

OPTOMETRY, OPHTHALOMOLOGY & THE LAW OF NEGLIGENCE

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OVERVIEW



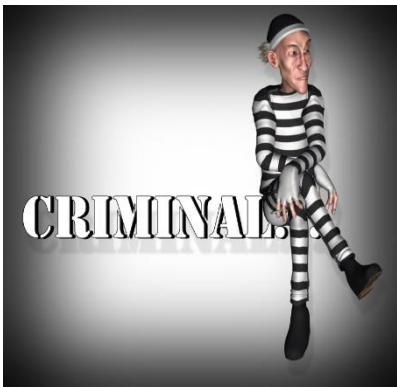
- Medical Negligence
- Criminal negligence
- Case studies
- Practical tips
- Questions

IMPORTANT OR NOT?

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Excellence
in healthcare



General
Medical
Council

Regulating doctors
Ensuring good medical practice

MEDICAL NEGLIGENCE: MOTIVATORS



I wanted to understand what had happened	28%
I wanted to prevent something that had gone wrong from going wrong again	23%
I wanted to prove that I was right	21%
I was motivated by the sense of injustice	21%
I wanted to get the compensation	18%
I wanted to change the behaviour of a person	14%
I wanted to obtain recognition of a mistake / receive an apology	10%

MEDICAL NEGLIGENCE: WHAT IS IT?



- A civil tortious claim
- Brought by the injured party (the **Claimant**)
- Against the healthcare provider (the **Defendant**)
- Heard by a Judge

MEDICAL NEGLIGENCE: THE THREE PART TEST

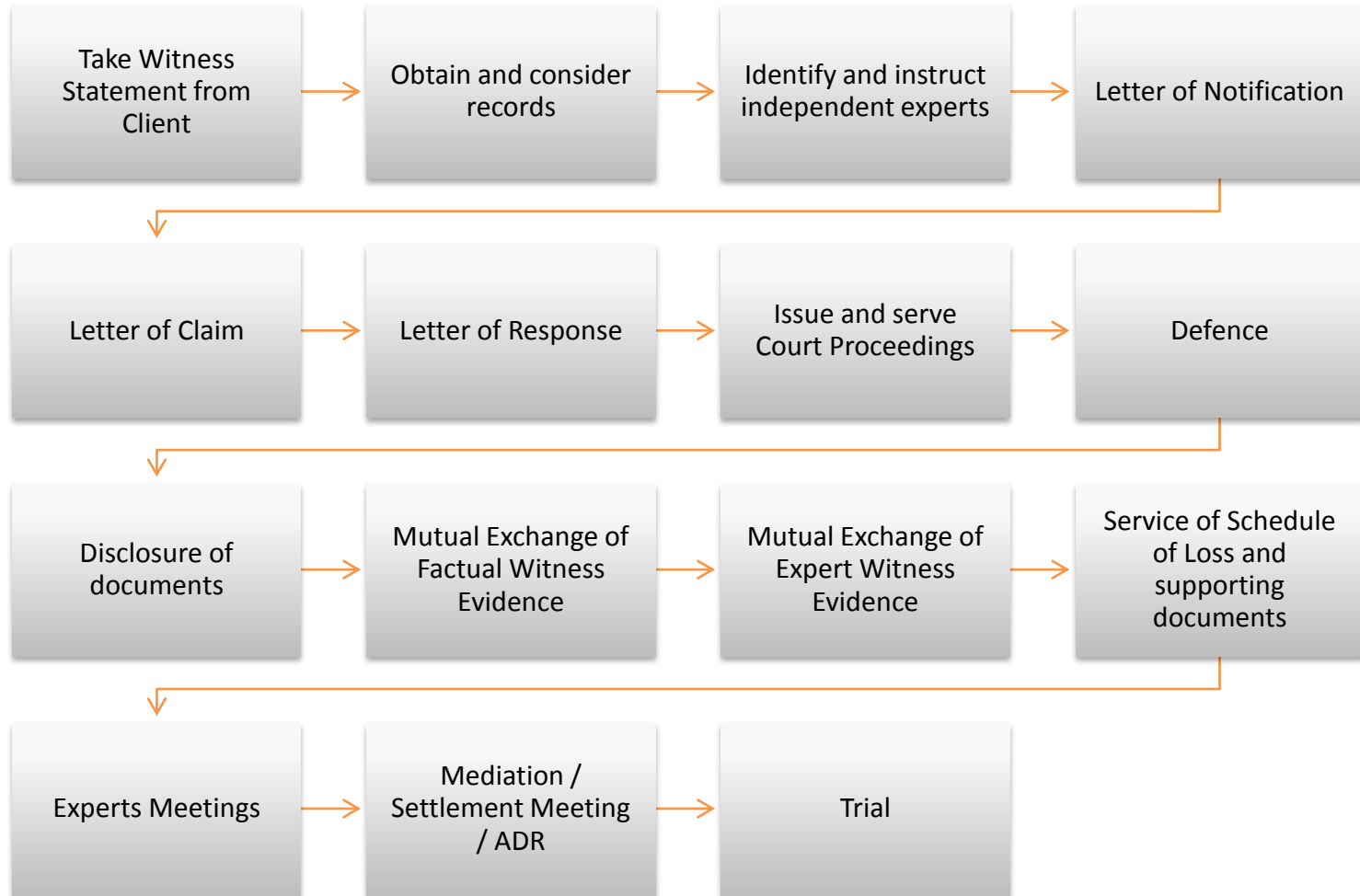
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1. Is there a **duty of care** to the patient?
2. Has the standard of care provided fallen below the standard normally expected of a practitioner in that field at the time (**breach of duty**)?
3. Has the patient suffered harm and, is that harm a direct consequence of the breach of duty (**causation**)?



