangerous incidents.

The court found that Dr Canarelli should have requested that her patient be placed in a specialised medical unit or referred to another medical team, as one of her colleagues had suggested, and concluded that her refusal to do so equated to a form of “blindness”.

The SPEP, a union for French state psychiatrists, who backed Dr Canarelli during the trial, described the verdict as “worrying” as it risked scapegoating the profession over a complex case. They also argued that it could lead to the harsher treatment of patients as psychiatrists practise increasingly defensively.

The case of Daniele Canarelli raises serious questions as to how to balance the interests of patients, of psychiatrists, and the safety of the general public.

An imprecise science
The late Dr Patrick McGrath, for many years physician superintendent at Broadmoor Hospital, once said that half of his patients could be discharged, but the problem is knowing which half.

We cannot completely remove risk from psychiatry for it is not an exact science; risk is a fundamental component of psychiatry, as in all medicine. Unfortunately, there is no risk instrument that predicts homicidal behaviour. Incarcerating all risky patients would reduce risk and protect the public, but it would be wholly defensive and inhumane to do so.
**Best practice**

MPS regularly receives calls from psychiatrists seeking medicolegal advice about the decisions they are taking about patients and the risks they present.

In Dr Canarelli’s case it has been proposed that she had not taken into account the views of her colleagues, and hadn’t fully considered the previous violent history. Good practice involves taking therapeutic risks based on thorough risk assessments involving the whole multidisciplinary team (MDT). They back up these discussions with comprehensive notes, which are of course the cornerstone of your defence should your care be questioned.

Professor Keith Rix is a consultant forensic psychiatrist with more than 30 years’ experience working in the medicolegal field. He says that if psychiatrists practise competently they will not end up in the same situation as Dr Canarelli. “The fact that the court found Dr Canarelli responsible for a ‘grave error’ suggests that she was convicted of the equivalent of manslaughter on the grounds of ‘gross negligence’. Not every negligent act of a doctor that results in the death of a patient has the potential to lead to a conviction for manslaughter.”

The degree of responsibility in medical negligence depends on the foreseeability and severity of the consequences of the breach of duty. If it is determined that the breach was serious enough to constitute gross negligence, a doctor could be charged with manslaughter. The seminal case here, *R v Adomako*, happened in the United Kingdom in 1994. An anaesthetist did not notice that a ventilator had been disconnected for six minutes; a result of which was that the patient suffered a cardiac arrest and died. The conduct of the defendant was regarded as so far below the standard of a reasonable practitioner that it amounted to a criminal act.

In order to secure a conviction for manslaughter the conduct must have:
- Fallen far below the standard to be expected of a reasonable doctor
- Involved a risk of death
- Constituted a breach of duty so serious that it amounts to a crime.

The *Rabone* case

In 2005, in the UK, 24-year-old Melanie Rabone was admitted to hospital as an emergency following a suicide attempt. She was assessed as being at high risk of a further suicide attempt, but was not detained under the Mental Health Act 1983. She remained a voluntary or “informal” patient, so when she requested a brief period of home leave, her doctor agreed. The following day, while on leave, she killed herself.

The Supreme Court held that the treating hospital had a duty to take reasonable steps to avert the risk to life in circumstances where they knew (or ought to have known) of a “real and immediate” threat to that individual. In the specific circumstances of the case, the court held that the hospital involved had violated the positive duty that it had, under Article 2 of the European Convention on Human Rights – the right to life – to protect a voluntary patient from the risk of suicide.

Professor Rix observed that this case has caused some anxiety amongst psychiatrists. He points out that the court defined a “real” risk as “a substantial or significant risk and not a remote or fanciful one”, which is a low threshold. The court defined “immediate” as meaning “present and continuing”. He says that there is an understandable concern that if a patient has an antisocial personality disorder and has a history of causing serious harm, a court will deem them as posing a “real and immediate” risk to the public, if allowed to be at large, and so psychiatrists will detain, or seek to detain, such patients longer, if not indefinitely.

Likewise he says that there are similar concerns that depressed patients who are at risk of suicide will be detained longer or not granted leave even when there is only a low likelihood of suicide. However, this duty should not persuade professionals to behave any more cautiously or defensively than they are already persuaded to do by the ordinary law of negligence.

**Balancing the risks**

Professor Rix advocates using thorough risk assessments to balance risks. He says: “You need to assess the likelihood of something happening, using all information available to identify what might go wrong, and how serious the consequences would be. This information falls into two categories: historical and dynamic factors. A dynamic factor would be the mental state of the person at the time.
This information should then be used to work out possible scenarios, eg, who might be at risk, what harm might they suffer? When using such methods Professor Rix warns practitioners to be wary of tick-box risk assessments. “I have seen a suicide risk assessment instrument that involves putting a tick in a box if the patient is ‘unemployed’ on the basis that this is associated with an increased risk of suicide. But what about the person who has worked all their life, is still employed, but faces almost certain redundancy in the coming weeks or months? It is necessary to think outside the box in order to identify this person probably being at greater risk of suicide than someone who has been unemployed for years and has adjusted to this state.”

Writing in the British Medical Journal, Dr John Morgan, who chairs a patient safety steering group, made an interesting point. He contended that we need to ensure that common psychiatric risks are not overshadowed by rare ones. He added that the emphasis needs to return to managing risk with clinical examinations, by systematic evaluations of signs and symptoms, thus returning to our enduring duties as doctors. Given that in psychiatry the therapeutic and prognostic implications of diagnoses are relatively weak, and the diagnoses themselves relatively unreliable, he has a point.

Raising concerns

Many calls to MPS’s advice line are from psychiatrists who are being pulled in two directions by their employers and their patients; on the one hand they are caught between what is in the patient’s best interests, and on the other, their employer’s needs, such as financial and organisational constraints.

Psychiatrists should always be mindful of what is in the best interests of their patients. Medical councils across the world advise that doctors have a duty to raise concerns where they believe that patient safety is being compromised by the practice of colleagues, or the systems, policies and procedures in the organisation in which they work.

This applies equally to psychiatrists, who may become aware that their employer is applying undue pressure to follow through with action that may put patient safety at risk, or compromise a patient’s care or dignity.

Steps to raise a concern:
- Follow the local procedures for reporting near misses and incidents
- Raise concerns with a manager or an appropriate officer, eg, team leader
- If patients are, or may be, at risk of death or serious harm, immediately report those concerns to the appropriate person or organisation
- Be clear, honest and objective about the reason for those concerns
- Keep a record of any steps that have been taken to deal with it.

The future

A patient having a heart attack will not make the front pages, but a patient attacking a member of the public most certainly will. The challenge for psychiatrists is to avoid practising defensively, so as not to undermine the therapeutic privileges afforded to psychiatrists.

The message from the Canarelli case is that it should not change psychiatric practice – psychiatrists should continue to practise competently and learn how to balance the risks in order to safeguard their practice for the future.

Professor Keith Rix is a consultant forensic psychiatrist, with more than 30 years’ medicolegal experience, including a Master of Laws in medical law and ethics. His current clinical responsibilities involve caring for particularly disturbed and potentially dangerous patients.

