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The duty to follow up

Case histories are based on actual medical negligence claims, however certain facts have been omitted or changed by the author to ensure the anonymity of the parties involved. Many general practitioners are concerned that the law places all of the responsibility for follow up on to the GP and ask: 'What is the patient's responsibility?' This article explores the duty of GPs and patients to follow up tests and results.

Case history

The patient, 50 years of age, attended his general practitioner for a general check up. He told the GP that he felt well, however, he said that his wife had been nagging him about having a check up because he was now 'half a century old'. As part of the check up, the GP ordered some screening investigations, including faecal occult blood testing (FOBT). The patient returned for review about 3 weeks later. The FOBT was positive. On questioning, the patient denied any gastrointestinal problems. There was no family history of bowel disease or cancer. Physical examination, including a rectal examination, was normal. In view of the positive FOBT, the GP recommended that the patient undergo a colonoscopy to determine if there was any significant bowel pathology present. The patient said that he felt well and did not think that it was necessary to have any more tests. The GP explained that there was a small possibility that the patient may have a pre-cancerous, or even a cancerous, polyp or growth in the bowel. Early identification of the problem could be life saving. The GP recommended that the patient see a gastroenterologist to discuss the matter further. The patient said that he did not want to 'waste' his money seeing a specialist and that he would prefer to wait and see how he got on.

Two years later, in 2004, the patient returned to see the GP again. He said that he had felt a little tired over the past few months. Clinically, the GP thought that the patient may be anaemic. A full blood count revealed iron deficiency anaemia. Again, the patient denied any gastrointestinal symptoms. The GP recommended that the patient undergo further investigations to try to identify the cause of the anaemia. At colonoscopy, an ulcerated polyp was found at the hepatic flexure. Biopsy confirmed adenocarcinoma and the patient subsequently underwent an extended right hemicolectomy in June 2004.

In May 2005, the GP received a request from the patient's solicitors for a copy of his medical records. The GP contacted his medical defence organisation because he was concerned that the patient may make an allegation of 'delay in diagnosis' of bowel cancer. The GP thought that he may be held legally responsible for the failure of the patient to undergo a colonoscopy after receipt of the positive FOBT. The medicolegal adviser reassured the GP that, based on his report of the events, there was no possibility of him being held legally liable for any potential delay in diagnosis of bowel cancer.

The GP provided the patient's solicitors with a complete copy of the patient's medical records in accordance with the request. The patient subsequently told the GP

that he had instructed solicitors to assist him in relation to a dispute with his disability insurer about payments associated with his bowel cancer treatment. He thanked the GP for sending the medical records to the solicitors so promptly and said that the matter had now been resolved.

Discussion

Recently there has been discussion about GPs' duty to 'follow up' patients. Many GPs are concerned that the law places all of the responsibility for follow up on to the GP and ask: 'What is the patient's responsibility?' If a patient decides not to attend or phone for their results, is it a necessary implication of the doctor-patient relationship that the GP must pursue the patient for an explanation or a reminder? As one commentator has remarked: 'Such is the medical profession's perception

of the law in this area that it is now commonly believed that it is not appropriate for a doctor to rely solely upon the patient to follow up test results, and that, at least in the case of patients with serious conditions for whom follow up appointments are particularly important, doctors have a responsibility to send reminders in the event of missed appointments'.¹

The term 'follow up' includes:

- Following up the information: following up on tests and results that are expected to be, but have not yet been, received by the practice
- Following up the patient: chasing or tracing the patient to discuss the report, test or results after they have been received by the practice and reviewed, or if the patient did not attend as expected.²

If a patient undergoes a test ordered by their GP, there is no doubt that it is the GP's responsibility to review the results and consider if further action is required. It should not be a controversial proposition that a GP, who has in his/her possession a result that has significance for the health of the patient, bears the onus of communicating this information to the patient. However, GPs are often concerned that in circumstances in which they have advised and provided recommendations to a patient about their results and the patient decides not to follow the GP's recommendations, then the GP may still be held legally responsible in the event that the patient is later diagnosed with a serious illness. This is not the case. As one judge has written: 'It may be that the reason for the scarcity of decided cases about the liability of a doctor whose patient has not followed his instructions is that it is so obvious a proposition of law that a patient who disobeys his doctor's or a hospital's instructions has only himself to blame, that no-one who has in fact disobeyed instructions has proceeded to bring an action'.³

The majority of medical negligence claims arising out of an allegation of failure to 'follow up tests and results' occur in circumstances in which a GP has ordered a test, the result has been received by the GP's practice but there has been a failure to inform the patient about

the clinically significant result. For example, a breast biopsy reveals the presence of cancer but the patient is not informed about the result and need for further treatment because the result is misfiled.

