

Hand Surgery and Professional Negligence



Professor David Warwick has been a Consultant Hand Surgeon at University Hospital Southampton for 20 years. He is Director of Hand Clinic Medicolegal Ltd, a specialised company in Hampshire preparing medical reports in the field of medical negligence and personal injury for both Claimant and Defendant.

Here he talks to Expert Witness about his philosophy and experience in medical negligence cases.

I have been acting as an Expert Witness for over 20 years and have prepared over 4000 Reports specialising in injuries and conditions of the hand and wrist. Medico-legal work provides a fascinating and challenging facet to my professional life, which is otherwise spent either seeing and operating upon patients with hand and wrist problems or academic activities such as research, teaching, book writing and leadership.

Apart from our eyes, the Hand is the most important organ with which we interact with our surroundings. Our personal independence, livelihoods and leisure all require competent pain-free hand function. The Hand can be affected by countless injuries and conditions which then require medical care. From time to time, the outcome of treatment is not as expected. The patient may consider that the treatment did not reach a satisfactory standard and thus, quite understandably, seek legal redress.

Whilst some cases on face value appear negligent, they actually just represent the poor or unpredictable outcome that can beset any injury or treatment- this is the outcome that would have occurred despite treatment. A severe intra-articular fracture of the radius, however well or badly treated, will not do well. Even

if a surgical plate is properly placed on the radius, the fracture may collapse. Even if the plate is placed in a technically imperfect way, the outcome in any event may have been so predictably poor that there is no extra loss to the Claimant. In such cases, the medical expert should sympathetically help the patient and their legal advisors understand the reason why the outcome was not as the patient expected.

The anatomy and function of the hand and wrist are so complex that medico-legal reporting in this field must be meticulous. Negligent damage to a flexor tendon or nerve by a surgeon's blade may finish the career of a pianist, yet a labourer might return to work within two weeks. An overlooked scaphoid fracture will stop a goalkeeper playing ever again; a striker will carry on regardless. So, with every Report I meet an individual. Matching the inevitable effect of the injury or condition and the additional effect of the subsequent negligent treatment, to the Claimant's individual work, hobbies, and domestic circumstance gives me a privileged insight into the huge variety in human life.

Lawyers are used to working one side or other of the 50% balance of probability line. We surgeons have a scientific standard of proof set at 95%. Sometimes I just cannot work out which side of the 50% bar the

treatment lies- it was suboptimal but not terrible. In such a dilemma I have found two tactics help. Firstly, I provide a range of opinion which lists the points for the Claimant and the points for the Defence. This may clarify my view or at least provide opinions and facts which the Court is better able to balance than me. Secondly, I discuss, anonymously of course, equivocal medicolegal cases with like-minded colleagues to gain a different perspective on whether the treatment could be regarded as reasonable, responsible and logical.

When the treatment was unsatisfactory, and cannot be defended according to the judgements of Bolam or Bolitho, then the Expert must make this clear. This should save the struggling NHS or ever more expensive Defence Unions and Societies from wasting money on a fruitless and expensive rebuttal. Similarly, the spiralling cost of negligence can be soothed by helping the parties agree a fair assessment of Causation, ensuring that the pain, suffering and loss of amenity that would have occurred in any event from the underlying condition or injury even with optimal treatment, is duly subtracted from the current condition. Due adjustment sometimes has to be made when the consequences of the alleged negligence seems to be inflated beyond what one would reasonably expect in clinical practice. Having a practice in which Reports are prepared for both Claimant and Defendant, and always bearing in mind that the Report is for the Court rather than the instructing solicitor; keep me focussed on impartiality.

Am I an ambulance chaser, exploiting the frailties and human error of my colleagues and juniors for personal gain? No I am not- if I don't take on a case then someone else will. Perhaps they would not be as fair or

scrupulous or meticulous or well-informed as I try to be. Every time I write a report which criticises another practitioner, I empathise with the predictable sleepless nights and loss of self-esteem that this may bring to the Defendant. But if a patient has been injured by an error (and to err is human) then full compensation is deserved; I just hope the Defendant will realise this was an uncharacteristic error, accept this as part of professional life, sympathise with the patient, learn from the error and come to terms with the personal consequences.

Because there is always a threat of a medical negligence claim against us, we doctors should always be aware that our decisions and actions can be forensically scrutinised; this will encourage responsible patient care and make us better doctors. Rarely but thankfully, the medical negligence system will detect an individual whose clinical judgement, technical competence or insight is such that their very fitness to practice is questioned. That will protect all in society- it could be me or my loved ones becoming a victim.

So in conclusion, hand surgery is as much art and intuition as it is mechanical science. Sometimes the treatment under consideration was suboptimal but not unacceptable; the surgeon could have done better but perfection is an unrealistic goal for every stitch, every screw, every plate, every clinical decision. Treatment does not have to be perfect to be good enough. But if it not good enough, then the medical negligence expert must say so and explain why.

Professor Warwick can be contacted via email on davidwarwick@handsurgery.co.uk, by telephone on 07887651451 or through the website www.handsurgery.co.uk

THE HAND CLINIC

Professor David Warwick

MD BM FRCS FRCS(Orth) European Diploma of Hand Surgery

Apart from our eyes, the Hand is the most important organ through which we interact with our surroundings.

Our personal independence, livelihoods and leisure all require competent pain-free hand function.

The Hand can be affected by personal injury, medical negligence or the workplace, thus inevitably becoming an object of legal attention.

- Expert on injuries and conditions affecting the Hand & Wrist
- Personal Injury & Medical Negligence, Claimant & Defendant
- Unbiased, sympathetic, meticulous, punctual
- Over 400 reports over 20 years
- **Informal advice** by telephone and email
- **Deferred fees** on request
- Southampton, Winchester, Jersey

T: 03454 505007
M: 07887 651451
@ davidwarwick@handsurgery.co.uk
A: Hand Clinic Medicolegal Ltd, Nuffield Hospital,
Southampton, SO53 2DW



www.handsurgery.co.uk