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Doctors are seen by society as leaders and frequently take on leadership roles both at work and in the community. Nevertheless, doctors spend a large part of their careers in training as followers, accountable to a more senior doctor. Even when fully registered as consultants or general medical practitioners, doctors will not always be the leader. When acting in committees or teams they will still often be required to follow.

The concept of followership has a very important part to play in the success of any group task. However, this is often forgotten.

This reflects modern culture’s emphasis on leadership and its tendency to overlook the less glamorous but vital role of followership. Unfortunately advertising ascribes leadership with all the positive aspects of success and falsely depicts followers as docile and impotent. “Always be a leader, never a follower” is emblazoned on one leading cyclist’s shoes.

Bill Gates may have founded and led Microsoft but could not have achieved success without the followers that worked for him. Health services around the world would not function without the support of the majority of their staff as docile and impotent. “Always be a leader, never a follower” is emblazoned on one leading cyclist’s shoes.

Followership is the response of people who are not in leadership positions.

It is not subservience or passive obedience to orders. Rather it is a tendency to overlook the less glamorous but vital role of followership. Unfortunately advertising ascribes leadership with all the positive aspects of success and falsely depicts followers as docile and impotent. “Always be a leader, never a follower” is emblazoned on one leading cyclist’s shoes.

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Followership is the response of people who are not in leadership positions.

It is a social relationship between the leader, followers and the group. It is not subservience or passive obedience to orders. Rather it is a process whereby followers engage in constructively critical thinking, and interact with and support the leader to help achieve a task.

Good followers are accountable for their actions. They can also influence and mould the leader’s views. When necessary they can even substitute for the leader.

Members of any team should be aware of their own and each other’s followership style as set out in Figure 1. This illustrates the two dimensions that are fundamental in determining an individual’s style of followership (independent thinking and active engagement) and the five followership styles that result from them.

Followers who are not engaged with their organisation or task and do not apply independent critical thinking are passive followers. These individuals require constant motivation and direction and, consequently, can be a drain on the leader and the team.

Those that support the task and are motivated but do not critically appraise what they are doing are conformist followers. They will always support the team leader and may work hard but they do not consider alternate options and may not make decisions without guidance from the leader.

Alienated followers have high levels of critical thinking but are disengaged from their organisation and task. These followers usually come across as sceptical or cynical. When the leader, or team, tries to move forward, they will voice the reasons why it shouldn’t happen. They may have good ideas but do not put these forward. Indeed, they may be negative and undermine the group.

In comparison, the exemplary follower will apply constructive critical thinking and interact with the group and the leader. If they agree with the current course of action, they will back the leader 100%. Alternatively, if they disagree, they will challenge the leader, offering constructive alternatives in order to help the leader and organisation achieve their aims.

Some people are pragmatists and move between the boxes in their followership style over the duration of the task.

Avoiding ‘group think’

It is important when working in a group that leaders and followers do not succumb to ‘group think’. This is where the culture of the group lends itself to thinking about and analysing things in the same way. Similar views, and a desire for unanimity, lead the group to concur too easily and overlook potential problems and alternative ideas or options.

Many modern businesses appoint one or two board members from successful organisations that have a completely different field of interest to prevent group think. Many clinicians will have experienced group think in hospital practice. For example, a surgeons’ meeting on theatre policy without an anaesthetist present will be very different to a meeting with anaesthetist representation.

Followership styles can have an important part to play in the onset of group think within teams. Within a group, passive followers agree and go along with the flow just because they think this is the group’s view. Conformist followers will actively support any group decision and act on it as they don’t have the independent level of thinking required to consider the options. Both these styles of followership predispose a group to group think.

Alienated followers demonstrate critical thinking, crucial for the prevention of group think, but due to their lack of participation in the group they may not be listened to and this again can allow group think from the other members.

In contrast, an exemplary follower will question the status quo, and critically evaluate the facts and options before making a decision.

Consequently, exemplary followers provide a level of independent thinking to the group member and others.
that is crucial to preventing group think, but they also bring a high level of energy to the group so are motivated
to help see the best decision made and the best job done.

**Being a good follower**

Good followers must have the moral courage to express concerns. They should question why and understand the reason they do things. In doing so it is important to not undermine the leader’s authority. This can mean asking the leader to step away from the group to present your views to them on a one-to-one basis.

Effective followers should be able to reflect, adapt and take responsibility for their own actions. Once the follower has understood a decision and had their questions answered satisfactorily, they should back the decision of the leader or group wholeheartedly.

However, followership is not only about the individuals who follow within a team; it is about the relationship between these individuals and their leader. A good leader is responsible for creating an environment conducive to an exemplary followership style. In creating such an environment the leader should be prepared to:

- Explain why
- Welcome challenging questions
- Seek regular feedback from members of their team
- Delegate responsibility
- Utilise the expertise within their team
- Lead by example
- Know their team
- Share the credit with the entire team.

There are many opportunities in clinical practice for doctors to show good followership and good leadership. A junior doctor can tactfully question his seniors as to why a decision is taken, understand it and then convey this with a sense of purpose to the nursing staff. Poor followers take negative attributes into their leadership styles.

360 degree feedbacks from juniors, nurses or administrative staff, a key aspect of doctors’ appraisal and future revalidation, will often reveal this. Exemplary followers, when leaders, are more able to appreciate the concerns of their followers and to set the tone and vision that others will follow willingly.

Throughout their careers doctors will be both leaders and followers. By understanding these roles they can better influence decisions and ultimately be more effective.

This piece is based on an article first published in BMJ Careers. Andrew Gibbons is a consultant in oral and maxillofacial surgery at Peterborough and Stamford Hospitals NHS Foundation Trust, UK; Danielle Bryant is a Human Performance Specialist at the Central Flying School, RAF Cranwell, UK.

**REFERENCES**


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**Figure 1:** Robert Kelley’s Followership dimensions and styles, adapted from Kellerman (2008)"
Since precise settlement figures can be affected by issues that are not directly relevant to the learning points of the case (such as the claimant’s job or the number of children they have) this figure can sometimes be misleading. For case reports in Casebook, we simply give a broad indication of the settlement figure, based on the following scale:

- **High**: €1,500,000+
- **Substantial**: €150,000+
- **Moderate**: €15,000+
- **Low**: €1,500+
- **Negligible**: < €1,500

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**WHAT’S IT WORTH?**

After listening to your feedback, we have made some changes to the format of this edition’s case reports, expanding the narrative to make the clinical detail clearer and including more details of the expert opinion provided for each case. Expert opinion plays a key role when handling claims for clinical negligence, as it considers whether there was a breach of duty and causation present. By covering this in more detail here, we can further explore why a case was defended or settled. As a result, some of the case reports are a little longer, but we hope that the extra reading will prove not only to be interesting, but invaluable in terms of risk management.

A recurring learning point from the following selection of cases is the need to be aware of the risks associated with diagnostic testing. Not only is it important to offer the relevant tests where clinically appropriate, you must record that you have done so in the patient’s notes. The reasons for the test should be clearly explained to the patient when taking informed consent, as should the outcomes and their implications when results become available.

