The duty of GPs to follow up patients

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A recent Supreme Court of Victoria judgement examined the legal obligations of a general practitioner to recall a patient who does not undergo a test that has been recommended by the GP or to return for a consultation, despite being asked to do so.

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jurisprudence; liability, legal; continuity of care

Case study

On 26 April 2002, Mr Stephen Grinham saw a general practice registrar, Dr Murray, for Q fever vaccination. The patient, 38 years of age, had commenced work cleaning floors in an abattoir in March 2002. Dr Murray made the following record of the consultation:

Wants Q fever vaccination as works at Tabro [abattoir]. Discuss with JH [Dr Murray's GP supervisor] for serology and skin test on 2/5/02.

Actions: Pathology requested: Q fever serology.

The patient attended the pathology service to have the test for Q fever serology later that day.

On 2 May 2002, the patient returned to see Dr Murray who recorded:

Given Q fever skin test, 0.1 mL of skin test diluted in 30 mL saline, then 0.1 mL injected intradermally as instructed. Pt to return in 7–10 days for reading. Given questionnaire to read. Will discuss at next appt.

Dr Murray's GP supervisor, Dr Hackett, supervised the administration of the skin test for Q fever. The employee questionnaire provided to the patient at the consultation asked a series of questions about previous Q fever diagnosis, screening and vaccination, potential exposure to animal transmission of Q fever and previous illnesses consistent with Q fever. The patient answered 'no' to all the questions.

The Q fever serology result was received by the practice on 8 May 2002. The results were reported as 'low positive'.

Mr Grinham returned to the practice on 9 May 2002 and saw Dr Murray. Dr Murray's GP supervisor also participated in part of this consultation. Dr Murray made the following entry in the medical record:

[S]kin test neg, history neg, serology low pos, discussed with JH [GP supervisor], seek further advice from Dr Kath Taylor [Department of Health expert in Q fever], not for vaccination, re-test in 1 month – both skin test and serology.

Actions: Pathology requested: Q fever serology.

The patient was informed that it was not clear whether or not he was immune to Q fever and that further testing was required. Dr Murray gave the patient a pathology request form for repeat serology in 1 month. The patient was asked to make an appointment in 1 month's time so that a second skin test could be performed. The GP supervisor confirmed that the low positive blood test meant that it was dangerous to vaccinate Mr Grinham at that time because of the possibility of a severe reaction.

The patient did not have the repeat serology performed, nor did he return in 1 month's time as requested. The patient continued to work in the abattoir and was subsequently diagnosed with Q fever in March 2006 after being admitted to hospital with dizziness, nausea, lethargy and pain. He went on to develop severe post Q fever syndrome.

Medicolegal issues

The patient sought compensation from his former employer as a result of contracting the Q fever while working at its abattoir.

The employer then commenced legal proceedings against Dr Murray. The Victorian WorkCover Authority also sought recovery from Dr Murray of payments of compensation that had been made to the patient.

The claim proceeded to trial in August 2012.[1] During the course of the hearing, the patient settled his claim against the employer. That left the proceedings against the general practice registrar by the employer and WorkCover to be determined.

The employer and WorkCover made two specific allegations of negligence against Dr Murray:

1. Given the low positive pathology results for Q fever, Dr Murray had not provided sufficiently comprehensive advice to the patient so as to alert him to the risks of working at the abattoir when it was not known whether he had tested positive to Q fever
2. Once Dr Murray determined to carry out further pathology and skin testing in about 1 month's time and Mr Grinham failed to re-attend, she should have ensured that he was recalled to the practice.

The patient gave evidence at the hearing that he had only returned to the practice on one occasion following the initial Q fever blood test. He stated that Dr Murray's GP supervisor had informed him that the skin test was negative but the blood test was low positive. He denied being given any other advice about the test results. Specifically, the patient gave evidence that he was not given a pathology request form nor was he asked to return to the practice for further skin testing.

The judge noted that the patient's evidence was inconsistent with the medical records, and the evidence of Dr Murray and her GP supervisor.

The judge found that at the consultation on 9 May 2002 the patient was advised that:

- his Q fever serology was low positive
- he could not be vaccinated at that time because of the results of the serology
- it was not known whether he was immune to Q fever as the results were inconclusive
- he needed to undergo a further blood test and skin test in 1 month's time to clarify the position
- he was given a pathology request form with the necessary implication that he undergo a further blood test
- he was asked to make an appointment in about 1 month's time to return for a skin test.

The judge further noted that:

- Dr Murray was aware that the patient had sought advice as to his Q fever status and to ensure that he did not contract the disease
- Dr Murray did not arrange or book a further appointment for the patient after the consultation on 9 May 2002
- Dr Murray did nothing subsequently to follow up the patient's failure to undergo the pathology test or to re-attend the practice.

The judge went on to conclude that the patient 'understood the advice he was given by Dr Murray that he was low positive, that he needed further testing and that he could not be immunised. There was nothing in Mr Grinham's presentation in court or within his evidence that suggested he did not comprehend what was said to him by Dr Murray or Dr Hackett [GP supervisor]. He denied being told to return by Dr Murray. I reject his account for the reasons already mentioned.'

