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CONFERENCE 2024

21st November 2024

Title

Presented by:

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Personal Injury Medical Reports –

Avoiding Pitfalls and Enhancing Quality

wrightington Lower Limb Unit

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- Consultant Trauma and Orthopaedic Surgeon
- Wrightington Hospital

North West Pelvic & Acetabular Fracture Service

Conflict of interest

- None
- Audit data – official permission

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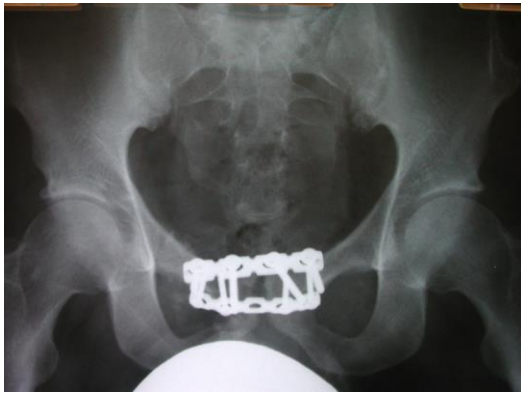
Background

- Orthopaedic training - India, North West (Manchester)
- Fellowships- Wrightington hospital, and Sunnybrook Canada
- Consultant in 2006
  - Trauma- hip & knee joint replacements, revisions,
  - Pelvic and acetabular surgery service
- Medicolegal 2007, Personal injury, Clinical Negligence 12 years



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Aims

Practical application of part 35 CPR rules

- Outline of pitfalls and errors
- Staying within area of expertise
- Importance of the letter of instruction
- Examination process
- Why medical records are important

Range of opinions

Causation in personal injury

The concept of acceleration injury

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Audit Data

Straying outside area of expertise
Instruction letter not adhered to
Specific questions/queries not covered
Medical records provided not fully reviewed

- Delays
- Formatting -Typos, spellings, grammar
- Documents not fully listed /considered

Problems with the medical report -

Expert conduct

Invalid complaints / spurious complaints – not withheld

Incomplete / missing prognosis
Insufficient clinical justification/reasoning
Unnecessary comments – opinion on something not asked
Poor quality reports – report not fit for purpose

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Why bother?

5 It's clear from a number of high-profile court and tribunal cases that, where significant concerns arise about the quality of expert evidence, this may affect public confidence in expert opinion.[1] It is

- Indemnity
- Reputational harm - GMC
- Complaints and litigation – professional negligence
- Costs being awarded against the expert – very high threshold

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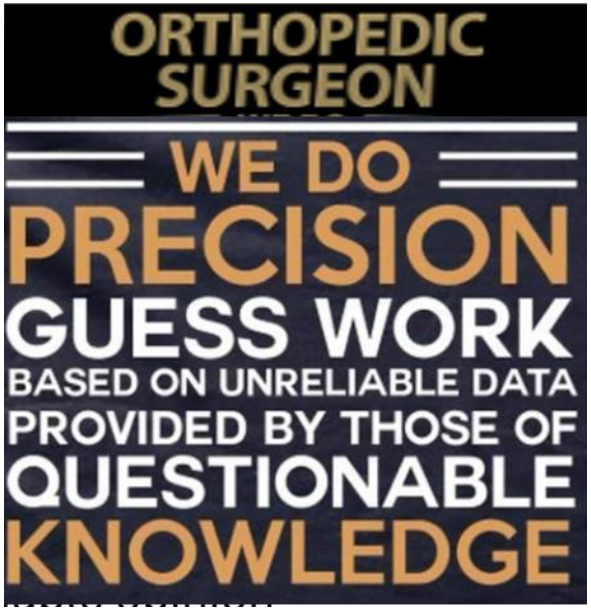
Clinical Specialist expertise

Expert Witness

Am I the correct expert- should I accept this?

- "Expert" – clinical expertise
- Do I see/ treat this condition regularly
- Is this my routine NHS / independent sector
- Training, knowledge, skills, experience
- Can I form a well-considered balanced reasonable opinion



Qualifications, Specialist Register, License to practice

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Expertise in report writing

- Part 35 CPR rules and practice direction
- GMC guideline
- Courses / conferences / meetings / Mock trial
- Feedback from solicitors - conferences with counsel

Case examples

Orthopaedic report

[redacted] **Psychological Examination:**

(Based on the interview and my clinical observations)

[redacted] There were no psychotic features, delusional ideas or thought disorders. [redacted] no tearfulness, agitation [redacted]

General surgical report

8.0 Prognosis

Fracture to right femur

I recommend an opinion from an orthopaedic surgeon

Fracture to right patella

I recommend an opinion from an orthopaedic surgeon

Fracture to left ankle

I recommend an opinion from an orthopaedic surgeon

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Conduct Issues

GMC guidance

Providing witness statements or expert evidence as part of legal proceedings

Providing witness statements or expert evidence as part of legal proceedings

1 *Good medical practice* sets out the principles, values, and standards of care and professional behaviour expected of all medical professionals registered with us. *Providing witness statements and expert evidence in legal proceedings* builds on *Good medical practice* to provide more detail on our expectations of medical professionals in this area.

providing factual, honest accounts of events and, objective and impartial advice if giving an expert opinion on matters within their competence and experience.

