

IS THE PUBLIC HEALTHCARE SYSTEM DOING ENOUGH TO PREVENT AND
MANAGE THROMBOEMBOLIC DISEASE UNDER A HEALTHCARE RESOURCE
CONSTRAINT ENVIRONMENTZ? CAN THE HEALTHCARE PRACTITIONER BE
ABSOLVED?

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INTRODUCTION

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PRESENT SITUATION IN PUBLIC HEALTH SECTOR REGARDING TREATMENT FOR DVT TO PREVENT PE

- PE ARISING FROM DVT ACCOUNTS FOR 10% OF ALL HOSPITAL DEATHS.
- VTE PROPHYLAXIS IS USED TO PREVENT DVT AND SUBSEQUENT PE.
- PATIENTS ARE ASSESSED USING PATIENT-RELATED AND PROCEDURE-RELATED RISK FACTORS.
- PATIENT'S UNDERGOING LOW-RISK PROCEDURES WITH NO PATIENT-RELATED RISK FACTORS, REQUIRE NO SPECIFIC PROPHYLAXIS.
- PATIENT'S UNDERGOING LOW-RISK PROCEDURES WITH ADDITIONAL PATIENT-RISK FACTORS, OR THOSE UNDERGOING HIGHER-RISK PROCEDURES WITH OR WITHOUT PATIENT-RELATED RISKS, ARE PUT ON A LMWH ACCORDING TO THE RISK CLASSIFICATION IN THE PROTOCOL.
- SEE GENERALLY, BF JACOBSON ET AL 'VENOUS THROMBOEMBOLISM – PROPHYLACTIC AND THERAPEUTIC PRACTICE GUIDELINE' (2009) 99(6) *SAMJ* 467-473.
- FOR VERY HIGH-RISK PROCEDURES ATTEMPTS ARE MADE TO ARRANGE INTERMITTENT COMPRESSION DEVICES (IVD) TO BE APPLIED IN THEATRE AND USED UNTIL THE PATIENT IS MOBILE – BUT IVDS ARE NOT ALWAYS AVAILABLE.
- THE USE OF IVDS IS BASED ON SURGEON PREFERENCE AND ARE NOT IN THE PROTOCOL.

PROBLEMS OF PROCUREMENT IN THE PUBLIC SECTOR

- IVDS AND THE NECESSARY CONSUMABLES ARE ORDERED AND SUPPLIED BY THE PROCUREMENT DEPARTMENT OF THE HOSPITAL.
- STOCK CONTROLLERS ARE SUPPOSED TO CHECK AND ENSURE THE AVAILABILITY OF CONSUMABLES AND OTHER RELEVANT STOCK SUCH AS LMWHS AND IVDS.
- USUALLY LMWHS ARE 'READILY AVAILABLE AND USED FREQUENTLY'.
- IVDS ARE NOT READILY AVAILABLE.
- OFTEN THERE IS A STOCK PROBLEM AND THE CORRECT CONSUMABLES ARE NOT AVAILABLE BECAUSE THE ITEMS HAVE NOT BEEN ORDERED OR THE BUDGET HAS BEEN OVERSPENT

GENERAL PRINCIPLES REGARDING MEDICAL PRACTICE IN A RESOURCE-STARVED ENVIRONMENT (1)

- IN A RESOURCE-DEFICIENT ENVIRONMENT, LIABILITY FOR MEDICAL MALPRACTICE DEPENDS ON WHETHER THERE WAS INTENTIONAL OR NEGLIGENT WRONGFUL CONDUCT BY THE PARTIES CONCERNED.
- WHERE THE DEPARTMENT OF HEALTH IS INVOLVED, VICARIOUS LIABILITY WILL DEPEND ON WHETHER ITS EMPLOYEES WERE ACTING IN THE COURSE AND SCOPE OF THEIR EMPLOYMENT WHEN THEY COMMITTED THE WRONGFUL ACTS OR OMISSIONS.
- DEPARTMENTS OF HEALTH AND PUBLIC SECTOR HOSPITALS MAY BE LIABLE FOR THE WRONGFUL CONDUCT OF THEIR HEALTHCARE SERVICE STAFF AS WELL AS THEIR ADMINISTRATORS AND MANAGERS.

GENERAL PRINCIPLES REGARDING MEDICAL PRACTICE IN A RESOURCE-STARVED ENVIRONMENT (2)

- DEPARTMENTS OF HEALTH AND PUBLIC HOSPITALS WILL BE VICARIOUSLY LIABLE FOR THE INTENTIONAL OR NEGLIGENT WRONGFUL ACTS OR OMISSIONS OF THEIR CLINICAL HEALTH CARE AND SUPPORT STAFF ACTING IN THE COURSE AND SCOPE OF THEIR EMPLOYMENT.
- THE DEPARTMENT OF HEALTH AND PUBLIC HOSPITALS WILL BE LIABLE FOR HARM CAUSED TO PATIENTS ARISING FROM A SHORTAGE OF RESOURCES DUE TO INTENTIONAL OR NEGLIGENCE CONDUCT BY THEIR ADMINISTRATIVE EMPLOYEES.

