

Medical Litigation is good for your health

As a solicitor practising in clinical negligence I often hear it said that if you sue doctors it leads to defensive medicine where a doctor is too scared to try a new treatment for fear of being sued.

In fact the reverse is true as many doctors who both practice and act as expert witnesses will testify. Many doctors say that the litigation process does have an important part to play in medicine because it provides opportunities for them to find out the areas where problems occur and the process of applying the Bolam test of reasonableness can ultimately lead to a change in medical practice.

There are already examples of this. A case in which I acted for a 35 year old who died from the failure to diagnose a suspicious lesion as a malignant melanoma highlighted the problems that a histopathologist faces in having to analyse hundreds of slides a day and the risk of human error in failing to spot an abnormality which can have tragic consequences. As a result of the case the hospital changed their practice so that instead of one pathologist signing off an analysis report, now two pathologists have to thereby reducing the risk of human error.

Another example is in relation to the method of diagnosing breast cancer. As a result of litigation it is now established that a triple test namely a mammogram, a needle biopsy and an ultrasound of the suspicious lesion should be carried out in order to make a diagnosis of the condition.

As a result of the tragic death of a young child during anaesthesia in a dental surgery and other similar cases, dentists cannot administer general anaesthetic in a general dental surgery.

The need for Checklists before surgery was highlighted by a case in which a client was advised by her consultant to undergo surgery to remove her gall bladder but unbeknown to her, the consultant felt that it should only be carried out after she had undergone an endoscopy to locate and remove gall stones (ERCP). She later saw a different consultant who decided to carry out the surgery without having arranged an endoscopy first. This had catastrophic consequences for the client who went on to suffer life threatening pancreatitis. The problem could have been easily avoided if there had been a check list in operation at the time which would have recorded the need for an ERCP before surgery and whether one had been done. Checklists are now being widely used in hospitals thereby reducing simple and avoidable errors.

Thus far from being a thorn in the side of medicine, litigation can work in tandem with it and at best lead to improvements in systems and thus patient health care. This must be good for our overall health.

However, if all the Jackson proposals are implemented and legal aid is removed then Litigation will become much more difficult and at worse impossible and would remove a unique opportunity for the profession to improve practices in areas of medicine where “negligence” often occurs.

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