Your principal duty is to the court

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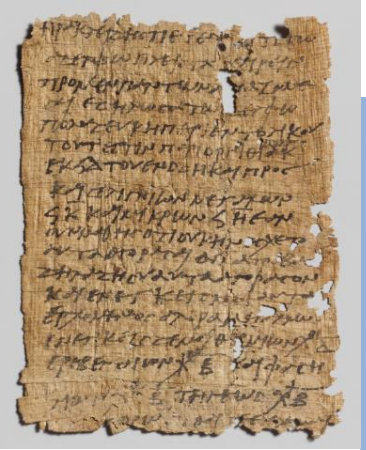
Pitfalls

- Exaggeration of expertise

Former [redacted] doctor made up qualifications in bid to win work as expert court witness

- Mis-representation of qualification
- Declare conflicts of interest ? Someone you have treated / know
- Maintain impartiality - avoid subconscious bias

The letter of instructions



- Read them carefully
- What do the solicitors want you to do
- Answer all questions / deal with all issues
- Can ask for clarification if vague instructions
- Do not overstep your remit

- Injuries?
- Causation?
- Prognosis ?
- Employment?
- Acceleration?

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Case example

- Instructions– “Please confirm if you can comment upon all 5 injuries?
- Surgeon confirms the above and accepts case
- Comments on 1 of 5 injuries – states that all else is outside his expertise
- He is probably right that it is outside his expertise
- But solicitors complain – “should not have accepted the instructions”
- Formal complaint and refusal to pay fee

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The consultation – pitfalls

- The claimant is not your patient - No duty of care
- GMC- Professional duty – respect, courtesy, privacy, dignity, confidentiality
- Same standard as one would towards a patient
- Adequate time (record it), take notes, confirm identify
- Thorough physical examination – same as OPD
- Notes, contemporaneous dictation in C's presence

Chaperone

Beware claimants may record you

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Case examples

- Consultation too brief- 8-10 min consults, 30 Claimants in a morning
- Substandard clinical examination / identical in all reports / fabricated
- Mass produced reports- all reports / examinations look almost the same
- Inappropriate conduct – no chaperone, rude, rough handling
- Injury became worse after clinical examination ?

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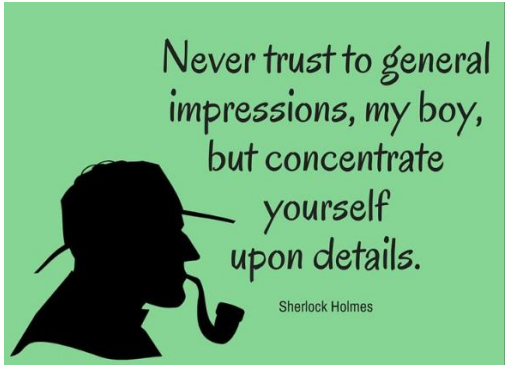
Importance of medical Records

- Past medical history
- Contemporaneous confirmation of injuries
- Onset of symptoms
- “Clues” of recovery – physio, GP comments
- Falsification / inconsistencies



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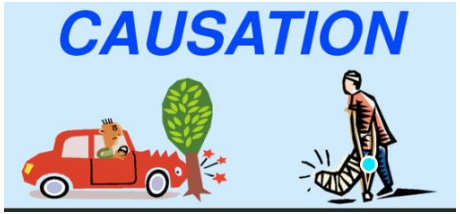
Causation in personal injury

- The “but for “ scenario
- Onset of symptoms
- Corroboration with medical records
- Breaks in causation

Causation



- Did the accident cause the injury ?
- Is the current problem / pain / restriction attributed to the injury
- Are there any other reasons? – pre-existing conditions
- Contributions from other causes unrelated to the accident
- Can the effects be separated ?

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The “But for” scenario

- What would have been the current status had the accident not occurred?
- What is the natural history of the pre-accident condition?