In “Suspected epilepsy: when to warn” on page 16, L’s parents were not made aware of the possibility of a diagnosis of epilepsy following their daughter’s fit. They failed to attend for an EEG appointment and they claimed it was not clearly explained to them what the test was for. Expert opinion found that had L’s parents been made aware of the possibility of epilepsy, and been given appropriate advice, they would have prioritised their daughter’s EEG appointment.

Similarly, poor communication in “When normal is wrong” on page 23 resulted in a claim that could not be defended. When Mr B rang the urology clinic for his results following a vasectomy, Dr X’s secretary informed him that the report was “normal”. Dr X had forgotten to label Mr B’s path lab test as post-vasectomy, leading to miscommunication and Mrs B’s unwanted pregnancy. Test results should not be given over the telephone by non-medically trained staff to avoid the potential for incorrect information being given or for misunderstandings, as happened here.

Good communication extends to detailed patient notes. A lack of clear documentation made the case “A failure to monitor” (page 21) difficult to defend. Remember, if an investigation is not written down, it is hard to prove that it took place.

Casebook aims to promote safer practice by sharing experiences that we hope you will find helpful. MPS publishes medicolegal reports as an educational aid to MPS members and as a risk management tool.

The case reports are based on MPS experience from around the world and are anonymised to preserve the confidentiality of those involved.

The cases described are historic and the expert opinions that follow in specific cases reflect accepted practice at the time. The learning points are applicable today.

If you would like to comment on a case, please email casebook@mps.org.uk.
Mrs B was a 44-year-old teacher with two children. She smoked ten cigarettes a day and was overweight. She saw her GP, Dr T, about knee pain and he prescribed ibuprofen and advised her to lose weight. The ibuprofen helped so she continued to take it long-term.

Later that year she saw Dr T again, complaining of itching. Dr T thought the likely issue was a change in washing powder so suggested she switched brands. He also requested some blood tests including renal function. Her creatinine was slightly raised at 138 and her eGFR (estimated glomerular filtration rate) was 38 (indicative of chronic kidney disease stage 3b). Dr T had documented “blood tests OK, repeat in three months”.

Mrs B forgot to have her repeat blood tests but saw the nurse and different GPs several times over the next few years with minor ailments. The issue was not raised again by any of the health professionals. A nurse had documented her BP as 125/80 when she had attended for travel vaccinations. Three years later, she consulted Dr R, another GP at the practice, complaining of breast tenderness. His notes remarked on a diagnosis of CKD stage 3 but Mrs B was not informed of the diagnosis and no investigation or further follow-up was made.

Another year later, Mrs B made an appointment with Dr R because she was struggling with anxiety and was concerned about palpitations. She was stressed at work and was waiting for some cosmetic surgery that she was nervous about. Dr R checked her BP and found it greatly elevated at 216/107. He prescribed her diazepam and propranolol and arranged an ECG on the same day, which showed ventricular hypertrophy. Dr R arranged blood tests the following day and rechecked her blood pressure. Her eGFR was 21, indicative of CKD stage 4. Her creatinine was 226 and urea 10.6. Mrs B was informed about a problem with her kidney function and was referred and seen the same day by a nephrologist, Dr W.

Dr W started treatment with amlodipine, bisoprolol, alphacalcidol, simvastatin, ranitidine and aspirin. He informed Mrs B that she had renal failure and accelerated hypertension. Mrs B underwent detailed investigation with blood tests, urinalysis and ultrasound. In Dr W’s opinion, her chronic renal failure was caused by a combination of smoking, a bad family history of vascular disease (and possibly renal disease), and hypercholesterolaemia, which, combined with the adverse effects of NSAIDs, produced an ischaemic interstitial disease that became rapidly worse with the sudden development of severe uncontrolled hypertension.

Mrs B was told that progression to end-stage renal failure was almost certain and that she would require dialysis or transplantation within five to ten years. She was told that her life expectancy with dialysis could be 10-15 years and 15-20 years with transplantation. She would need a complex drug regime, dietary restrictions and indefinite outpatient follow-up.

Mrs B was devastated and felt that the diagnosis and treatment of her renal failure had been delayed. She was struggling with fatigue and was unable to cope at work. She made a claim against both GPs. Expert GP opinion acknowledged that there had been a big shift in clinical practice since the case took place. Guidance has changed regarding diabetes, anaemia and nephrotic syndrome. Expert opinion also suggested that an urgent referral within a week should have been made if the hypertension was marked and the rise in creatinine rapid. In the absence of a rising creatinine and in the presence of a normal blood pressure, the patient would normally have been seen within two months. Had this been done, the severe episode of hypertension could have been avoided and renal function preserved. The timely withdrawal of NSAIDs would have been of some benefit. As a result of missed opportunities for referral and intervention, progression to end-stage renal failure was almost certain and dialysis or transplantation would be required.

The claim was settled for a substantial sum.

Learning points
- This case occurred before 2008 and the expert opinion follows practice that was current at the time. Guidelines surrounding the management of CKD have since been updated – see NICE, Chronic kidney disease – Early identification and management of chronic kidney disease in adults in primary and secondary care, www.nice.org.uk/CG73
- Good note-keeping is important. This is vital for a good defence. It was useful that Dr T documented that he had advised Mrs B to return for blood tests in three months.
- Steps to ensure continuity of care would have made it easier to notice that Mrs B had not returned for the planned follow-up. GPs should review previous notes when seeing patients, to put the consultation into context and continue with existing management plans.
- It is important to keep up-to-date and be familiar with guidelines and developments that affect your work.
Suspected epilepsy: when to warn

A girl of eight, L, was brought by ambulance to the Emergency Department (ED) with a history of a fit during a lesson in school. There was no reliable history: according to friends who had been playing with L, she had touched an electrical socket, fallen, and then had a fit lasting about five minutes, from which she spontaneously recovered.

Shortly after L's parents had arrived in the ED, she was seen by the on-call paediatric team. By this stage she had fully recovered. Her parents were keen to take her home. The on-call paediatrician noted that there were no signs of any acute infectious aetiology for the fit, and no evidence of any burn injury associated with an electrical discharge.

It was unclear whether a head injury had been sustained either before or during the incident. Because of uncertainty around the aetiology, a CT brain scan was performed. This was reported as normal. L's parents were advised that further investigations would be organised as an outpatient, and to bring L back if any further episodes occurred. However: there was nothing in the notes to suggest the hospital intended to rule out anything serious, like epilepsy. An electroencephalogram (EEG) was arranged for two weeks and a follow-up appointment was made for the paediatric outpatient clinic in six weeks in order to discuss the results of the EEG.

Unfortunately, L did not attend for her EEG. The hospital did not have a “Did not attend” policy in place, and no further action was taken by medical staff as a result of this.

Four weeks later, L was again brought into the ED by a teacher from her school. On this occasion the history was a little vague; it seemed that L had fallen to the ground, possibly as a result of a faint. It was unclear whether she had hit her head on a desk or on the floor. When on the floor, she had been noted to have some persistent blinking and unusual side-to-side movements of the head and one hand.

When examined in the ED about one hour after the episode, L was alert and co-operative. Neurological examination was unremarkable. A further CT brain scan was performed, and again reported as normal. On this occasion L's parents were advised that further investigations including an echocardiogram and an EEG were necessary, that these would be arranged as an outpatient and that she would be seen in the paediatric department with the results of these. She was discharged home with planned EEG and follow-up appointment booked for two weeks and four weeks respectively.

