

MEDICO-LEGAL

**ML001
PREVENTING LITIGATION: THE ROLE OF CLINICAL
GOVERNANCE**

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Clinical governance exists to help clinicians and managers improve patient care and outcomes. In doing so it should have the added benefit of reducing litigation, which stems from errors. Clinical governance seeks to prevent errors. It does this proactively, using risk management principles, and reactively, by investigating clinical incidents. The focus is on preventing errors by addressing system issues but does not shirk the equally challenging area of accountability with regard to clinical competence and performance. The principles of good communication and open disclosure form part of the clinical governance approach. Litigation is more likely to occur when they are absent. Examples of the clinical governance approach drawn from the experience of Australia's first Clinical Governance Unit (established in Newcastle in 1999) will be given.

**ML002
COMPLEX REGIONAL PAIN SYNDROME POST SPINAL
SURGERY-DIAGNOSIS AND MEDICOLEGAL IMPLICATIONS**

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The Complex Regional Pain Syndrome (CRPS), a potentially severe diseased state, is diagnosed more frequently due to a new taxonomy and new Guidelines. Reviewing the literature one finds that, apart from medical conditions and several post-surgical/trauma conditions, CRPS cases may also follow spinal surgery.

Extensive Medline research detected 20 lumbar cases in the English literature, namely post-discectomy or pedicular fusion. The French literature produced 24 cases, post-lumbar laminectomy or anterior fusion.

However, no cervical surgical case was detected.

We present a case of CRPS developing post-cervical foraminotomies and the diagnosis is made in accordance with the guidelines of the International Association for the Study of Pain (IASP). This case is illustrated by the history and the clinical signs, supported by MR images and three subsequent follow up reviews. It is suggested that this syndrome is due to the anatomical connection between somatic nerve roots and the sympathetic chain.

Medico-legal implications are discussed since before patient consent is obtained, there is another condition in need to be mentioned and added to the list of possible complications.

**ML003
RECOGNITION AND COMMUNICATION OF ALERTS IN
HOSPITAL PRACTICE. RESULTS OF THE FIRST AUSTRALIAN
STUDY**

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The management of patient alerts is critical to the provision of safe hospital care. Alerts are defined as patient characteristics which, if not recognized, increase the potential for harm to the patient, or others involved in their care. Despite a current national focus, the nature, incidence and communication of patient alerts is poorly understood.

The present study sought to comprehensively define the incidence of alerts in hospital patients. In addition, the study examined the extent to which these factors were communicated at key points in the course of an elective surgical episode of care.

The records of 258 patients attending a Urology Outpatient Clinic were reviewed. 773 alerts were identified in 210 patients. Cardiovascular alerts, anticoagulation and drug intolerance were the most frequent alerts. 85% of

patients had fewer than 6 alerts; however the incidence of alerts increased with patient age.

145 of these patients were admitted for surgical procedures. Retrospective review of 553 alerts in this cohort showed that 62% of alerts were documented in anaesthetic records, 56% in the admission notes, 43% in perioperative nurse records, and 23% in discharge correspondence. Only 3% of drug allergies or intolerance were highlighted using existing hospital mechanisms.

Patient alerts are not aggregated at any point in the medical record, nor is there an electronic repository of alerts data. The present study underscores a need to improve the recognition and communication of this important information.

**ML004
'RAMIFICATIONS OF TORT LAW REFORM: A VICTORIAN
PERSPECTIVE'**

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Introduction and Purpose A dramatic increase in medical negligence payouts and the subsequent ballooning of medical indemnity insurance premiums led the charge for tort law reform nationally. In Victoria these reforms predominantly took the form of amendments to the Wrongs Act. This paper seeks to consider implications of legislative change on medical negligence actions.

Methods Review of The Wrongs Act with specific reference to legislative changes in 2003 was conducted. In addition, analysis of cases presented to the Victorian County Court Medical List was performed and correlated with legislative changes.

Results In 1996, 11 actions were filed in the medical division at the County Court. This number increased to 53 in 1996 and remained stable between 1998 and 2002 at around 250 actions. In 2003 there was a spike to 676 and then a staggering 1224 actions filed in 2004. This represents a 93.5% increase in a single year. In 2005, following the reforms, the number had decreased to 79 cases.

Conclusions At first impression it might be concluded that the results suggest that the legislative reforms have been effective, as case numbers decreased from 1224 to 79 in a single year; however a more cautious position should be adopted. It is likely that part of this fall represents cases that were already filed the previous year in anticipation of the reforms taking effect. The ramifications for the legal profession will also be discussed.

