

PREFACE

Whenever specialists are asked to express an opinion about medical negligence, they become aware of the dearth of literature on the subject. They also come to realise that it is a far more taxing task than merely reporting, in the usual way, on a patient referred for treatment.

As a topic, medical negligence must first encompass the whole of medicine; it must then add commentary for the identification of clinical error and any lack of adequate care. A whole library of books would be needed to cope with it comprehensively. All that any single text can achieve is to delineate some general principles and then to deal with numbers of important examples in areas where claims for negligence commonly arise. Of necessity this has meant that some topics, which are major ones in standard textbooks, have been reduced in importance in this work. Others, such as operations designed to induce infertility, although a minor topic, have been given a small chapter to themselves.

Although as many topics as possible have been included, there will be some aspects of considerable importance which will have been omitted. I trust my reviewers will be kind in the realisation that the topic is immense, and that the text must of necessity be limited.

The ingredients of a successful claim for medical negligence are that the standard of care has been inadequate and that avoidable suffering with or without permanent damage flowed from that. Since the proof of damage is a necessary ingredient of a claim, little prominence has been given to conditions not presently preventable or curable, or whose relentless progress cannot be significantly altered.

The text does not deal at length with instances where the facts speak for themselves, for example, where a patient has been negligently electrocuted by a radiologist's equipment. It only needs the plaintiff or his relatives to adduce evidence to this effect and to show the resulting damage. Medical evidence is then necessary for little more than to assess residual disability.

There are a number of other areas not dealt with in this text. These include, for example, disciplinary proceedings against medical practitioners and discussions of legal principles including liability under tort or contract. I do have a few words to say about informed consent, as seen from a medical angle.

Although this text will give general background knowledge to medical and legal practitioners, in the final analysis, when a claim for negligence is made, an expert must be found to provide supporting evidence. One cannot conclude that a client with a problem superficially similar to one described in this book 'has a case without close examination of the facts. Nothing can replace the careful examination of the details of each individual allegation. Two patients treated for

identical conditions may both be left with a poor result. There may have been negligence in one case and none in the other. The fundamental question remains: *was there an adequate standard of care, having due regard to all the circumstances of the case?* That is the first question to which the medical expert witness must address himself; the second is to assess what the patient suffered as a consequence of any lack of adequate care. It is then up to the members of the legal profession to determine whether that amounted to negligence and whether damages should be paid.

The author hopes that this book will achieve two objectives. The first of these is to help those unfortunate patients who have been injured as a result of medical negligence to be adequately compensated. The second objective is just as important and that is to avoid the expense incurred by defendants and plaintiffs (or by taxpayers when the plaintiffs are supported by legal aid) arguing a fruitless case.

The generous assistance of the Medical Defence Union of the UK is fully acknowledged. Without that assistance this, and an earlier work, could not have appeared; indeed, to a very large extent, the book has been written around the Union's Annual Reports and other publications. It is to its great credit that the MDU has not sought to hide anything but rather to be enthusiastic in its support. While not speaking for that body, I cannot help feeling that one of its primary purposes is to avoid medical mishaps rather than merely to compensate the unfortunate. Prevention of iatrogenic illness and injury is better than compensation. Case studies derived from Medical Defence Union Annual Reports are labelled MDU.

Described in an earlier work are over 440 case summaries mostly from the published records of the Union; additional material has been added. None is a mock-up; all are from real life although here and there, in order to protect anonymity, small changes which do not affect the issues have been introduced.

I owe a debt to many practitioners and lawyers who assisted me in an earlier work and acknowledged at that time.

Arnold Mann