

Misdiagnosis of abdomen pain

Pekkala v Lubke

Peter Carter, Brisbane

A commentary on the decision of the Court of Appeal in Queensland which was delivered on 22 November 1996

The plaintiff presented at the defendant's suburban consulting rooms on 21 December 1989 with pain in his abdomen. It was held there was no proper examination. A preliminary diagnosis of gastroenteritis was made. He was prescribed Endone and Maxolon. The only note in the doctor's records was "abdo pain - non specific".

The patient returned on several occasions over the next few days and saw other doctors at the clinic. The defendant was not available to be seen. On 31 December 1989 he was admitted to the Princess Alexandra Hospital and underwent an emergency operation to remove and drain an abscess. He was diagnosed with appendicitis. He required further hospitalisation to have his condition stabilised before the appendectomy could be performed on 6 March 1990. He spent fifteen days in hospital. He had a readmission due to infection.

The negligence as particularised in the pleadings was that the doctor:-

- failed to examine the plaintiff at all
- prescribed Endone and Maxolon in circumstances where it ought not to have been prescribed
- failed to diagnose an abscess or appendicitis
- failed to investigate the condition fully or to consider appendicitis as a potential condition

The trial judge exonerated the doctor and found that there was no negligence in the misdiagnosis. In all the circumstances the doctor's conduct was not below a reasonable standard of care. He also found that the subsequent medical difficulties which the plaintiff underwent were not related to any negligence on the part of the doctor. The plaintiff's claim was essentially that the

doctor ought to have diagnosed appendicitis or abscess on 21 December. His claim was modest in that he was claiming for the additional hospitalisation and difficulties by reason of having to have his condition stabilised between 31 December and 6 March when the appendectomy was eventually performed.

The basis of the finding by the trial judge that there was no negligence was on the basis of the following:-

- poor communication ("limited capacity to clearly express himself")
- here were antibiotics in the plaintiff's system which may have been masking the condition
- unusual position of appendix (this was based on the fact that the three other doctors he had seen at the same clinic between 21 December and 31 December also missed the diagnosis. None of these other doctors were called to give evidence.)
- fat stomach
- patient disbelieved on most points (diarrhoea and vomiting /palpation /lower right quadrant)
- there was a bout of gastro in the district at the time

The Court of Appeal took a very different view. It considered that the first two issues could in no way excuse the doctor missing the diagnosis. The duty was on the doctor to elicit a proper history. The fact that the patient was a poor historian or communicator simply meant that the doctor had to be even more careful. Further, the prescription of antibiotics about a week before, was in the notes available to the doctor. As to the clinical difficulty of obesity, there was no evidence that the doctor considered this a difficulty in arriving at a proper diagnosis.

It was further found that the prescription of Endone was unusual for gastroenteritis and that this would have had the effect of masking the symptoms of appendicitis subsequently. The prescription of Endone was also indicative that the patient's symptoms were severe and should have

alerted the doctor to the suspicion of appendicitis. Once again the doctor's record keeping was the subject of much comment. It was said that "while it is possible that the doctor's note did not do justice to the extent of his examination, so far as it conveys any impression, it points to a perfunctory examination rather than one of a different character".

The doctor had no recollection whatsoever of the consultation. He gave evidence of his usual practice. This was not accepted on appeal as reliable. Rather it was stated "He had scant recollection of the occasion and his evidence of it was redolent of reconstruction". The Court found that the patient was suffering from acute appendicitis when he presented on 21 December. The diagnosis was at best inconclusive or provisional. This was supported by the interpretation of the notation of the words "non specific" indicating something the GP couldn't be sure of.

At the very least, he ought not to have excluded appendicitis and not to have conveyed the impression to the patient that all was well and that it would be resolved by taking the medication. A proper examination ought to have at least indicated the need for further investigation or ought to have itself disclosed appendicitis. As to causation, the Court simply held that "nothing emerges to suggest that (the consequences) other than flowed from the defendant's breach". The defence also argued contributory negligence on the part of the patient for failing to provide a proper history and not returning to the surgery until 24 December instead of 22 December. This was rejected by the Court of Appeal. It should be remembered that the claim was always only a modest one: it was only for the additional hospitalisation and difficulties in having to have the abscess stabilised before the appendectomy could eventually be performed.

Damages of \$36,000 had been assessed by the trial judge and this was the sum awarded by the Court of Appeal. ■

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