**ML005
THE LAWFUL FUNCTIONING OF MEDICAL ADVISORY
COMMITTEES**

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Medical Advisory Committee (MAC's) are one of the few remaining areas of hospital administration where clinicians and particularly surgeons can still play a valuable, essential and important administrative function. The principal function of MAC's is in the credentialing of practitioners and the awarding and reviewing of clinical privileges. Because of the importance of this function to the individual initial applicant or one whose existing privileges are being reviewed, to the community as a whole and to the profession as well as to the members of the MAC's it is vital that the principles of administrative law are both understood and are followed at all times. Legal challenges to the MAC's decisions and to individual MAC members can follow if proper procedures are not adhered to at every stage of the initial credentialing or subsequent review process. This paper reviews relevant administrative law principles and the lawful functioning of MAC's.

**ML006
PATIENT INFORMATION AND INFORMED CONSENT**

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Appropriate documentation underpins the consent process. An important element is the provision of information to patients regarding the nature of intended treatment, the benefit, alternatives and likely risks. The present

study reviewed the provision of information for patients placed on a surgical waiting list.

Methodology The consent forms of all patients on a Urology waiting list were reviewed. Information was recorded regarding the procedural description, and information that was documented regarding risks, and alternative treatment options. In addition, letters sent to general practitioners were reviewed to determine what procedural risks had been communicated.

Outcomes 362 Consent and Booking Forms were examined. A plain English description of the intended operation was provided in 3.8% of cases. The procedure was described in technical terms in 86.5% of cases. In 29.8% of cases a significant component of the procedure, was described using acronyms. Relevant risks were documented in 7.2% of cases. A statement of the purpose of the procedure was provided in 10.2%. No consent documented any alternative treatment options. 11% of consent forms failed to mention a significant component of the intended operation. This omission was particularly prevalent for patients undergoing biopsy, stent insertion or X-Ray examinations under anaesthesia. In 15% of cases, a letter was sent to the referring General Practitioner. Relevant procedural risks were documented in 11% of letters.

Conclusion The present study has provided a foundation for local practice refinement. The role of uniform standards for provision of consent information is discussed.

ML007 COMPLAINTS AGAINST SURGEONS TO THE HEALTH SERVICES COMMISSIONER OF VICTORIA

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Introduction The Office of the Health Services Commissioner (OHSC) is an independent statutory body designed to assist in the resolution of complaints against health service providers. Each year the OHSC receives around 2500 complaints, only around half of which will be confirmed in writing and accepted, many of these cases involve surgeons.

Aims

1. To identify major causes of complaints against surgeons at the OHSC level.
2. To determine common outcomes that complainants are seeking in dispute resolution with surgeons.
3. To assess various methods of medical dispute resolution.

Methods 100 randomly selected surgical cases were chosen for review. These were cases currently in the conciliation process and were thus representative of more major complaints to the OHSC. The cases were from a broad range of surgical fields including colorectal, upper gastrointestinal, orthopaedic, plastics and urology. As the cases were selected from the active caseload, they could be analysed in a prospective manner.

Results The files were divided into four major groups: surgical misadventure (20), communication breakdown (38), unwanted outcome (27) and failure/delay in diagnosis or treatment (15). Various aspects of these cases will be discussed including demographics of complainants, correlation with surgical adverse events as well as some remarkable responses from surgeons. In addition, as the data has been collected prospectively, an update will be provided as to the progress of these cases and whether resolution has taken place.

ML008 THE PATELLO FEMORAL JOINT AND IMPAIRMENT ASSESSMENT

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The Purpose of this paper is to review the embryology, anatomy, pathology and surgery of the patello femoral joint and apply it to impairment assessment under WorkCover guidelines. Most knee pain is anterior and most relates patello femoral pathology. Pre-existing conditions such as bi-partite patellae and lateral sub-luxation are discussed together with supra patella plicae, osteochondral lesions and the bio-mechanics of the patello femoral joint.

A range of clinical conditions are highlighted and the impairments therein following work place injury.

References

1. Guides to the Evaluation of Permanent Impairment Vth Edition November 2000 L. Cocchiarella and G> Anderson Ed.
2. WorkCover Guides for The Valuation of Permanent Impairment (1st Edition December 2001).

ML009 AGE, SEX AND TENNIS ELBOW

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The reason why some in the community suffer from epicondylitis and most do not, is not known.