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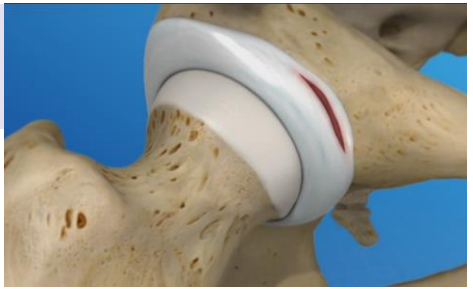
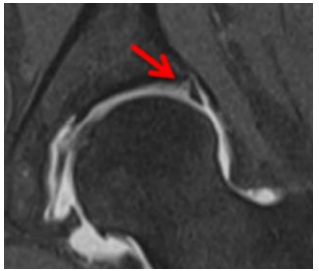
Case example – onset of symptoms





- Minor RTA- neck pain – MEDCO report – C gets better
- Reports hip pain later- (delayed onset) Ortho report- MRI- labral tear
- Opinion- “attributable to RTA – poor records review
- C undergoes hip arthroscopy- no better – repeat scan – repeat arthroscopy chronic pain, disability, cannot work etc.
- Alarm bells- defence - review of case – forensic review of records
- C doing several ½ marathons in 3 months after RTA + fall with hip pain (break in causation)
- Hip pain started 5 months after RTA – XR - early osteoarthritis + labral tears

Causation example – corroboration of injury

- Side impact RTA –knee pain - first report- no records review- no PMH- STI - 6 months
- Persistent knee pain 3 years - can't work- knee arthritis – TKR – ?? attributable to RTA
- Records – no contemporaneous evidence of knee injury -GP entry

  - *attended today – states RTA 10 weeks ago, looks well,*
  - *no pain anywhere, not injured, gait normal*
  - *was told to visit GP and record this*
  - *Knee pain 10 years - not bothering currently*
  - *Returned from walking holiday* -

PMH - 10 years history knee pain – confirmed OA prior to RTA – offered TKR 2 years ago

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Avoiding pitfalls – causation

• History- mechanism of accident	Does it make clinical sense ?
• Onset of symptoms	Beware delayed onset symptoms
• Evidence of recovery	Return to activity – running / gym
• Medical records –	Meticulous forensic review
• Further injury / falls	Breaks in chain of causation

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Practical application of part 35 rules

- Expert is not the claimant's advocate
- Range of opinions –
- Balanced review of literature
- Comprehensive prognosis

Overriding duty to the Court – not a hired gun

PART 35 –

2.2 Experts should assist the court by providing objective, unbiased opinions on matters within their expertise, and should not assume the role of an advocate.

PD4.2 - However the overriding objective does not impose on experts any duty to act as mediators between the parties or require them to trespass on the role of the court in deciding facts.

PD 4.3- Experts should not take it upon themselves to promote the point of view of the party instructing them or engage in the role of advocates.

Beware - Medicalisation of all reported symptoms into an injury

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Range of opinions

- On the one hand -----
- On the other hand ---
- My reasons / justification
- Hence my opinion from the range is ---

PRACTICE DIRECTION 35

Practice Direction 35 3.2 gives details of the matters that an expert's report ***must*** contain. One of these mandatory items is

"(6) where there is a range of opinion on the matters dealt with in the report –

(a) summarise the range of opinions; and

(b) give reasons for the expert's own opinion;

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Prognosis

- Has the injury / fracture healed ?
- Residual symptoms / problems / restrictions / function
- Recovery- incomplete / complete / can’t say now
- Further treatment needed / investigations / further review ?
- Long term problems- surgery / acceleration / deterioration
- Outcomes after future treatment, job, accommodation, adaptations, care

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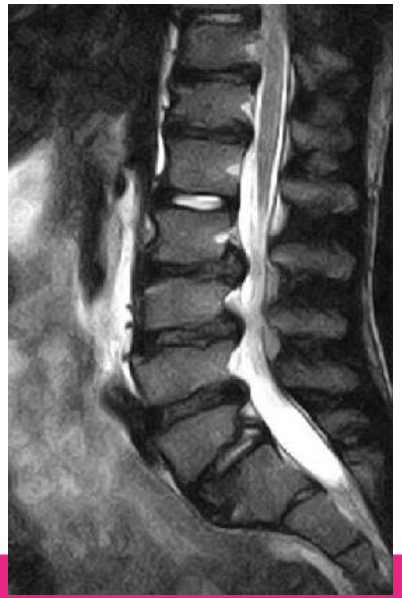
Acceleration concepts – true acceleration

Acceleration of symptoms – legal concept

- No previous history of back pain – confirmed from medical records
- Fall at work from height- spinal soft tissue injury – healed in 6 months
- Ongoing persistent back pain – MRI scans - degeneration
- Have the inevitable future back symptoms manifested earlier than they would have ? "but for"
- How much earlier ? Range of opinions



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Summary and Conclusions

- Take our role as an expert witness seriously
- Be familiar with part 35 CPR and follow it
- Be thorough as we would in clinical consultation and patient care
- Be humble- accept if wrong / made a genuine mistake
- Reflective learning – to improve quality of medical reports

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Thank you!