Montgomery: a wake-up call for pharmacists?

The NHS is facing unprecedented financial pressure as a result of legal claims for negligence. Last year the health service broke the £1bn barrier in compensation payouts, with just under half of that going towards legal costs.

Doctors are of course well versed in the perils of practice in this respect and pay hefty premiums to protect them from liability in negligence cases.

But most pharmacists are not as aware of the risks and, in particular, the implications of an important case that could see them the subject of future litigation, according to research published this month in Prescriber.

On page 16, Nina Barnett and Claudia Carr report the results of their survey on pharmacists’ knowledge concerning the case of Montgomery v Lanarkshire Health Board (Scotland) 2015, which they warn could “open the floodgates” for patient claims against them.

In an ideal system, the law reflects the societal context of its time. The 1957 Bolam test of duty of care, which ruled that a doctor could not be deemed negligent if they acted “in accordance with a practice accepted as proper by a responsible body of medical men”, was clearly outdated – supporting a paternalistic system where doctors decided which treatment risks to warn a patient about.

Setting new standards

Nadine Montgomery, a woman of small stature with diabetes, suffered complications while giving birth that resulted in the baby being born with severe disability. Her obstetrician had failed to inform her of the risks of vaginal delivery associated with her stature and diabetes, and the alternative option of a caesarean. In the lower courts, the Bolam test of duty of care was applied and Mrs Montgomery was unsuccessful, but on appeal to the Supreme Court, the application of Bolam was rejected and it was ruled: “The doctor is... under a duty to take reasonable care to ensure that the patient is aware of any material risks involved in any recommended treatment, and of any reasonable alternative or variant treatment.”

Hailed as “the most important UK judgment on informed consent for 30 years”, the Montgomery judgment has had far-reaching repercussions. “Concerned particularly with doctors, it is also relevant to other healthcare professionals”, say Barnett and Carr, pointing out that Montgomery sets new standards of risk disclosure to everyone who treats patients, including pharmacists.

“...pharmacists, who historically have not attracted clinical negligence claims, may be at risk of breaching their duty of care to their patients, which could expose [them] to the risk of future legal action,” warn the authors.

References

1. Bolam v Friern Hospital Management Committee [1957] 1 WLR 582.

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