The nature of the pathological process involved also is not clearly understood.

It is a condition that is difficult to assess from the community's point of view because most do not require hospitalisation.

From a medicolegal perspective, this is a study of consecutive workers evaluated for their condition.

My ambition in this study was to ask the questions who are they, what is their age, what is their sex, which elbow is involved, how long does the treatment last and of the treatments offered, which are the most effective.

The results reveal a surprising correlation with those who suffer from carpal tunnel syndrome.

The majority who present, precisely as they present with carpal tunnel syndrome, are females aged between forty-eight and fifty-four. It is, therefore, a condition of a degenerate nature in some way linked to the hormonal change of menopause.

The question remains, is this a work related condition? For those who suffer from an acute epicondylitis at the workplace, that without question is a work related matter. It would appear, from the information obtained in this consecutive series of patients who have suffered from epicondylitis, without trauma involved, that it is a degenerate problem, and perhaps in the early stage aggravated by employment, but after a period of rest it would seem reasonable to declare that this is a condition unrelated to occupation.

ML010 LESSONS FROM CAMPBELLTOWN AND CAMDEN HOSPITALS

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In 2003 whistleblower allegations of defective care at Campbelltown (260 beds) and Camden (72) Hospitals led to enormous media coverage with accusations of malpractice conduct by doctors and nurses and cover up by management.

Six major investigations included two by the Health Care Complaints Commissions. (HCCC) a NSW Parliament Upper House Inquiry, the Walker inquiry, an Independent Commission Against Corruption (ICAC) investigation and NSW Medical Registration Board investigation. Other committees examined coronial referrals and hospital procedures. In June 2004, 15 doctors and 11 nurses were referred to the HCCC.

By 2006 media interest in Campbelltown and Camden has largely abated as the several investigations reported favourably. It became clear that the adverse event rate was little different from that in comparable Australian Hospitals and most hospital staff were exonerated. Unfortunate consequences of the critical public scrutiny included a downturn in morale, disintegration in team work as the trust and confidence in mutual professional competence dissolved, and a diversion of resources to monitoring and overseeing performance. Paradoxically, reporting and cooperation declined through a reluctance of staff to be involved or identified with potentially further examination. Positive outcomes included greater emphasis on patient safety and the quality in the delivery of health care in the NSW Health system, establishment of new Clinical Excellence Commission, diversion of staff and other resources to Campbelltown and Camden Hospitals, and the realisation that the public health system must be supported in preserving and nurturing its positive culture of dedication to patients, teamwork and learning.

**ML011
POST OPERATIVE RADICULOPATHY AND NEUROPATHIC PAIN****R. L. ATKINSON***Princess Alexandra Hospital, Brisbane, Queensland, Australia*

The rating of post operative lumbar radiculopathy and neuropathic pain requires a careful history, clinical examination, access to imaging and electrical diagnostic tests.

The history should include any prior injury, previous lumbar surgery, substance abuse, sexual abuse, depression and background stressors.

The assessment is only valid when the claimant has reached maximum medical improvement (MMI). The Diagnostic Related Estimate (DRE Table 15.5 AMA Guides 5th Edition) is the preferred method. In special cases the range of movement method (ROM Table 15.7) must be used. If both apply, the high percentage is used. If there is a cauda equina component the DRE method is combined with the cortico-spinal tract (Table 15.6).

If the burden of pain is significant Chapter 18 of the Guides is used.

The impairment can be increased by 3% or using the method in Table 18.6 and 18.7 pain is rated as mild, moderate, moderately severe or severe. It may be unrateable in some cases.

Finally, the method in which the rating assessment is reached should be documented.

**ML012
ASSESSMENT OF PERMANENT IMPAIRMENT OF THE LUMBAR SPINE****R. H. PILLEMER***Sydney, New South Wales, Australia*

On 1 January 2002, NSW implemented new workers compensation legislation for assessment of permanent impairment, using the American Medical Association Guides to the Evaluation of Permanent Impairment, 5th Edition.

In addition, WorkCover NSW published its own Guides to be used in conjunction with AMA 5, with their instructions taking precedence over AMA 5, and making it more suitable for local conditions.

The criteria for rating impairment due to lumbar spine injury are dealt with in Chapter 15 of AMA 5, particularly Table 15-3, and in Chapter 4 of the WorkCover Guides.

A diagrammatic method is presented which combines the instructions from both sources, while at the same time simplifying the assessment process.

A simple method of determining the component of impairment due to interference with activities of daily living is also suggested.