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A patient's duty to follow up

This article discusses a recent Supreme Court of the Northern Territory judgment, which examined the responsibility of patients for their own medical care and follow up.[1]

Case study

The patient, Mr Clive Impu, 28 years of age, attended the Central Australian Aboriginal Congress (Congress) on 2 March 2000 and saw an Aboriginal health worker who noted 'pain in and crushing sensation on (L) chest, finding hard to breathe. BP 110/70, T37'. The Aboriginal health worker asked one of the general practitioners at Congress to immediately review the patient. The GP, Dr Boffa, recorded the following notes of his consultation with Mr Impu:

'Story: smokes half a packet per day
No alcohol
No lunch today
Stressed +++ about kids, hard work
Pain gone now
Retrosternal discomfort, not pain
No radiation
No sweating, vomiting, nausea
Felt shortness of breath with pain
ECG – December 31 – normal
Observations: looks well
Afebrile
Blood pressure 110/70
Heart rate 76
Throat (tick)
S1 – S2 nil added
Lungs clear
Assessment: Episodic chest pain
Not related to exercise
Plan: fasting cholesterol
Monday (tick) appointment
Cease smoking
Discussed risk factors for ischaemic heart disease
Refer specialist clinic as wants further opinion'.

At a previous GP consultation on 31 December 1999, the patient had presented with pins and needles in both hands and fingers. There was a reference to 'stress+++' in the family and the patient had been 'advised strongly to seek medical help if chest pain + further problem'.

Following the consultation on 2 March 2000, Dr Boffa gave the patient an appointment card to return to Congress on the following Monday for a fasting cholesterol blood test. Dr Boffa also phoned reception and asked that the patient's name be put into the appointment book for the next specialist clinic. He gave the patient a card with the date of the specialist clinic appointment on 21 March 2000 and included a notation '? heart trouble'. Dr Boffa completed a referral form for the specialist in which he noted that the patient should probably have an exercise stress test to ascertain if the chest pain was ischaemic in origin. Dr Boffa did not see the patient again after his consultation on 2 March 2000.

The patient did not attend for the fasting cholesterol test the following Monday, and he also failed to attend the specialist clinic appointment on 21 March 2000.

The patient next attended Congress and saw another GP on 23 April 2000 for the treatment of boils. On 28 May 2000 he again attended Congress complaining of boils and also that he had lost his medications. He was seen again on 29 December 2000 at which time he was treated for a dog bite.

On 26 January 2001, the patient was briefly seen at Congress at about 12.30 pm. He complained of intermittent pain in his right axilla, which had first occurred in about September 2000 at the end of the football season. He was given a sample pack of a nonsteroidal anti-inflammatory drug. At 2 pm, Congress received a telephone call from the local hospital advising that the patient had collapsed on his way home from Congress and had been taken to hospital by ambulance. He was unable to be resuscitated. The death was reported to the coroner.

An autopsy performed on 31 January 2001 revealed that the cause of death was coronary atherosclerosis. There was evidence of myocardial fibrosis, which was consistent with longstanding coronary artery disease.

The patient's wife and three children (the plaintiffs) subsequently commenced legal proceedings against Congress and Dr Boffa.

The allegations of negligence against Congress were that there was a failure to follow up the patient's diagnosis and treatment and, in particular, a failure to follow up the recommended cholesterol test and failure to follow up the referral by Dr Boffa to a specialist physician for assessment of suspected ischaemic heart disease. The allegations against Dr Boffa were that he was negligent in failing to properly diagnose and/or treat the patient on 2 March 2000 and in then failing to follow up on the patient's suspected ischaemic heart disease.

The claim proceeded to trial in 2008 and judgment was handed down on 19 November 2008.

At the hearing, the practice management and administrative procedures which existed at Congress in 2000 were scrutinised in great detail. Evidence was led that the specialist clinic scheduled for 21 March 2000 had been cancelled. During the course of the investigation into the patient's death it became apparent that the wrong patient's medical record had been produced to the clinic on 21 March 2000. There was a note made on that date in another medical record which bore the same name 'Clive Henry Impu'. There was nothing on the file to indicate that there were two patients with the same name. Usually, in this situation, the front cover of both files would be marked 'Note: two files with the same name'.

