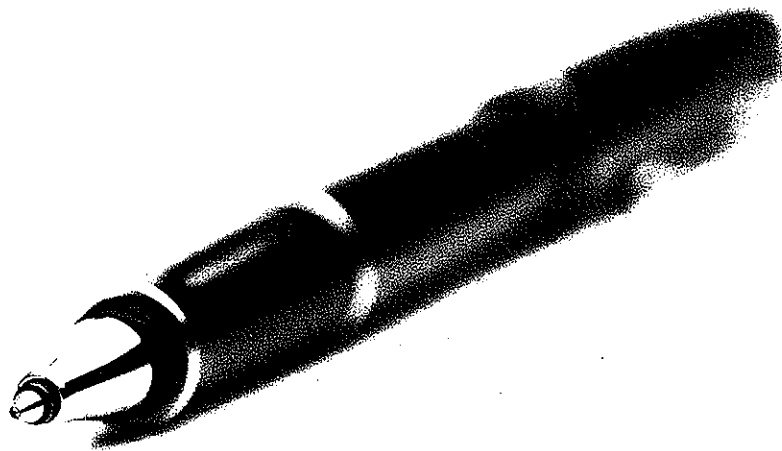


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Notes on negligence

A GP was recently ordered to pay \$300,000 after failing to send a patient with neck pain for a CT scan. Two lawyers who represented the patient explain why the GP was found negligent.

BY ANNA WALSH AND DR DUNCAN GRAHAM

THE recent finding of negligence by the Supreme Court of NSW against a GP for failing to refer a patient for a CT scan to investigate her neck pain caused an outcry among many doctors.

The concerns expressed, particularly through the media, were that the finding meant doctors would be required to order needless radiological investigations and to practise defensive medicine.

This is simply not correct.

The case highlights several well-accepted aspects of proper medical practice. It reminds doctors of the need to take and record a proper history, perform a proper examination, consider relevant differential diagnoses, and institute and advise a patient about an appropriate management plan.

This is hardly earth-shattering

stuff. When considering a legal decision by a court in a case of medical negligence, remember that the judge's decision will be based on findings of fact, expert medical evidence based on those facts, and then the application of the law to the facts and the medical evidence.

Decisions made by courts are case specific and it can be difficult and often wrong to reduce the decision to a blanket directive that all doctors must follow with each and every patient.

In this case, the decision is a good reminder of the importance of some general aspects of practice.

All doctors should be aware of the aphorism, "no notes, no defence". The importance of record-keeping cannot be overstated.

This case, *Thompson v Dr Haasbroek*, largely turned on the adequacy of the GP's records.¹ The

patient, Sandra Thompson, presented to the GP, Dr Johannes Haasbroek, several times over a period of about 12 months. Dr Haasbroek admitted that his records for some of the key consultations were inadequate and the trial judge was unable to accept the GP's reconstruction of events without proper contemporaneous records.

This should be contrasted with the case of *Hollier v Surcliffe*, which was also run in the NSW Supreme Court at about the same time as *Thompson v Haasbroek*. In that case, involving the implantation of a contraceptive device, the trial judge found for the defendant GP because she had good contemporaneous records that supported her case.

The case of *Thompson v Haasbroek* involved a patient who presented with the classic symptoms

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of cervical radiculopathy — neck pain radiating down to the arm. Dr Haasbroek admitted in evidence that he did not consider a differential diagnosis of cervical radiculopathy and did not refer Mrs Thompson for a CT scan in a timely way to determine the possible causes of the condition. He said he would have referred her if he had considered a cervical radiculopathy.

He assumed the neck pain going down the arm was caused by osteoarthritis of the shoulder. He made this diagnosis after performing an examination of the shoulder that only entailed forward flexion of the arm.

His notes made no reference to a history of duration of pain or past episodes, or trauma. As it turned out, the radiculopathy was caused

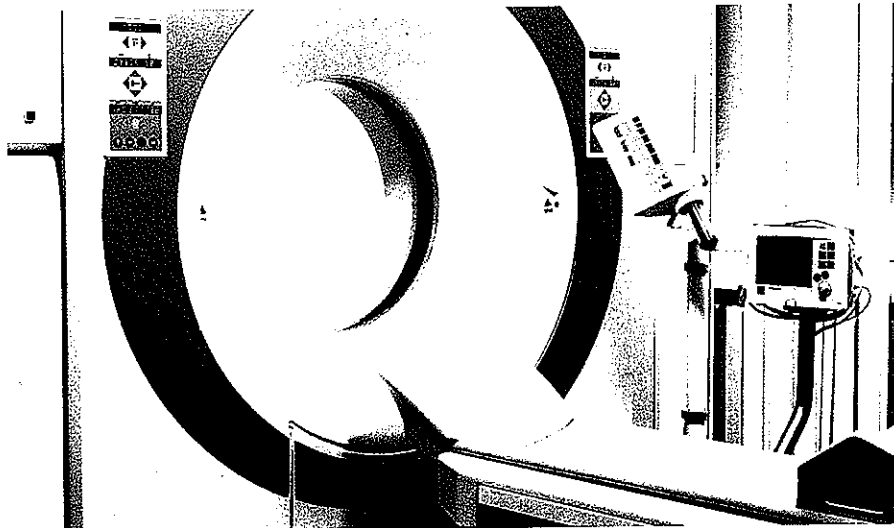
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from previous page by degenerative disease of the spinal column. The osteophytes causing the radiculopathy also impinged on the spinal cord. Over time, the pressure on the spinal cord caused a cervical myelopathy.