The judge concluded that it was necessary to examine closely all the relevant factors associated with the doctor's actions, or lack of action, in determining whether a medical practitioner acted reasonably in the circumstances. He stated that:

'[I]t is important not to lose sight of the fact that the legal test is one of what was reasonable in the circumstances, not what might be the perfect medical practice, particularly when viewed with the advantage of hindsight. A standard of perfection may demand consideration and, indeed, implementation of a recall system in relation to any patient who fails to re-attend or undergo a pathology test. This in itself would be unreasonable.'

The judge noted that the GP's impression was that the patient was not suffering from any linguistic or intellectual disability and, as far as Dr Murray was concerned, understood the advice he was given. There was nothing to suggest to Dr Murray that Mr Grinham would not re-attend the practice or undergo a further pathology test. Further, the contraction of Q fever was a serious risk but not a life-threatening disease.

The judge also considered that Dr Murray's actions needed to be viewed in the context of the advice she received from her GP supervisor. Her supervisor did not suggest to her that she should follow up Mr Grinham. Similarly the Q fever expert, Dr Taylor, whilst directing her towards further testing, did not state that it was vital that Mr Grinham be followed up.

With respect to whether Dr Murray should have recalled Mr Grinham when he failed to re-attend the clinic and to undergo the pathology tests, Dr Murray gave evidence that if Mr Grinham had made an appointment, his electronic file would have been reviewed in 1 month's time when he did not attend the appointment and it would have then been possible to follow him up at that time.

The judge commented on the issue of personal autonomy. He noted that Mr Grinham was well capable of understanding what he was told by Dr Murray. He knew when he left the clinic on 9 May 2002 that he was still at risk of contracting Q fever:

> 'It was his (not Dr Murray's) decision not to undergo further testing and to not make an appointment to return for advice and treatment.'

The judge concluded that it was reasonable for Dr Murray not to implement a recall of Mr Grinham as a result of his failure to re-attend the practice or to undergo the pathology test. Therefore, the judge found that Dr Murray's management of Mr Grinham was not negligent and the claim against Dr Murray by the patient's employer and WorkCover was dismissed.

Discussion

Although this judgement examined a GP's duty as it existed in 2002, there are some important principles arising from the case which provide guidance as to how the courts will interpret the duty of medical practitioners to follow up patients. In determining whether there was a breach of duty of care to follow up, the judge endorsed the comments of the New South Wales Court of Appeal which stated that the approach of the High Court of Australia 'reflects the autonomy of the adult patient who is regarded as having the right (if properly informed) to decide for himself or herself whether or not to embark on a procedure'.

The judge also noted that when examining the question of breach of duty, the analysis is not

to be carried out knowing that the patient had contracted Q fever and suffered from post Q fever syndrome, rather it was to determine whether Dr Murray should, acting reasonably, have done more than she did in terms of advice and follow up of Mr Grinham in May and June 2002.

In this regard, the judge accepted the evidence of three GPs who were called to give evidence on behalf of Dr Murray. He did not accept the evidence given by the GP called on behalf of the employer, finding that his evidence about the advice Dr Murray should have given to the patient was a 'hindsight observation knowing that Mr Grinham failed to return'.

Risk management strategies

The Royal Australian College of General Practitioners *Standards for general practices*[2] state under Criterion 1.5.3 that the term 'follow up' can mean:

- following up the information – following up on tests and results that are expected but have not yet been received by the practice
- following up the patient – tracing the patient to discuss the report, test or results after they have been received by the practice and reviewed, or tracing the patient if the patient did not take a test as expected.

'Recall' means:

- a system to make sure patients receive further medical advice on matters of clinical significance.

'Clinical significance' is determined by:

- the probability that the patient will be harmed if further medical advice is not obtained
- the likely seriousness of the harm.

'Follow up system' is required by the practice to ensure that:

- all received test results and clinical correspondence (eg. reports from other healthcare providers) relating to a patient's clinical care are reviewed
- clinically significant tests and results are followed up
- patients are made aware of the seriousness of not attending for follow up
- patients are made aware of who is responsible for communicating with whom about results and when this is to occur.

The standards go on to state: 'The follow up system needs to be designed in a way that anticipates individual cases will require different levels of follow up depending on the clinical significance of the case …

While the patient is the ultimate decision maker, it is important for the patient to be well informed in order to make such decisions. Decisions need to be based on information that the GP has a duty to provide. The GP needs to convey the information to the patient in a way that helps the patient to understand it. A patient who makes a decision based on insufficient information is not making an informed decision. Once properly informed, however, there can be legally effective informed consent, and there can also be legally effective informed refusal'.

The judgement confirms that once a patient has been properly informed of the management recommendations by the GP and the patient has understood this advice, it is ultimately up to the patient to decide whether or not to follow the recommendations.

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2. The Royal Australian College of General Practitioners. Standards for general practices. 4th edn. South Melbourne: The RACGP, 2010.

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