Ten days later, L was found drowned in the bath at home. L's parents made a claim against the hospital treating L. Expert evidence on behalf of the parents advised that had the parents been made aware of the possibility of epilepsy as a diagnosis, and been given appropriate advice, that they would have prioritised the EEG appointment; and they would have followed standard advice given to parents of children with a diagnosis of epilepsy, ie, to ensure that she was supervised during baths, or to take only showers. The claim was settled for a moderate sum.

The hospital did not have a “Did not attend” policy in place, and no further action was taken as a result of this.

Doctors may be faced with a dilemma when counselling parents about conditions in their child that are unconfirmed and still under investigation. There is a delicate balance to be found between causing undue anxiety if the condition is subsequently not diagnosed, and failing to provide parents with sufficient information for them to take appropriate precautions. In the case of a child who has had two episodes that are suggestive of a fit over a short period of time and in which investigations for epilepsy are underway, it would be prudent both to offer some precautionary advice to parents and to document the advice given.

In the UK, NICE’s clinical guideline 137 The epilepsies: the diagnosis and management of the epilepsies in adults and children in primary and secondary care, issued in January 2012, states that:

1. All children, young people and adults with a recent onset suspected seizure should be seen urgently (ie, within two weeks) by a specialist (ie, a paediatrician with training and expertise in epilepsy). This is to ensure precise and early diagnosis and initiation of therapy as appropriate to their needs.

2. Following a first seizure, essential information on how to recognise a seizure, first aid, and the importance of reporting further attacks should be provided to a child, young person or adult who has experienced a possible first seizure, and their family/carer/parent as appropriate. This information should be provided while the child, young person or adult is awaiting a diagnosis and should also be provided to their family and/or carers.

3. Children, young people and adults with epilepsy and their families and/or carers should be given information to include (where appropriate):
   - epilepsy in general
   - risk management
   - first aid, safety and injury prevention at home and at school or work.

4. The time at which this information should be given will depend on the certainty of the diagnosis, and the need for confirmatory investigations.

In this instance, the parents’ failure to bring the child for the initial investigation may have been a contributory factor. Had a ‘Did not attend’ policy been in place, there would have been an opportunity to review the records and to establish whether further efforts should have been made to ensure that the child was brought for medical assessment or treatment.
Mishandling major surgery

Mr A, a 63-year-old retired farmer, had suffered from severe gastro-oesophageal reflux disease for many years. His symptoms were partially controlled with long-term anti-secretory medication but after a number of years he had reached the point where his gastroenterologist recommended anti-reflux surgery. He saw Dr X, an upper gastrointestinal surgeon, who arranged a repeat endoscopy. This demonstrated a 10cm area of Barrett’s oesophagus with no obvious macroscopic abnormality above a 5cm sliding hiatus hernia. Dr X went on to perform a laparoscopic Nissen fundoplication, after which the patient made an uneventful recovery.

At a review appointment three months later Mr A reported a significant improvement in his symptoms and no longer required his medication. He next saw Dr X for a surveillance endoscopy seven months later. The fundoplication was intact and the long segment of Barrett’s appeared unchanged. On this occasion multiple biopsies were taken and were subsequently reported by pathologist Dr H as demonstrating high grade dysplasia (HGD). Dr X reviewed the patient shortly thereafter and explained that the findings were likely to indicate the development of cancer. He recommended that Mr A should undergo an oesophagectomy.

Postoperatively the patient was managed jointly by Dr N, a respiratory physician, and Dr X on the intensive care unit. Dr X had arranged to go on holiday the day after the procedure and spoke to a colleague, Dr B, about managing the patient in his absence. Details regarding the handover and cover arrangements were subsequently disputed. Specifically Dr B allegedly told Dr X that he could not look after the patient until the following day.

In the afternoon after Dr X had departed, the patient developed intra-thoracic haemorrhage. Another surgeon, Dr F, was called to perform an emergency right thoracotomy and successfully stopped the bleeding by ligating an aortic bleeding point. Postoperatively, the patient developed severe gastric distension and pneumonia. Dr B (who was now available) inserted an NG tube to decompress the stomach, confirming its position by chest x-ray. However the NG tube failed to drain any fluid and Dr N subsequently discovered that it had been placed in the right main bronchus when performing a bronchoscopy. Dr N placed it correctly into the stomach under direct vision.

There then ensued a protracted period of ventilation and multi-organ support on the intensive care unit. Dr X returned from leave and continued the patient’s care. A stepwise deterioration occurred with worsening pneumonia, sepsis and multi-organ failure and Mr A died on the intensive care unit 14 weeks after the operation. The final pathology report from the specimen demonstrated multi-local HGD with no signs of invasive carcinoma and all margins clear.

Mr A’s family made several claims of negligence by the clinicians involved in his care. They alleged that Dr X had failed to biopsy the Barrett’s segment at the patient’s initial endoscopy leading to an unnecessary fundoplication and delay in the finding of high grade dysplasia. They also complained that Dr X had failed to adequately discuss alternative management options for HGD other than surgery and that he had also not arranged adequate cover for his planned absence after the operation. Allegations of negligence also centred on Dr H and Dr X relying on a single pathologist’s assessment for the diagnosis of HGD.

Expert opinions for MPS and the claimant agreed that biopsies of the Barrett’s segment should have been obtained at the initial endoscopy performed by Dr X, although they accepted that previous endoscopic biopsies did demonstrate entirely benign Barrett’s epithelium. They also agreed that the standard approach to the finding of HGD should warrant further independent pathological review and assessment of biopsy material before acting upon the findings. However, it was noted that the diagnosis here was correct, as several pathologists confirmed the findings of HGD in the resected oesophageal specimen.

It was accepted that at the time the case occurred, the finding of HGD in Barrett’s in a fit patient was an indication for consideration of oesophagectomy. Other therapies, including endoscopic mucosal resection and radiofrequency ablation, have now become more accepted treatments as an alternative to surgery. There was considerable criticism of Dr X’s decision to schedule such major surgery a day before he was on holiday and his subsequent arrangements for colleagues to cover. The absence of an NG tube placement at the initial operation and subsequent procedure was also criticised, as was Dr B’s misplacement of the tube and his misinterpretation of the X-ray findings.

The case was eventually settled for a moderate sum.