MEDICAL NEGLIGENCE: PROCESS & PROCEDURE



MEDICAL NEGLIGENCE:

The most common scenarios

- Failure to take / heed / (record) a proper history
- Failure to properly examine
- Failure to properly investigate
- Failure to heed test results
- Failure to consider differential diagnoses
- Incorrect diagnosis
- Failure to provide correct treatment
- Failure to refer for further investigation / opinion
- Surgical mistakes, e.g. wrong site surgery

MEDICAL NEGLIGENCE: CASE STUDY A

The Facts

- 4 visits to Specsavers in 11 days
- *“Each time I went, they kept saying it was fine, but I couldn’t see out of 50% of my eye....In the end, it was my GP who referred me immediately to the Eye Clinic.”*
- C had suffered a detached retina
- C now suffers from permanent distorted and reduced vision in her left eye.
- *“It’s a challenge all the time. I never have a balanced focus and this can make some everyday tasks more difficult, at home and at work.”*

MEDICAL NEGLIGENCE: CASE STUDY A

Optician's response



MEDICAL NEGLIGENCE: CASE STUDY A

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What C did next and why....

Complaint to General Optical Council

“He was negligent and I felt he should face up to what he had done. Specsavers couldn’t just ignore what had happened to me as a result of their employee’s incompetence...They needed to face up to the impact of what they did”

For me it was never about the money, I trusted the optician as a professional but he didn’t do his job”

Commenced a medical negligence claim

MEDICAL NEGLIGENCE: CASE STUDY A

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The outcome

- General Optical Council held a hearing and produced a damning report into what happened
- C recovered compensation to compensate for past financial losses and to help with his future needs

For me, the best thing about the process was Specsavers admitted they were in the wrong

If they had said at the beginning that they were sorry and would look into it, I would not have started a claim for compensation. It was the fact when I went back after I had been diagnosed and went to hospital, they were awful to me and said they did everything right and denied any responsibility.



