

Potter Rees Dolan

Applying Medical Knowledge and Choosing the

Gill Edwards, Senior Solicitor



Applying Medical Knowledge and Choosing the Right Expert

- ▶ General principles
- ▶ Case studies
- ▶ Questions

Basic Principles

- ▶ Combining law and medicine
- ▶ What are you trying to prove?
 - Breach of duty
 - Factual Causation
 - Medical Causation
 - Condition and prognosis
 - Quantum

Basic Principles

- ▶ Breach of duty
 - Which type of specialism?
 - GP, A&E, obstetric?
 - What level of expertise did the unit have?
 - District Hospital or Centre of Excellence?

Basic Principles

- ▶ Factual Causation - Bolitho
 - Negligent omission
 - What *would* and *should* have happened?
 - Failure to refer e.g. lump
 - Breach of duty: GP expert
 - Causation: Oncologist

Basic Principles

- ▶ Medical causation - what injury?
 - Which injuries has the Claimant suffered?
 - How serious are those injuries?
 - Proportionate to investigate?
 - Underlying condition?
 - The best expert in that field that you can find

Basic Principles

► LOA and LOI

- Review the medical records thoroughly
- Complex condition? Ask the expert to explain it in the report - for the client **and** the court (shipping/gas/oil)
- Ask specific questions
- Phrase the questions properly eg material contribution

Specialist Experts

- Laparoscopic surgery - specialist training
- Cerebral aneurysm: clipping/neurosurgeon; coiling/interventional neuro-radiologist
- Lung cancer: thoracic surgeon
- Brain injury: cognitive impairment - neuropsychology
- Brain injury: depressive symptoms/behavioural issues - neuropsychiatry
- Catastrophic injury: Rehabilitation physician for C&P
- Life expectancy -
 - CP - paediatric neurologist
 - Non-CP case - physician

Applying Medical Knowledge and Choosing the Right Expert – Case Study 1

► Dr Sido John v Central Manchester and Manchester Children's UH NHSFT [2016] EWHC 407 (QB)

- A&E negligence
- Sub-dural haematoma
- Negligent omission: *Bolitho* - what *would* and *should* have happened
- Material contribution

Dr Sido John v Central Manchester and Manchester Children's UH NHSFT [2016]

BACKGROUND FACTS:

- Successful GP - locum, prison doctor
- Age 16 intra-cranial infection left-sided craniotomy
- mild right-sided hemiparesis - right hand, right foot drop
- 23.12.07 Christmas night out with friends
- Returns to communal flats
- 18 factual and expert witnesses

Dr Sido John v Central Manchester and Manchester Children's UH NHSFT [2016]

- ▶ Falls backwards on stairs
- ▶ Found by a neighbour, another doctor, 2 hours after fall
- ▶ Vomited, dysphasia, GCS 9/15
- ▶ 06:52 admitted by ambulance to MRI
- ▶ CT scan ordered
- ▶ A&E Consultant, Dr Stewart, "chatted"; says GCS 15 and cancelled CT scan
- ▶ Review on CLDU; GCS 12-13; CT scan re-ordered - went ahead at 13:12
- ▶ SDH diagnosed and plan to transfer to Hope for surgery
- ▶ Seizure and delays in calling an ambulance

Dr Sido John v Central Manchester and Manchester Children's UH NHSFT [2016]

Hope Hospital

- ▶ Transferred to Hope Hospital ventilated
- ▶ 19.30 surgery at Hope Hospital
- ▶ Craniotomy to evacuate acute SDH and relieve raised ICP
- ▶ Severe post operative brain infection

Injuries

- ▶ Prolonged rehabilitation
- ▶ Developed hemianopia, cognitive impairments and depression
- ▶ Unable to return to work as a GP

Dr Sido John v Central Manchester and Manchester Children's UH NHSFT [2016]

Gathering evidence - facts

- ▶ Claimant's witness statements
 - claimant
 - doctor who found him
 - nurse in A&E
 - neurosurgeon from Hope Hospital
 - mother
- ▶ Medical records/disclosure
 - condition on and during admission
 - computerised records re scan ordering/cancellation
 - operation note from Hope Hospital

Dr Sido John v Central Manchester and Manchester Children's UH NHSFT [2016]