SD

Learning points

- The diagnosis and management of HGD in Barrett’s oesophagus remains a controversial area with a number of different therapies available. It is now common practice for specialist multidisciplinary teams that include surgeons, gastroenterologists and pathologists to manage these patients. This approach may improve the accuracy of diagnosis and staging, and facilitates a consensus on the optimum management for each patient.
- It is not always possible for a surgeon to be constantly available for the postoperative management of a patient. In periods of extended absence, robust arrangements must be made for adequately qualified colleagues to cover the care of a patient. The patient, relatives and all relevant staff involved should be informed. Even so surgeons undertaking major or high risk elective surgery before a planned holiday are likely to be at risk of criticism when something goes wrong in their absence. The duration of time that can elapse between events and subsequent litigation, as highlighted in this case, demonstrates the need to maintain accurate and detailed notes as the cornerstone to any medicolegal defence.
- It is common practice to place an NG tube after oesophagectomy. In this case it may have prevented gastric distension, aspiration and pneumonia. Misplacement of an NG tube is a common error and a potential source of morbidity, mortality and medicolegal problems. See Casebook 20(3), September 2012, for an article on NG tube errors.
Ms M, a 38-year-old woman, consulted Dr F, an ophthalmologist, for surgical correction of high hypermetropia. Dr F recommended clear lens extraction and intraocular lens implantation with subsequent excimer laser treatment to correct any residual refractive error. There was no record of any consent process describing the complications of intraocular lens implantation. Ms M underwent uncomplicated clear lens extraction and a silicone intraocular lens was implanted. She was not given any postoperative anti-inflammatory treatment.

On the fourth day post-surgery, Ms M was reviewed and was noted to have moderate postoperative uveitis. She was started on Maxitrol (dexamethasone, polymixin B and neomycin) and cyclopentolate eye drops and was managed as an outpatient. Over the next two days, Ms M was reviewed daily and some improvement was noted, but a “tiny hypopyon” persisted.

On the seventh day post-surgery, Ms M presented to the Emergency Department of another hospital with pain and reduced vision. A diagnosis of endophthalmitis was made. The endophthalmitis was treated according to local protocol and Ms M improved. She eventually regained excellent vision and had good binocular vision at final follow-up. Mild posterior capsular opacification was noted, but she remained asymptomatic.

Ms M made a claim alleging that she was not given informed consent prior to the surgical procedure, that the postoperative treatment of the infection was poor and that she suffered a period of reduced visual acuity.

Learning points
- Even though the final visual outcome was excellent, failure to take informed consent made this case indefensible. Ample guidance on taking consent is available from professional bodies and employers.
- In this case, inappropriate postoperative prophylaxis for uveitis and infection compounded the problem. Following lens extraction surgery, the majority of ophthalmologists would prescribe topical antibiotics as prophylaxis against infection and topical corticosteroid therapy as prophylaxis against uveitis. Furthermore, older generation silicone intraocular lenses have been associated with a higher incidence of postoperative uveitis. In the absence of strong evidence to support alternative practice, it would have been prudent to use prophylactic anti-inflammatory treatment in this patient.
- Postoperative adverse incidents should be treated promptly and mitigated immediately. Endophthalmitis is a sight-threatening emergency that should be evaluated and treated promptly and usually requires in-patient care and monitoring. The presence of a hypopyon and the failure of rapid resolution should alert the ophthalmologist to the possibility of endophthalmitis.
- This case was identified as being indefensible at an early stage – so MPS did all it could to ensure a swift settlement to keep legal costs controlled.
Mr G was admitted to hospital under Mr R, consultant orthopaedic surgeon, complaining of severe right leg pain. Mr G had a long history of back pain and had already undergone a disc removal at L5/S1 some years earlier. On this occasion, Mr G was complaining of severe back pain and radiating pain down the right leg for about two weeks. His pain was very severe and he was unable to work.

An MRI scan was obtained, which showed a large recurrent disc prolapse at L5/S1 with a retrolisthesis and end plate oedema at that level. In hospital, conservative treatment was begun, but after five days there was no improvement.

Mr R suggested a revisional discectomy and pedicle screw fusion at L5/S1. He carefully explained and documented the uncertainty about the results of such surgery and the increased risks because of the previous procedure at that level. Mr G wished to go ahead.

Following surgery, Mr G was still in a lot of pain. A CT scan was performed, which showed that the right sided pedicle screws were too long and had protruded beyond the front walls of both the L5 and S1 vertebrae. The tips of the screws were reasonably close to the iliac artery and vein. However, there was no evidence of intra-abdominal injury or haematoma. Because Mr G’s pain was continuing, a further operation was performed and the screws were replaced. During surgery, the bone at S1 was found to be osteoporotic and an oversized screw was required to gain purchase. Mr G improved for a few days but then his pain returned and continued unabated. Further scanning showed no complications.

Mr G was dissatisfied and began a claim against Mr R. He felt that Mr R had not examined him properly and had failed to discuss the problems that could be caused by a weak vertebra, or the nerve damage that could result.

Expert opinion found that Mr R had adequately explained all the risks of the operation, and had tried a reasonable period of conservative treatment before surgery was undertaken. The inappropriate initial placement of the pedicle screws on the right was unfortunate, but there was no evidence that this had injured the patient. Expert opinion also found that the manipulation of the L5 roots at the initial surgery was the cause of the continuing pain, but this can occur in the best of circumstances and did not constitute negligence. There was no way to predict the osteoporotic nature of the S1 vertebra preoperatively.

A detailed letter of response was sent and the claim was successfully defended.

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**Learning points**

- Patient expectations must be carefully managed. Under ideal conditions, lumbar surgery has an approximate 80% success rate. In situations such as this case, where there has been previous surgery and instrumented procedures are contemplated, the overall results may not be quite that good. Patients must always be informed of these facts and of the risks to neurological structures, and this must be well documented.
- A failure to resolve the patient’s symptoms does not constitute negligence.
- When proposing surgery on the spine for benign conditions, it is important to first explore the possible benefit of non-surgical treatments. Very rarely is surgery appropriate as the first line of treatment.
- Sometimes things happen during surgery that are less than ideal, such as in this case, where pedicle screws were used that were too long. Although these screw placements were inappropriate, no harm occurred as a result, and so a claim of negligence was unsuccessful.
Mrs B was a housewife with a four-year-old son. She had been trying to have a second child for some time and eventually conceived. She rang Dr L, senior partner at her practice, to inform him of her positive pregnancy test.

Her son developed chickenpox and seemed “under the weather” so Mrs B phoned her surgery to make an appointment with her GP. While she was talking to the receptionist she asked if she was at any risk from chickenpox since she was eight weeks pregnant. The receptionist tried to be reassuring and told Mrs B that there was no risk from chickenpox and that only German measles or rubella would cause concern.

Mrs B’s husband took their son to the appointment with GP Dr Y the next day. Dr Y confirmed the diagnosis of chickenpox by inspecting his widespread vesicles. He had noted that examination of his ears, nose and throat had been acceptable and that his chest was “fine”. His management notes were very minimal and just stated “advice given”.

On a separate occasion, Mrs B visited Dr Y to arrange antenatal care. She did not mention her son’s chickenpox because she had felt reassured by the advice he had given her husband when he had attended with their son. Dr Y made no notes of this consultation although he arranged a dating ultrasound scan and an appointment at the antenatal clinic.

Mrs B developed the same spots as her son and immediately panicked about her pregnancy. She became anxious that the baby could be harmed so rang her surgery to make an appointment with her GP. The receptionist informed her that only emergency appointments were available so she could not get an appointment that day. She also told Mrs B that “nothing could really be done for chickenpox”. Mrs B was still anxious so the receptionist agreed to put her through to the practice nurse. The nurse also tried to reassure her and reiterated the receptionist’s advice.

