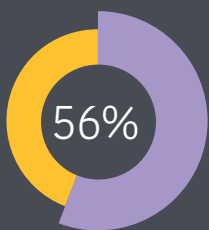
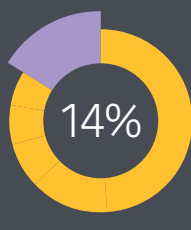


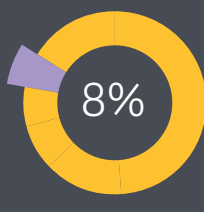
Causes of Surgery Claims



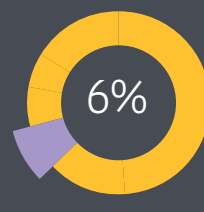
Procedure – complications



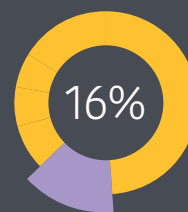
General duty of care



Legal issues



Diagnosis



Others

Based on MDA National data

Medico-legal Case Study

When Everybody Drops the Ball

► The Case

The patient, 61 years of age, underwent an elective vaginal hysterectomy at a private hospital on 1 December. During the operation, some suture material was inadvertently looped around the patient's bowel, but this was not noted by the gynaecologist at the time.

Two days later, the patient became unwell and was noted to be vomiting "coffee coloured fluid". Nursing staff arranged for her to be reviewed and the attending doctor identified a possible post-operative ileus.

By the morning of 5 December, the patient had been repeatedly vomiting faecal material. The gynaecologist directed that she be nil by mouth for 24 hours and receive IV fluids, but he did not order any investigations.

Nursing staff later recorded that the patient's nausea was no longer present, and her observations were stable, even though her oxygen saturation had been recorded at 92% and 93% earlier in the day. These levels were not re-checked in the evening, nor were any other vital signs monitored.

Although there are inconsistencies in the hospital records as to what occurred in the early hours of 6 December, at approximately 5.00am the patient was found unresponsive with an oxygen saturation of 73%, a heart rate of 130, and an unrecordable blood pressure. A MET team was called – on arrival, they found copious amounts of faecal fluid in her airway. Despite extensive efforts, including CPR, the patient could not be resuscitated.

► The claim

The patient's husband and two daughters commenced a claim against the gynaecologist for dependency, and also brought claims for nervous shock. These claims were settled prior to hearing.

> Continues overleaf

► Cross-claim

The gynaecologist admitted he breached his duty of care to the patient and that this had resulted in her death. He did not, however, admit he was solely at fault, and a cross-claim was filed against the hospital.

The hospital initially denied any negligence, but during the hearing of the cross-claim, the hospital admitted both negligence and certain breaches of duty. Whether the admitted breaches were the entirety of the hospital's breaches, and whether they had contributed to the patient's death, was still in question.

In the cross-claim, the gynaecologist alleged that the hospital had breached its duty of care in failing to ensure that:

- post-operative observations (including four-hourly vital signs, clinical pathway documents and fluid balance charts) were completed
- post-operative observations were recorded at specific times
- a clinical pathway document was completed for 6 December 2008.

► Medico-legal issues

The judge confirmed that the hospital and the gynaecologist each owed the patient a non-delegable duty of care, and their duties never passed from one to the other. The duty of care that the hospital owed to the patient was stringent, irrespective of any acts or omissions on the gynaecologist's part.

The judge concluded that the scope of the hospital's duty was to provide the patient with all necessary services during her post-operative care, including care by nursing and paramedical staff. These services should have been provided in accordance with the hospital's policies while she was an admitted patient.

The court found the hospital failed in its duty to provide the patient with the services she required, and that the hospital's negligence was more extensive than it was prepared to admit. Several of the hospital's failures were identified, including necessary observations not being taken or recorded by hospital staff, and other steps required by the hospital's own policies (including clinical pathway guidelines) not being taken.

On the balance of probabilities, the judge was satisfied that the hospital's failures created (or at the very least increased) the risk of injury which led to the patient's death. The court assessed the hospital's liability to be 20%.

► Preventing a claim

The decision is a timely reminder that various members of a patient's treating team cannot shift their responsibility onto others. A hospital has an independent and non-delegable duty of care to provide patients with the services and care they require.

If medical practitioners have any concerns about the manner in which a patient is being cared for, it is appropriate for nursing staff to be directed to undertake specific observations and to provide regular updates in relation to the patient's condition.

Surgeons have a duty of care to their patients in the postoperative period and a delay in the diagnosis of an intraoperative complication is a common cause of surgical claims. In this case, the gynaecologist should have sought early advice and assistance from a general surgeon.

If you receive a claim or complaint, contact MDA National's Medico-legal Advisory Service team for advice and support on 1800 011 255.

Online resources

Visit mdanational.com.au/advice-and-support/library for medico-legal FAQs, articles, case studies, and videos. You can also subscribe to our *Medico-legal Blog* to receive the latest updates on key medico-legal issues, recent cases, court judgments and legislative changes. Subscribe at mdanational.com.au.