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Modern Endocrinology and the Law

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Editorial

The extensive specialised, sub-specialised and super sub-specialised categories of the discipline of Endocrinology are undergoing vast and rapid clinical applications based on stratospheric underlying scientific addenda. It is indeed difficult to maintain a paripassu balance between scientific discovery, ethical clearance of clinical application and dissemination of such knowledge in a clear and methodical fashion. The end point of the argument is that a clinician's practice needs both to learn and assimilate rapidly increasing new practice changing knowledge in the daily management of a patient, and act as "gatekeeper" both regarding the patient's best interests as well as any potential medico-legal fall-off.

Limiting ourselves to but one aspect of these developments, we can superficially look at the great inundation of endocrinological discoveries not only pertinent to the classical endocrine disorders but also to endocrine-related neoplasm embryo, logically close to neural tissue development. Biological activity-oriented detection of endocrine neoplasm can antedate detection through size, due to the tremendous successful upsweep of immuno-chemical and biochemical/imaging over conventional diagnostic thinking and testing. We speak here, of, but one aspect of the unstoppable, game changing, paradigm shifts in the fascinating world of endocrinology.

One aspect of the argument at hand is the distinction between the scientist behind the clinician and the physician himself who must tailor fit the new knowledge to the patient, always along the principle of "primum non nocere". This principle is a pregnant one indeed for by direct application it also includes the management as explained and accepted by the patient. This may not be easy and may in fact be more difficult than appears; indeed it may be more challenging for the physician than administering the treatment itself. For, we must ply our trade along the signs of the times and the physician cannot decide or chose for the patient.

In a Court of law, the patient is progressively being empowered to make his or her own decisions at the complete displacement of "medical paternalism", no matter how well intentioned. This is so, even if the disclosure of risks will scare off the patient, and the doctor feels that this is a mistake. Especially beware the friend, the neighbours or even the relative "who, would never sue me!" There are no friends, neighbours or even relatives, if and when things go wrong. Their lawyer will not be counsel to a friend, neighbours or relative of Dr X, whose treatment led to an adverse effect. Their lawyer will be counsel to a plaintiff seeking liability at Court.

Within this context, it is worth referring to two case law studies pertaining to the disclosure of important medical information. *In Rogers V Whitaker*, the plaintiff underwent ophthalmic surgery on her right blind eye with a view to improving its appearance and possibly even restoring some degree of vision. The surgeon did not discuss the 1 in 14,000 risk of 'sympathetic ophthalmia' striking her good left eye, which complication did ensue. The defendant surgeon claimed reference to the Bolam principle, stating there was a substantial body of reputable medical practitioners, who would not have warned the respondent of the danger of such a very rare complication.

Representing the Australian High Court, Mason CJ, Brennan, Dawson, Toohey and McHugh JJ rejected the application of the Bolam principle in this case, and among many other points, stated that particularly in the field of non-disclosure of risk and the provision of advice and information, the Bolam principle has been discarded and instead the Courts have adopted the principle that, while evidence of acceptable medical practice is a useful guide for the Courts, it is for the courts to adjudicate on what constitutes the appropriate standard of care after giving weight to " the paramount consideration that a person is entitled to make his own decision about his life".

The Courts Made another Crucial Point

The law recognises that a doctor has a duty to warn a patient of a material risk inherent in the proposed treatment. A risk is material if, in the circumstances of the particular case, a reasonable person in the patient's position, if warned of the risk, would be likely to attach significance to it or if the medical practitioner is or should reasonably be aware that the particular patient, if warned of the risk, would be likely to attach significance to it [1,2].

In 1992, the UK Supreme Court does not seem to have taken particular cognizance of this justified evolution of the Bolam test with regard to disclosure of information. However, 23 years later, in the Appeal case *Nadine Montgomery Appellant against Lanarkshire Health Board Respondent*, the same Supreme Court, awarded the plaintiff £5.25 million as compensation in a case where an

obstetrician failed to warn about the 9-10% risk of shoulder dystocia in a diabetic patient of short stature and carrying a large baby, should a vaginal delivery (in contrast to a C-section)be chosen. Among numerous crucial statements made by the UK High Court, we find that the test of materiality is whether, in the circumstances of the particular case, a reasonable person in the patient's position would be likely to attach significance to the risk, or the doctor is or should be reasonably aware that the particular patient would be likely to attach significance to it.

In echoes which vindicate *Rogers V Whitaker,* the Court is clearly stating, that the hallmark of what constitutes material information, is the significance of a resultant complication to a reasonable person and *not its frequency of occurrence*. As in Medicine, so in matters medico-legal: prevention is better than cure. One must keep updated with the fruitful yield of toiling science, or else, one would be failing in another aspect of healing. However, time and serious reflection in explaining all to the patient, can no longer be given second place. We thread potentially dangerous waters. Although we must not be afraid to swim, it behoves us well to look carefully around us.

References

1. *Rogers V Whitaker* (1992) 175 CLR 479.
2. *Nadine Montgomery Appellant against Lanarkshire Health Board Respondent* - 2015 S.C.C.L.R. 315.