When Mrs Thompson was eventually sent for a CT scan a year later, urgent spinal surgery was needed to decompress her spinal cord. Unfortunately, she did not escape injuries, including incomplete quadriplegia. However, Mrs Thompson generally made a good recovery after her surgery.

In determining whether the doctor had breached his duty of care to his patient, the court looked at the differential diagnoses the doctor should have considered, what steps he should have taken to confirm or exclude them, and when such steps should have been taken. This largely depended on the adequacy of the history taken and the examination performed.

In deciding whether a doctor has acted reasonably in the particular circumstances of a case, the court



will hear the testimony of medical experts concurrently. In this case, the court heard from five expert GPs.

Overwhelmingly those experts gave evidence that, in their opinion, Dr Haasbroek should have considered cervical radiculopathy as a cause for the patient's symptoms of neck pain radiating to her arm. To confirm

or exclude this diagnosis, he should have referred Mrs Thompson for a CT scan much earlier than he did.

As most doctors would know, an acute radiculopathy may be managed conservatively. In this case, it had been present for many weeks.

Dr Haasbroek deprived himself of the opportunity to

determine whether it was an acute or chronic condition because he did not take an adequate history.

His examination of Mrs Thompson's shoulder was universally criticised by the experts because it did not include abduction.

The court accepted the opinion of the majority of the expert GPs and found

that Dr Haasbroek had breached his duty of care to the patient. His diagnosis of osteoarthritis of the shoulder rested on an inadequate examination. The history should have pointed to a cervical radiculopathy that had been present for some time.

Many have wondered what the case means in terms of ordering investigations. Why did the trial judge find a CT scan was required in this case?

The trial judge said a CT scan was required in the hypothetical event that Dr Haasbroek had considered the correct diagnosis. He did not find that a CT scan was needed to rule out something not supported by a proper history and examination. The case did not provide any specific guidance about when an investigation should be ordered.

The outcome of the case suggests if you listen to a patient, take a good history and perform a proper examination, you are more likely to get it right and order the appropriate investigation.

There are general points that can be taken from the case. In determining when it is reasonable for a doctor to refer a patient for an investigation, a good rule of thumb to follow is that of common-sense. This requires a clinical judgement, weighing up such factors as the likelihood of an underlying sinister condition, the consequences of missing a treatable condition, the duration of the presenting problem, or whether common, benign conditions have been reasonably excluded.

Most doctors would agree that when a patient presents to a GP with symptoms, they want to be given a diagnosis for their problem and appropriate advice and treatment. To make a final diagnosis and provide appropriate treatment, a doctor may need to consider several differential diagnoses.

A patient should understand that, on some occa-

His notes made no reference to a history of duration of pain, past episodes or trauma.

sions, a diagnosis is not clear cut, so various investigations may be necessary to exclude or confirm diagnoses. If it is likely the patient's symptoms point to a particular condition that does not require radiological investigations, then it may be reasonable not to initially refer the patient for further tests.

However, if the patient's condition changes, worsens or does not improve despite treatment, then it would be reasonable for the doctor to reassess their diagnosis and consider other conditions, which may involve radiological or other investigations.

In this case, once a proper history revealed a persistent radiculopathy, the underlying cause had to be found. There were several potential causes that required exclusion, some of which were quite serious.

Ultimately, it can never be good practice to treat symptoms rather than trying to discover why the symptoms are there in the first place.

If a doctor fails to do this, as in this case, then it is possible the doctor's actions are unreasonable and not consistent with what is considered to be competent professional practice.

Thompson v Haasbroek reinforces the fundamentals of good record-keeping, good history-taking and a proper examination. Investigations ordered when these basic principles are followed are invariably justified.

The GP in this case admitted in court that if he had considered the differential diagnosis that his peers told the court he should have, he would have ordered a CT scan.

Ms Walsh is a principal in the medical law department of Maurice Blackburn Lawyers and Dr Grabam is a barrister in Sydney. They acted for Mrs Thompson in this case.

Reference:

Thompson v Dr Haasbroek [2010] NSWSC 111 (29 March 2010).



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