Mrs B, who had had two miscarriages in the past, still felt very anxious about her pregnancy. She felt upset and rang her husband at work. He rang the surgery and demanded that his wife should have an appointment with a GP that day. An appointment was eventually made with Dr L who made no notes of the consultation. Mrs B stated that Dr L said there was “no need to worry about any risks to her pregnancy with respect to her chickenpox”.

Mrs B went on to have a normal dating and 20 week scan. Her chickenpox was never discussed in her antenatal appointments. She had a normal delivery at term. Her baby, CB, was 4.54kg and breast fed well.

When CB was three months old, the health visitor noticed a squint and a referral was made to a paediatrician. At five months old it became evident that CB had an abnormal posture. Mrs B’s chickenpox at eight weeks gestation was noted by the paediatricians and congenital varicella syndrome (CVS) was diagnosed. CB had severe visual impairment, asymmetrical 4 limb motor disorder, scoliosis and learning difficulties.

Mrs B was completely devastated that her chickenpox had not been managed while she was pregnant and she made a claim against her GP, Dr L.

The opinion of a GP expert was sought. He thought the standard of care was indefensible because the receptionists had provided clinical advice without discussing it with a doctor first. He felt that Mrs B should have been able to speak to a doctor. Had a doctor seen Mrs B when she had the chickenpox contact, he stated that varicella antibody testing should have been arranged. If varicella IgG had been negative then Mrs B should have been offered varicella zoster immune globulin (VZIG). It was his opinion that a “reasonable GP” would have concluded that there was no benefit in giving VZIG when Mrs B was seen with the rash.

The claim was settled for a high amount. Dr L was criticised in his capacity as senior partner in the practice for allowing administrative and nursing staff to provide negligent medical advice. It was also agreed that he had personally provided negligent advice to Mrs B concerning the risks to her and her unborn baby resulting from exposure to the varicella virus. He had also failed to test Mrs B for immunity to the varicella virus and administer VZIG once the results were known.

The opinion of a GP expert was sought. He thought the standard of care was indefensible because the receptionists had provided clinical advice without discussing it with a doctor first.

Learning points

- Clear and accurate note-keeping is an important aspect of providing good clinical care. It is also vital when trying to defend a case. Dr Y’s records were very minimal and some consultation notes were completely missing. The case was consequently impossible to defend.
- Reception staff should not provide medical advice. It could be easy for them to act outside their competence so clear roles and responsibilities should be set.
- If a pregnant woman consults you worried about a chickenpox contact:
  - Define “contact”. Significant contact usually means face to face contact in the same room for 15 minutes or more.
  - Ask the woman if she has had chickenpox. If she has a negative history or is unsure, test for varicella zoster IgG urgently.
  - Consider her susceptible if IgG is not detected.
  - Post-exposure prophylaxis with VZIG can be given if susceptible within ten days of the exposure and may attenuate the disease in pregnant women.
  - If the woman is antibody negative with significant contact or if she has the vesicular rash then expert advice should be sought.
A failure to monitor

Retired engineer Mr S, 77, went to see his GP, Dr J, with symptoms of dizziness. He had returned from a pacemaker check at the hospital that morning and while travelling home on the train he had started to feel off-balance. He managed to get an emergency appointment to see Dr J, by which time the symptoms were resolving. Dr J noted that the pacemaker had been fitted for complete heart block six years ago, and had remained in situ without any problems since then. Mr S reported no chest pain or palpitations and Dr J, feeling reassured by the recent pacemaker check and a normal examination, attributed the symptoms to motion sickness and prescribed cinnarizine.

Despite taking the medication regularly, Mr S’s dizziness continued, so he returned to the practice two days later to see Dr A, his usual GP. Dr A recorded his BP as 140/50 and attributed the symptoms to benign paroxysmal positional vertigo. No record was made of Mr S’s pulse. Dr A advised Mr S to continue the medication prescribed by Dr J.

During the next six weeks, Mr S consulted with Dr A on three further occasions with ongoing symptoms of intermittent dizziness. Note-taking from all three consultations was sparse, with no defined cause of the symptoms documented, and no further cardiovascular examination or ECG performed. Mr S was given a trial of betahistine for presumed Meniere’s disease.

Two months after his initial presentation, Mr S consulted with Dr A on three further occasions with ongoing symptoms of intermittent dizziness. Note-taking from all three consultations was sparse, with no defined cause of the symptoms documented, and no further cardiovascular examination or ECG performed. Mr S was given a trial of betahistine for presumed Meniere’s disease.

Two months after his initial presentation, Mr S was taken into the Emergency Department after collapsing on the street when out shopping. He was found to be in complete heart block, with a pulse rate of 32 beats per minute. The admission ECG showed atrial pacing but no ventricular spikes, and his symptoms were attributed to a malfunctioning pacemaker. He was admitted to hospital, and while being monitored on telemetry, the pacemaker activity resumed without intervention. Mr S became acutely confused after admission to the ward. He was treated for a urinary tract infection, and underwent a full confusion screen, which was unremarkable. A CT scan of his brain showed small vessel disease. The patient continued to deteriorate, leading to him becoming fully dependant. He was discharged into a care home following a prolonged admission.

Mr S’s family made a claim against Dr A, stating that the confusion and memory loss developed as a result of hypoxia, linked to the malfunctioning pacemaker. Experts agreed that a competent GP would rethink the diagnosis of vertigo and carry out a cardiovascular examination, including an ECG. Dr A defended his actions by stating that by taking a manual blood pressure reading, he would have listened to the pulse and been aware of any significant irregularity or abnormal rate.

However, opinion was divided on the causation of Mr S’s decline. Experts found no evidence to support an episode of circulatory failure significant enough to cause prolonged hypoxic damage. The general deterioration was considered to be due to a pre-existing cognitive impairment, which was exacerbated by the hospital environment and the bradycardia – which experts agreed, would have occurred in any event with an earlier hospital admission.

The case was settled for a low sum to reflect the partial causation defence.

Learning points

- Lack of clear documentation makes a case difficult to defend. In this scenario, there was no record in the notes that the patient’s pulse had been taken. If an investigation is not written down, it is hard to prove that it took place.
- The allegation in this instance was of memory loss as a result of hypoxia. Ultimately, the deterioration of the patient was attributed to pre-existing cognitive impairment, hence the low settlement. From a medicolegal standpoint, this highlights the importance of fully investigating claims, since taking the claim at face value may have resulted in payment of long-term care costs.
- Be wary of repeat consultations. Dizziness is common, but revisiting a diagnosis and carrying out a basic examination, especially in a patient with a cardiac history, is essential to ensure that good quality care is provided.
Miss Y, 37 years old, was known to have bilateral ovarian endometrial cysts treated at the time of a laparotomy by Mr D, consultant gynaecologist. For several years she had been regularly followed up and repeat scans had showed recurrence of her cysts, which were managed with dydrogesterone. She subsequently presented as an emergency, complaining of severe dysmenorrhoea for three days. Further bilateral ovarian cysts were confirmed on a trans-vaginal ultrasound scan and a decision was made for her to undergo further surgery.