Perhaps not unreasonably, GPs often state that it is the patient's responsibility to obtain their own tests and results. There is no doubt that patients also have a responsibility in their own health care and this includes seeking to obtain their results. It is important to have follow up systems in the practice that are meaningful for patients; that create a shared understanding of what is going to happen; that define who is responsible for follow up; and that encourage patients to discuss how they can help manage their own health. These systems might include outlining the practice's policy for follow up in the patient information sheet, placing a notice in the waiting area, and having the GPs and clinical staff routinely describe the practice's system for follow up to patients when requests for pathology or imaging tests are made.² Nevertheless, there are many reasons why a patient may fail to take steps to obtain their own results. Patients may have:

- misunderstood or forgotten the advice about the need to obtain their results
- not realised that they have received some but not all of the results
- assumed that 'no news is good news' and that their GP would tell them if there was anything to be concerned about.

A range of patient factors such as expectations, cultural background, personality, cognitive problems, denial, anxiety, fear, and ignorance may contribute to the failure of a patient to obtain their own tests and results. The weakness of the argument that states that patients must take full responsibility to obtain their results is that it assumes no vulnerability and complete comprehension on the part of the patient, and an equal relationship between doctor and patient.

However, what is obvious to the GP may not be so obvious to their patients. The doctor-patient relationship is not an equal partnership. Patients rely heavily on the skills and knowledge of their GP. The GP is a professional whose role, in part, is to provide information

and advice to patients. The Royal Australian College of General Practitioners (RACGP) *Standards for general practices* state: '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'.²

Risk management strategies

Criterion 1.5.4 of the RACGP *Standards for general practices* describes the system for follow up of tests and results. The indicators for this criterion are:

- Our patient health records contain evidence that pathology results, imaging reports, investigation reports and clinical correspondence received by our practice have been:
 - reviewed by a GP
 - initialled, and
 - where appropriate, acted upon in a timely manner.
- Our GP(s) and staff can describe the system by which pathology results, imaging reports, investigation reports, and clinical correspondence received by our practice are:
 - reviewed
 - signed or initialled (or the electronic equivalent)
 - acted on in a timely manner, and
 - incorporated into the patient health record.
- Our practice has a written policy describing the review and management of pathology results, imaging reports, investigation reports and clinical correspondence received by our practice.
- Our GP(s) and staff can describe how patients are advised of the process for the follow up of results.
- Our GP(s) and staff can describe the

procedure for follow up and recall of patients with clinically significant tests and results.

- F. Our practice has a system to recall patients with clinically significant tests and results.
- G. Our practice has a written policy to follow up and recall patients with clinically significant tests and results.²

The *Standards* also state: 'If the practice needs to initiate follow up contact with a patient, it needs to do so in a reasonable manner. The number and types of attempts will take into account all of the circumstances. Depending on the likely harm to the patient, three telephone calls at different times of the day and follow up by mail to the address in the patient's health records may be needed. These attempts at follow up need to be documented in the patient's health record'.²

Conclusion

'Rather than just focusing on the content of the duty to implement follow up systems, it is equally important (and sometimes more important) to also reinforce the importance of having a meaningful discussion (that is, meaningful from the patient's viewpoint) to ensure that there is either a shared understanding of what is going to happen and who is responsible for following things up, or enabling the clinician to identify that this particular patient – through fear, ignorance or a range of factors – is unlikely to or may not either understand or comply, despite their (occasional) representations to the contrary'.⁴

Conflict of interest: none.

References

1. Harcourt V. The doctor's duty to follow up: legal fiction, a return to paternalism or an exercise in risk management? *J Law Med* 2001;8:286–301.
2. *Standards for general practices*. 3rd edition. Melbourne: RACGP, 2005.
3. *Ralph v South Australia* (1986) 126 LSJS 142 at 146 per Rogerson J.
4. Milstein and Associates. Changes to college standard: advice re medical legal repercussions.