MEDICAL NEGLIGENCE: CASE STUDY B

The facts: First visit to Optician - 2005

- Symptoms:
 - slightly blurred vision L side
 - epiphoria
- Investigations:
 - Full clinical examination - no strabismus and no anisometropia; IOP normal
 - refraction examination – R6/5; L6/7.5. No prescription required
 - visual field testing - revealed a left superior temporal visual field defect, right eye normal
- Diagnosis: lazy left eye but C “doesn’t think so”
- No reference on Record Sheet of Visual Field results or that these were discussed with C.
- Action: Complete GOS18 for referral to Ophthalmologist
 - “LE has been watery and blurred intermittently for 2wks since flu. Left acuity is reduced slightly, possibly very mild amblyopia but difficult to say as 1st eye test. No epiphoria present but as patient feels concerned please refer for ophthalmological opinion”
 - Results of visual field tests attached to GOS18

MEDICAL NEGLIGENCE: CASE STUDY B

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MEDICAL NEGLIGENCE: CASE STUDY B



The facts : Ophthalmology

- Investigations:
 - Clinical examination - normal
 - refraction examination – R6/4; L6/6. No prescription required
 - No visual field testing
- Diagnosis: impending presbyopia
- Action: discharge

MEDICAL NEGLIGENCE: CASE STUDY B

The Ophthalmology allegations

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MEDICAL NEGLIGENCE: CASE STUDY B

The facts: Second visit to Optician

- Symptoms:
 - blurred vision L side
- Investigations:
 - clinical examination
 - refraction examination - significant reduction (6/18 with and without correction and no improvement with pinhole) in left distance and near visual acuity and substantial change in required reading correction since the examination on 29th March 2005
 - visual field testing – significant superior temporal field defect in the right eye with some loss also in the inferior quadrant
 - Diagnosis: lazy left eye
- Action: None

MEDICAL NEGLIGENCE: CASE STUDY B

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MEDICAL NEGLIGENCE: CASE STUDY B

The logo for Tees, consisting of the word "Tees" in a bold, black, sans-serif font, centered within a white circle that has a thin white border.

What happened next?

- 21 November 2010: TIA
- CT diagnosed a massive pituitary adenoma
- Following surgery, C suffered a significant stroke
- C suffered severe visual, neurological and endocrine injuries

CRIMINAL NEGLIGENCE: WHAT IS IT?

- A criminal case
- Where negligence occurs as a result of **gross** carelessness / extreme recklessness
- Burden of proof – beyond all reasonable doubt
- Decided by a Jury
- May result in a custodial prison sentence

CRIMINAL NEGLIGENCE: A CASE STUDY

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CRIMINAL NEGLIGENCE: The Williams Report – June 2018

- Key findings:
 - the legal test for the offence set at an appropriately high level.
 - anxiety that the test was not applied consistently.
- Key recommendations:
 - develop an agreed understanding of gross negligence manslaughter that reflects the most recent case law
 - improve assurance and consistency in the use of expert witnesses and
 - improve local investigations into unexpected deaths in healthcare.

PRACTICE POINTS

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- Take a **full and detailed history** from the patient... And document it
- Perform a **full clinical examination**..... And document it!
- Consider what **tests / investigations** are needed And document it!
- **Ensure test results are reviewed accurately** and against the correct criteria... And document it!
- Always **consider the possibility of a serious diagnosis**.... And document the differential diagnoses
- Always give **follow up advice** And document it!



PRACTICE POINTS: GOVERNANCE



- Ensure clinicians have proper training and support.
- Are robust processes and pathways in place?
- Ensure policies and procedures are up to date together with any General Optical Council & GMC guidance
- Have a system for routine monitoring and review of medical practices
- Have an **effective complaints handling policy**, ensuring complaints are properly investigated and changes made to prevent repetition of mistakes
- ...and remember, sometimes all the injured party wants is an apology or explanation, and to know that the same thing won't happen to somebody else.

HOMEWORK : READING



- https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/717946/Williams_Report.pdf
- <https://www.college-optometrists.org/the-college/blogs/the-law-of-gross-negligence-manslaughter.html>



**THANKS
FOR
LISTENING
ANY
QUESTIONS?**