The system in place at Congress when a person failed to attend the clinic was to follow up the patient either by telephone or by facsimile, and notify the patient of the need to attend the next specialist clinic. This did not happen in this case because the wrong file had been produced at the clinic. Ultimately, the judge found that it was a 'serious administrative error to extract the wrong file at the specialist clinic on 21 March 2000'.

With regard to the cholesterol test, the practice at Congress in 2000 was that if a patient failed to attend for this type of test, they would be offered the test at the next visit to Congress. A new computer system had been installed after 2000 which would pick up nonattendance and flag the nonattendance for the next practitioner. However, in 2000, the paper based medical record system relied upon the next practitioner picking up the fact that there had been a nonattendance. This system appeared to have failed because, on the three subsequent occasions that the patient had attended Congress, being 23 April, 28 May and 29 December 2000, when he was seen by other GPs and health practitioners, the patient did not undergo a cholesterol test. Nor was there any indication that Dr Boffa's notes of 2 March 2000 had been read and followed up by any of the GPs or health workers at Congress who subsequently consulted with the patient.

With regard to Dr Boffa, expert evidence was provided by a GP, Dr Heard. He concluded that Dr Boffa's treatment of the patient was entirely appropriate. Evidence was also given by a cardiologist who concluded that Dr Boffa proceeded appropriately in not performing an electrocardiogram or seeking a coronary angiogram on 2 March 2000 and not requesting any tests, other than a fasting cholesterol and an appointment for the specialist clinic on 21 March 2000. Based on the evidence of Dr Boffa, and the expert GP and cardiology evidence, the judge concluded that he 'was not satisfied that, on the balance of probabilities, Dr Boffa was negligent or failed in his duty of care to his patient by proceeding in the manner that he did on 2 March 2000'.

The judge also had to consider causation: that is, did the breach of duty cause or contribute to the harm suffered by the patient? The cardiology expert evidence suggested that further investigations such an exercise stress test or coronary angiogram would have, on the balance of probabilities, detected the presence and causes of the myocardial ischaemia. Evidence was led that the probability of an exercise stress test showing up as positive ranged from 50–75%. The experts opined that if treatment had been provided to the patient, his life expectancy would have been extended by 12 years.

Solicitors for Congress and Dr Boffa pleaded contributory negligence on the part of the patient. The particulars of contributory negligence were that the patient failed to:

- keep the appointment at the specialist clinic on 21 March 2000
- follow up the cholesterol test, or a further specialist appointment
- mention to the doctors at Congress on 23 April, 28 May or 29 December 2000 that he had not undergone the tests or seen a specialist.

The judge found that 'I am satisfied, on the balance of probabilities, that Dr Boffa expressed his opinion at the time that there was a low likelihood the deceased had heart disease. I am also satisfied, on the balance of probabilities, that Dr Boffa explained the potential seriousness of ischaemic heart disease and the importance of the follow up appointments he had made for the deceased, so as to ensure the possibility of ischaemic heart disease could be excluded. In accepting this evidence, it appeared that Dr Boffa was striking the right balance between not unnecessarily alarming his patient but stressing the importance of the further appointments... the deceased failed in his own interests to attend either the appointment or to ever raise the issue of these tests when he subsequently attended Congress for other unrelated conditions. As such, there must be a discount in the award of damages to the plaintiff for the deceased's contributory negligence'.

The judge found that Congress had breached its duty of care to the patient but that the contributory negligence of the deceased amounted to 50%. The plaintiffs were awarded $236 972.

Discussion and risk management strategies

In this case, the GP was found not to have been negligent in his assessment of the patient on 2 March 2000. Dr Boffa had recorded adequate medical records of his consultation with the patient and he was able to give detailed evidence about the consultation at the

hearing. The judge found that Dr Boffa had provided an appropriate explanation to the patient about why further investigations were required, and had struck the right balance between not unnecessarily alarming the patient while still stressing the importance of the further investigations.

The medical practice, however, was found to have been negligent for a series of administrative problems which resulted in the patient not being followed up. The practice did not have an adequate system to follow up patients who had been referred for further investigations and treatment. There was an inadequate system for identifying files in which the practice had more than one patient with the same name.

The claim also serves as a reminder for GPs about the importance of reviewing previous entries in the medical records to ensure that unresolved issues have been followed up. Of note, the introduction of electronic medical records has made it more difficult for GPs to routinely review previous entries in the medical records.

Conflict of interest: none.

Reference

1. Young v Central Australian Aboriginal Congress Inc & Ors [2008] NTSC 47.

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