Mr D performed a further laparotomy and found recurrent bilateral ovarian cysts stuck down in the Pouch of Douglas and adherent to the back of the broad ligament. Both tubes were dilated but otherwise normal. Mr D recorded that the right ovary was freed and chocolate coloured material aspirated. The left ovary was drained in situ, but no attempt was made to free it. Before the operation, Mr D inserted a small pack into the posterior fornix in an attempt to keep the uterus and ovaries elevated. Miss Y had never been sexually active.

Miss Y made an uneventful recovery and was discharged from hospital on day four. Three weeks later she was referred back to the gynaecology department with increasing pain and urinary incontinence. Clinical examination demonstrated left iliac fossa tenderness but an ultrasound scan was negative. A diagnosis of dysmenorrhoea, secondary to endometriosis, was made as the patient had begun menstruating two days earlier. The patient declined admission to hospital as she was anxious to go home. Mefenamic acid was prescribed and she was reviewed by Mr D two weeks later.

At this stage she continued to complain of a foul vaginal discharge although her pain and urinary symptoms had settled. A high vaginal swab was taken and the patient was given continuous progesterone for three months and doxycycline for ten days. At a further review two weeks later the patient was well with no evidence of discharge, but an offensive odour was detected. Betadine vaginal pessaries were prescribed and Miss Y was asked to reattend in three weeks. Upon reattendance, it was found that the foul smelling discharge had resumed. Further swabs revealed the presence of faecal organisms and the betadine pessaries were continued.

The patient’s problems persisted. Eight months after the original operation she was reviewed again by Mr D who performed a speculum examination. This revealed the pack in the posterior fornix, which was removed, and the vagina was washed with more betadine. Some oestrogen cream was inserted and she was put on further antibiotics. The patient subsequently made a full recovery.

The patient initiated proceedings against Mr D, citing negligence in failing to remove the swab during the operation. A further complaint was also made that Mr D failed to suspect or locate the swab after surgery by not taking reasonable steps to heed or investigate her complaints. Responsibility for not removing the pack and failing to diagnose its presence for several months was accepted and the case was settled for a moderate sum.

SD

A retained swab

Learning points

- Such incidents as described in this case report continue to occur after operative procedures with variable degrees of subsequent harm. Each organisation and individual surgical team need to implement safety checks and take responsibility for ensuring that all surgical instruments and swabs used in an operation are counted in and counted out. The World-Health Organisation Surgical Safety Checklist has been widely implemented and has specific elements to help reduce the risk of such events. See www.who.int.
Mr B, a 35-year-old businessman, consulted Mr L, a urologist, over the telephone requesting a vasectomy. Mr B had been married for 12 years and had three children with his wife, aged seven, four and two. Mr L explained the procedure briefly over the telephone to Mr B, stating that there was a slight risk of infection and bleeding from the procedure and a very slight risk of chronic scrotal pain. Mr L then sent Mr B the hospital admission form and the consent form, to bring back with him on the day of the operation.

Mr B was admitted to the ward and only met Ms Q, the urologist who would perform the operation. In that short visit, Ms Q introduced herself to Mr B, checked his signature on the consent form, and told Mr B he should be out of hospital in a few hours’ time.

On discharge later that day, Mr B was advised to get a sperm count organised by his doctor in 12 weeks’ time. He claimed later that he was not given any practical advice on contraception, nor told that there was a risk that the vasectomy might not have worked. Ms Q did not see Mr B after the operation; instead it was the nursing staff that discharged Mr B and gave him advice regarding his sperm count check.

GP Dr X saw Mr B in clinic and was surprised to hear about the operation but still requested a path lab test for his semen analysis, although he failed to label that it was post-vasectomy. Dr X advised Mr B to contact the urology clinic for the results.

Mr B contacted the clinic but could not get hold of any of the doctors. The secretary mentioned that the report said “normal”, which Mr B interpreted as meaning that the operation had been successful.

Unfortunately, Mrs B became pregnant and only then it was made clear that Mr B’s sperm count was normal. Mr B made a claim against all doctors involved. The case could not be defended and it was settled for a moderate sum.

He claimed later that he was not given any practical advice on contraception, nor told that there was a risk that the vasectomy might not have worked.

Learning points

- Vasectomy is one of the technically simplest urological procedures and yet one of the most litigious. While the procedure might be simple, the consent process is not. Informed consent is best gained in person rather than over the telephone and ideally should be performed by the person performing the operation. If it is gained a few days or more before the procedure, consent should be confirmed on the day of the procedure by verifying the patient’s understanding of the procedure. Going through the operative risks of the procedure is not sufficient. The failure rate of vasectomy, either due to failure to remove adequate sections of both vasa or recanalisation, albeit small, is of crucial significance, and must be mentioned and documented.

- The patient must also be told that it takes around 12-14 weeks on average for the sperm to be non-motile or absent after vasectomy, and thus two separate sperm samples should be provided at these time intervals, and contraception used until the patient receives the ‘all-clear’ from these samples. These sperm samples should be marked as post-vasectomy so the processing laboratory understands that the desired result would be to have no sperm or few non-motile sperm. If the patient’s GP is expected to send these samples then a discharge letter explaining this plus the procedure should be sent to him/her, so that he/she is aware of the situation. The results of the sperm samples should also be sent in writing to the patient’s GP as well as the patient with a letter from the urologist who performed the procedure stating the ‘all-clear’ or otherwise. If viable sperm are still present, the patient should be advised to continue contraception and provide a further sample four weeks later.

- Results should not be given over the telephone by non-medically-trained staff, to avoid potential miscommunications as happened in this case.

- This case illustrates the commonest reason for medical claims – poor communication. There was poor communication at multiple stages: during the consent process, between urologist and patient after the operation, between urologist and GP after the operation, between GP and sperm laboratory, and between patient and urology secretary. While each of these errors might appear small in isolation, together they added up to an undesired outcome.
Over to you

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

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Ignoring the guidelines

Re: The case report “Ignoring the guidelines”, Casebook 21(1), January 2013

I have some years’ experience with a medicolegal practice in obstetrics and gynaecology and as a trainer for the Inner Temple. I read this article with some degree of incredulity.

Personally, I would find it very difficult to criticise many of the actions of the obstetrician involved and indeed to follow the guidelines in the particular case with a poor outcome could be considered to be negligent. In many emergency cases it is entirely appropriate for the clinician concerned to act within their abilities. Even if the guidelines make particular recommendation, it would be unwise to adhere to it in an emergency situation if they have no experience of using a particular drug or a technique. In the situation you describe it would not be appropriate for the individual to do anything other than what they are familiar with. At no point does anyone question the validity of the guideline.

I would be disappointed if this case was not robustly defended. In my own experience I have made the mistake of relying on RCOG (Royal College of Obstetricians and Gynaecologists) guidelines in the past, only to be demolished and humiliated by the opposing side when they have pointed out that in “Where the heart is”, the statement “Mr R’s symptoms were potentially life-threatening” is inaccurate. In fact, those symptoms can and often do represent life-threatening conditions, but they are not in themselves fatal.

My main gripe however is with the statement “...where a cardiologist would have diagnosed him and Mr R would have survived”. It certainly isn’t the case in my (A&E/ITU-bearing) hospital in rural West Wales that Mr R would have been guaranteed to be seen by the only cardiologist on staff. Nor could we have guaranteed that the large saddle embolus in his pulmonary artery would not have killed him.