Gathering evidence

- ▶ Factual evidence: what *would* have happened if scan done earlier?
 - ▶ Witness statement from surgeon at Hope Hospital
 - Was damaging raised ICP present earlier?
 - Would Hope have accepted him as a patient?
 - Would Hope have operated if transferred earlier?
 - Was a damaging level of raised ICP present when Hope operated?
- ▶ Expert evidence: what *should* have happened: expert evidence
 - Accident & Emergency
 - Neurosurgery

Dr Sido John v Central Manchester and Manchester Children's UH NHSFT [2016]

Claimant's allegations:

- ▶ The CT scan should have been performed soon after admission
- ▶ C would have been transferred to Hope Hospital sooner
- ▶ Negligent delay in calling the ambulance
- ▶ Monitoring = raised ICP
- ▶ The neurosurgeon would have operated
- ▶ Would still have had a post-operative infection
- ▶ Would have avoided a damaging period of raised ICP
- ▶ The negligent period of raised ICP materially contributed to his cognitive and neuropsychological deficits which have meant that he will likely never work as a doctor again.

Dr Sido John v Central Manchester and Manchester Children's UH NHSFT [2016]

▶ Defence

- Breach of duty denied
- Dr Stewart examined at 9.30
- GCS was 15/15
- Reasonable to cancel the scan
- Causation: necessary to apportion damages between the damaging raised ICP (caused by the negligence) on the one hand and the initial head injury, raised ICP and post-operative infection not caused by any negligence on the other.

Dr Sido John v Central Manchester and Manchester Children's UH NHSFT [2016]

- ▶ Breach of Duty Experts:
 - A&E
- ▶ Causation experts:
 - Neurosurgery
 - Neuropsychology
 - Neuropsychiatry
 - Ophthalmology

Dr Sido John v Central Manchester and Manchester Children's UH NHSFT [2016]

- ▶ Evidence to prove when Dr John had raised ICP
 - GCS score, dysphasia, finding at operation
- ▶ Experts were agreed that:
 - if the judge decided that there was a period of damaging raised ICP prior to the surgery at 19:30, this would have made an unquantifiable yet more than de minimis contribution to Dr John's injuries; and
 - it was not possible to separate out the relative contributions of the three factors of: (a) the initial trauma; (b) an extended period of RICP; and (c) the post-operative infection.

Dr Sido John v Central Manchester and Manchester Children's UH NHSFT [2016]

Judgment by Mr Justice Picken

- ▶ The CT brain scan should have been performed not later than about 10:00.
- ▶ A negligent delay in arranging a transfer to Hope Hospital.
- ▶ Dr John had been suffering from damaging raised ICP from at least 12:15 or so, which lasted for a period of in excess of 7 up to surgery at 19:30.
- ▶ Factual causation: Dr John would have avoided about 6 hours of raised ICP, assuming 15 minutes for initial decompression during the surgery at 19:30.
- ▶ Ambulance delay: Dr John probably would have avoided an hour of damaging raised ICP.
- ▶ The test of material contribution had been satisfied and Dr John could recover for all of his injuries.
- ▶ Damages £454,858.65, inclusive of interest. £100,000 of this was for PSLA

Applying Medical Knowledge and Choosing the Right Expert – Case Study 2

- ▶ Cerebral Palsy
- ▶ Delay in second stage of labour
- ▶ Left occipito -posterior position
- ▶ Spinal block
- ▶ Registrar attempts to manual rotate
- ▶ Bradycardia
- ▶ Further attempts to manual rotate
- ▶ Forceps
- ▶ Consultant attempts to manual rotate and forceps
- ▶ LSCS
- ▶ Acute profound hypoxic ischaemic brain injury

Case Study 2

Medical Experts:

- ▶ Breach of Duty:
 - Obstetrician
 - Midwife
 - Obstetric anaesthetist
- ▶ Causation:
 - Obstetric anaesthetist
 - Neuro-radiology
 - Neonatology
 - Paediatric Neurology

Case Study 2

Condition and Prognosis and quantum

- ▶ Paediatric Neurology
- ▶ Orthopaedic
- ▶ Neuropsychology
- ▶ Educational Psychology
- ▶ Quantum Experts

Applying Medical Knowledge and Choosing the Right Expert

Case studies: www.prd.uk.com

Questions

Potter Rees Dolan

Applying Medical Knowledge and Choosing the Right Expert

Gill Edwards, Senior Solicitor

END