

she suffers has occurred fairly regularly, in terms of an infection or disorder being attributed to a previous lifestyle, eg. the attribution of STD infections and severe weight loss to a previous lifestyle as a "junkie" or an "IV drug user". Once a doctor makes such a note on a file, it is much more difficult to fight the pejorative effect of such false statements.

Unnecessary operations and illusory success

A universal complaint from ex-gynaecology patient claimants is that operations and procedures were carried out on them, that, even when successful per se in terms of the physical operation, were never going to produce the result the patient desired. For example, reversal of tube clipping or tying, of which there are several

current examples before the Courts, is a procedure that one specialist has said he doesn't and wouldn't do, because although the operation has a success rate of 80% it does not restore the original fertility to its patient; in fact there are other complications including ectopic pregnancies that have an increased chance of occurring because of the scar tissue on the fallopian tubes. It is a similar story with operations to remove benign cysts from the ovaries. Such damage can be done to ovaries in the process that fertility is not positively affected at all, in fact quite the reverse.

Can they do no harm?

In conclusion, it can be said that although doctors in the field of gynaecology have a duty to their patients and indeed

a very sensitive field of practice, they may fall well short of the standard of care the law requires of them when they become too hypnotised by the desire to micro-surgery for its own sake, and when they fail to properly understand the indissoluble and fundamental link between the female psyche as it is dimly understood and childrearing. Anything that separates a woman from her fertility is an area laden with dangers for a treating physician, and they must obtain full detailed consent and in particular warn the patient of the small prospects of success attendant on some procedures. ■

Jonathan Nolan is a Barrister and Solicitor with David Francis & Associates in Darwin. **Phone** 08 8941 0217 or **email** deflaw@ozemail.com.au

Office of the Protective Commissioner

Brian Porter, NSW Protective Commissioner, Sydney

The Office of the Protective Commissioner (OPC) is a NSW statutory body which provides estate management services for people who are incapable of managing their financial affairs.

The Protective Commissioner may be appointed as manager of the financial affairs of incapable persons pursuant to orders made under the Protected Estates Act 1983, or under the inherent jurisdiction of the Supreme Court of NSW. The evidence required before the Court will make a management order is set out in Part 76 of the Supreme Court Rules. The Court also has power to appoint a private manager who acts under the supervision of the Protective Commissioner. Similar orders may be made by the NSW Guardianship Board.

The powers of the Protective Commissioner in relation to the estate of a protected person include:

- Retaining the services of legal practitioners

- Entering into cost agreements
- Giving instructions for the commencement of legal proceedings
- Giving instructions for the compromise of actions for damages

The Protective Commissioner has a statutory obligation to consult with the protected person and relatives prior to making major decisions unless it would be inappropriate or impossible to do so.

The Protective Commissioner will usually be appointed tutor for the protected person in the proceedings. The management fees charged by the Protective Commissioner are prescribed by the *Regulations to the Protected Estates Act*. The management fees may be claimed as a head of damage in a personal injury action.

Case study: OPC working with plaintiff lawyers

Ms R suffered relatively minor injuries in a motor vehicle accident. Some years later she developed a severe neurological

condition which rendered her totally incapacitated. Medical opinion was divided as to whether the neurological condition was causally related to the accident.

Ms R was unable to give instructions. Her father, who had been appointed tutor, refused to accept the advice of his legal representatives, including senior counsel. Ms R's father refused to give instructions to compromise the claim even though there was a 90% chance of a finding in favour of the defendant on the causation issue. After payment of the defendant's costs, no damages would have been recovered.

The Protective Commissioner was appointed prior to the hearing and gave the necessary instructions to compromise Ms R's claim. The Court subsequently approved the settlement, which resulted in Ms R recovering a significant amount by way of damages plus costs. ■

The NSW Protective Office can be contacted at PO Box A235 Sydney South, NSW 2000. **Phone** 02 9265 3131.



Mr Brian Porter
Protective Commissioner & Public Guardian