A small point perhaps, but definitely one to reflect on.

Dr Gavin Ross, Haverfordwest, Pembrokeshire, UK

Response

We would agree that strict adherence to guidelines is not mandatory, and that circumstances will arise where this strict adherence is not inevitably in the patient’s best interests. Guidelines are intended to represent pooled experience of best practice, and so if a decision is made to depart from them, the clinician doing so has the burden of being able to explain and justify why that decision was appropriate – and document the reasoning.

You will have noted that there were other criticisms in the case – failing to attempt less radical procedures before proceeding to hysterectomy and lack of documentation.

Where the heart is

I read with interest the last issue’s compendium of mishaps. I would like to point out that in “Where the heart is”, the statement “Mr R’s symptoms were potentially life-threatening” is inaccurate. In fact, those symptoms can and often do represent life-threatening conditions, but they are not in themselves fatal.

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Dr Gavin Ross, Haverfordwest, Pembrokeshire, UK

Ignoring the guidelines 2

I read with interest the report on “Ignoring the guidelines” in the January 2013 case of postpartum haemorrhage (Casebook 21(1)). Whilst I agree that the ultimate decision on the most appropriate surgical management of this patient lay with the obstetrician on-call, it is important to point out that the medical management of the patient up to that point (including maternal resuscitation, and the correct implementation of the local massive obstetric haemorrhage guidelines) was the joint responsibility of the obstetrician and the obstetric anaesthetist on-call covering the labour ward.

Generally, when a massive obstetric haemorrhage occurs, in most obstetric units, the anaesthetist should take the lead with the administration of intravenous syntocinon (+/- infusion), im/iv ergometrine, im carbaprost, intravenous fluid resuscitation and administering packed red cells/blood products, since they are most familiar with these drugs and in those specific aspects of maternal resuscitation; the obstetrician (assisted by the midwifery team) should take the lead with the usage of pr misoprostol and im syntometrine, external uterine massage and bimanual compression, since they are most accustomed to using these particular drugs/techniques.

Once the decision to go to theatre has been made (jointly), whilst the anaesthetist should mainly concern themselves with continued maternal...
resuscitation, they still have a duty to discuss/remind the obstetrician of their available surgical options (B-Lynch suture, internal iliac/uterine/ovarian arterial ligation, packing of the abdomen as a holding measure or to enable angiography +/- embolisation, hysterectomy, cross clamping the aorta etc, depending on the clinical scenario and cardiovascular/haematological stability), particularly if there is perceived deviation from local/national guidelines.

Massive obstetric haemorrhage is an extremely stressful clinical situation, particularly for the obstetrician, therefore the anaesthetist plays a crucial role in ensuring that logical sensible decisions are still being made amidst the mayhem, which includes insisting that the obstetrician calls for further assistance/senior help/consultant advice/consultant to come in, if the clinical situation warrants it.

Maternal resuscitation in massive obstetric haemorrhage is most effective when the labour ward obstetricians, anaesthetists and midwives work together as a team, so that the guidelines are followed and the appropriate decisions are made at the appropriate times, to achieve the best maternal outcome (which may still unfortunately be a hysterectomy, but at least the appropriate steps to justify that decision will have been taken along the way).

To round off the point, if a discharge notification is even more important. Information is even more important. Information is even more important. Information is even more important.
Medical Law

By Jo Samanta and Ash Samanta (£24.95, Palgrave Macmillan, 2011)
Reviewed by Dr Simon Paul, Consultant Rheumatologist, Kingston Upon Thames

I have ever looked for a book on medical law that manages to balance an exposition of historical medical jurisprudence and ethics, academic debate, insightful critiques of the contemporary UK healthcare situation, a thorough exploration of current medical law and future challenges, all interwoven with stimulating discussions using real-life practical dilemmas, then this book might be for you! Medical Law, written by a husband and wife couple, stands out from most recent medical law texts in many respects. Firstly, the authors come from nursing and medical backgrounds, but are also law lecturers.

Undoubtedly, their practical experience of healthcare settings, enhanced by their legal backgrounds, provides a unique insight into medical law. The authors illustrate topics with authoritative case law and, where relevant, primary and secondary legislation. Refreshingly, the authors also manage to discuss obiter dicta (persuasive statements made in passing by judges, which, although not binding, may be influential on later decisions), something that many other books sadly fail to do. It was nice to see comparative analyses of case law and legislation from other (non-UK) jurisdictions, eg, in the section on assisted dying, and also discussion on relevant EU law.

Each chapter begins with a topic map and this serves to put subjects into neat headings. As expected, there are areas of medical law that overlap chapters (eg, consent in chapters on mental health law, ethics and research) but topic analyses are not duplicated in the chapters; if anything, they are developed in subsequent sections. I found it more helpful to read the end of chapter summaries at the beginning to help signpost how the chapters evolve, but that is only a personal preference.

The authors develop the reader’s understanding using practical scenarios to illustrate important but not straightforward principles. Key terms are expanded for the reader with little background knowledge, but these are also useful for those with more experience in the area as aide memoires. A minor criticism is I found the text blocks a little hard to wade through in places – this is not unusual in books that tackle medical law and ethics, but in general, good use is made of headings and subheadings to break up the text. The book is sufficiently indexed and suggestions for further reading are provided, which mostly appeared relevant.

Overall, I would highly recommend Medical Law, a book that manages to bridge the gap between an introductory and more substantive textbook. It will appeal to law and medical students who have chosen medical law modules, but will also appeal to postgraduate medical and other healthcare practitioners. Lawyers with an interest in medical law will find this a useful general textbook.

CliniCalc app

Reviewed by Dr Laura Davison, GP in Milton Keynes

Have you ever been clerking in a patient and just cannot remember what the four E’s of the Glasgow Coma Scale are, or remember which dermatome those shingle-like vesicles seem to be following? Ever needed to urgently calculate The Delta Gap and Ratio... well, probably not that last one, but the point of new app, CliniCalc, is that if you wanted to, you could.

This very thorough and clever little app covers a multitude of clinical scoring systems, risk evaluators and physiological calculations. Its breadth should mean it applies to both primary and secondary care doctors, from junior to consultant level. The coverage is wide ranging, from the bamboozling anaesthetic and nephrology calculators, to the simplicity of BMI and GCS.

There are numerous lifestyle and cardiac risk categories too, applicable to general practice; however, the majority of modern operating systems for GPs now have these already incorporated.

There are so many calculations on this app, to be honest I had not heard of half of them, and as good as the program is at telling you how it worked it out, it cannot tell you what to do with the results at the end of it. But I guess that is why we went to medical school.

The only obvious omission I’ve noted is the Rockall Score for gastrointestinal bleeds, but perhaps this could be included in a future upgrade.

My only concern is that you can waste minutes flicking through the various category screens hunting for the calculator you need. There is an option on the app to save certain calculations to your “Favourite”s.

Overall a useful application to put on your smartphone, to whip out for patient care decisions or showing off your thoroughness on the ward round, and if you do not use it in the end, who cares, it is free to download from the Apple App Store. So if it is no use to your practice, just delete and replace it with another upgrade of Angry Birds.

CliniCalc is yet to be released for the Android market.
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