



A Doctor's Duty to Diagnose

By Shona Anne Thomas



3 SEPTEMBER 2020

The popularity of medical television dramas (such as *ER*, *The Good Doctor* and *Grey's Anatomy*) is undeniable. Good script aside, it allows us to watch fictional characters dealing with illnesses that we fear facing at some point in our lives. As interesting and entertaining as it is to watch actors playing "Sherlock Holmes" to diagnose and treat an ailing patient, the same cannot be said when it hits close to home.

When we visit the doctor, there is an expectation that he/she will deliver the correct diagnosis, followed by the appropriate treatment. However, not many realise that diagnostic errors are a major patient safety concern in primary healthcare and emergency care. According to the World Health Organization (**WHO**), "a study conducted in a high-income country found that approximately 5% of adults experienced diagnostic errors in outpatient settings each year. Over half of these errors had the potential for severe harm. The researchers suggested that this was likely to be an underestimate and the rate of diagnostic errors in low-income countries may be much higher".¹

The area of diagnosis has high risk for errors because various factors are always at play. The three types of diagnostic errors that could occur are:²

- (a) *Missed diagnosis*, where a condition is not detected despite clear symptoms.
- (b) *Delayed diagnosis*, where an abnormal test result is suggestive of a condition which has yet to be told to the patient.
- (c) *Wrong diagnosis*, where a patient is told they have one condition when there is evidence of another.

This may be cause for concern to some as the typical doctor-patient relationship is hardly ever equally balanced, given that the patient places trust in the experience, skills and knowledge of the doctor. Due to this imbalance, a doctor is always required to exercise reasonable care and skill in carrying out his duties and in this case, making a diagnosis. That being said, it is important to note that a wrong diagnosis does not in itself amount to negligence if the doctor had observed the required standard of care expected of him. Hence, a diagnostic error will only be deemed as medical negligence where it can be established that:

- (a) the doctor failed to carry out an examination or a test that the patient's symptom called for; or
- (b) the doctor's conclusion with regards to the diagnosis was one that no reasonable, competent doctor would have arrived at.

¹ World Health Organization, "Diagnostic Errors: Technical Series on Safer Primary Care" (2016)

² *Ibid*



The rationale behind this principle is best explained by Lord President Clyde, who states that “*in the realm of diagnosis and treatment there is ample scope for genuine difference of opinion and one man is clearly not negligent merely because his conclusion differs from that of other professional men*”.³

For instance, in *Chien Tham Kong*,⁴ although the patient was initially managed on a provisional diagnosis of a stroke (when the actual condition suffered was that of cervical epidural abscess), the doctors were not held liable for negligence. Given that a cervical epidural abscess is a very rare type of infection, the court found that it would have been very difficult to consider the possibility of cervical epidural abscess when the patient presented signs and symptoms consistent with a stroke. Therefore, “it was unreasonable for a doctor to first suspect a rare condition when the symptoms and signs presented by a patient pointed to a different but much more common condition”. In short, the court found that the professional conduct of the doctors was consistent with the appropriate standard of care expected to be exercised by either of them as specialists.

In stark contrast to the abovementioned case is *Inderjeet Singh*.⁵ Here, the patient had sustained injuries due to a road accident and was brought to the hospital for treatment. Despite signs of a urethra injury, the patient was catheterized and re-catheterized more than five times, which led to the patient lapsing into a coma and being transferred to another hospital for further treatment. Subsequent tests showed that the patient’s urethra had ruptured completely. In this case, the court found the doctors involved to be liable for negligence as they had, among others, neglected to carry out either the urethrogram test or cystoscopy to ascertain the exact condition of the patient’s urethra before treating him. Further, the doctors had also diagnosed the swelling of the abdomen of the patient incorrectly when all signs pointed towards urethra injuries.

To avoid and minimise diagnostic errors, especially those that may amount to negligence, a doctor must always ensure certain basic duties are carried out before reaching a final diagnosis. He/she must always give full consideration to the patient’s medical history, ask the patient relevant questions as well as listen to the patient’s account of the illness and, in the case of a doubtful diagnosis, it is good practice for the patient to be referred to a specialist. Failure to carry out such basic duties risks exposure to liability for negligence.

As Lord Woolfe noted, the phrase, “*Doctor knows best*” should now be followed by the qualifying words, “*if he acts reasonably and logically and gets his facts right*”.⁶

If you have any queries, please contact the author, **Shona Anne Thomas** (sat@lh-ag.com).

³ *Hunter v Hanley* [1955] SLT 2133 at p 217

⁴ *Chien Tham Kong v Excellent Strategy Sdn Bhd & Ors* [2009] 7 MLJ 261

⁵ *Inderjeet Singh a/l Piara Singh v Mazlan bin Jasman & Ors* [1995] 2 MLJ 646

⁶ See *Foo Fio Na v Dr Soo Fook Mun & Anor* [2007] 1 MLJ 593, per Siti Norma Yaakob FCJ; and “Shift in courts’ medical view” *BBC News* (17 January 2001) <<http://news.bbc.co.uk/2/hi/health/1122857.stm>>