WHEN HEALTHCARE PRACTITIONERS WILL BE LIABLE FOR NEGLIGENCE OR MALPRACTICE

- HEALTHCARE PRACTITIONERS ARE EXPECTED TO EXERCISE THE DEGREE OF SKILL AND CARE OF REASONABLY COMPETENT PRACTITIONER IN THEIR PARTICULAR BRANCH OF PROFESSION.

CASTELL V DE GREEF 1993 (3) SA 501 (C)

- THE MORE COMPLICATED THE PROCEDURES THE GREATER THE SKILL AND CARE THAT MUST BE EXERCISED - WITHIN AVAILABLE RESOURCES.

COLLINS V ADMINISTRATOR, CAPE 1995 (4) SA 73 (C)

- THE TEST FOR NEGLIGENCE IS WHETHER A REASONABLY COMPETENT PRACTITIONER IN THE POSITION OF THE DEFENDANT OUGHT TO HAVE FORESEEN THE LIKELIHOOD OF HARM AND GUARDED AGAINST IT.
- A FAILURE TO EXERCISE THE REQUIRED DEGREE OF SKILL AND CARE RESULTING IN INJURY AND DAMAGE TO A PATIENT WILL RESULT IN A CLAIM FOR PROFESSIONAL NEGLIGENCE.
- AN INTENTIONAL WRONGFUL ACT AGAINST A PATIENT WILL RESULT IN A CLAIM FOR MALPRACTICE (EG. BREACH OF CONFIDENCE; FAILURE TO OBTAIN AN INFORMED CONSENT).

WHEN HEALTHCARE ADMINISTRATORS MAY BE HELD LIABLE FOR NEGLIGENCE OR MALADMINISTRATION

- HEALTHCARE ADMINISTRATORS ARE EXPECTED TO EXERCISE THE DEGREE OF SKILL AND CARE OF REASONABLY COMPETENT PEOPLE IN THEIR POSITION IN THE ORGANISATION.
- THE TEST FOR NEGLIGENCE IS WHETHER A REASONABLY COMPETENT PERSON IN THE POSITION OF THE ADMINISTRATOR OUGHT TO HAVE FORESEEN THE LIKELIHOOD OF HARM AND GUARD AGAINST IT.
- THUS ADMINISTRATORS WHO INTENTIONALLY OVERSPEND THEIR BUDGETS DUE TO ENGAGEMENT IN UNLAWFUL TENDER TRANSACTIONS; WASTEFUL EXPENDITURE ON TRAVEL, ENTERTAINMENT AND STUDY TOURS; OR THE OVERUSE OF CONSULTANTS ETC. MAY BE GUILTY OF MALADMINISTRATION.
- OTHER EXAMPLES ARE NEGLIGENTLY FAILING TO REPAIR OR REPLACE MEDICAL EQUIPMENT, OR TO ORDER MEDICAL ITEMS AND DRUGS WHEN FUNDS ARE AVAILABLE, OR DIVERTING FUNDS FROM HEALTH CARE SERVICES TO THE DETRIMENT OF PATIENTS.
- D McQUOID-MASON 'ESTABLISHING LIABILITY FOR HARM CAUSED TO PATIENTS IN A RESOURCE-DEFICIENT ENVIRONMENT' (2010) 100(9) *SAMJ* 573-575.

VICARIOUS LIABILITY

- VICARIOUS LIABILITY MEANS THAT ONE PERSON IS LIABLE FOR ANOTHER PERSON'S WRONG ACT EVEN THOUGH THE FIRST PERSON IS NOT AT FAULT
 - VICARIOUS LIABILITY APPLIES WHERE A PERSON EMPLOYS ANOTHER AS A 'SERVANT' AND THE LATTER UNLAWFULLY HARMS A THIRD PERSON WHILE ACTING 'WITHIN THE COURSE AND SCOPE OF THEIR EMPLOYMENT'
 - SUBJECT TO THE ABOVE, DEPARTMENTS OF HEALTH MAY BE LIABLE FOR WRONGS COMMITTED BY PEOPLE EMPLOYED BY THEM WHETHER THEY ACT NEGLIGENTLY OR INTENTIONALLY
 - THE EMPLOYEES – WHETHER HEALTH CARE SERVICE PRACTITIONERS OR ADMINISTRATORS MAY ALSO BE HELD LIABLE PERSONALLY
 - HEALTH CARE PRACTITIONERS AND ADMINISTRATORS ARE NOT LIABLE FOR THE ACTS OF INDEPENDENT CONTRACTORS CONTRACTED BY THEM – UNLESS THEY NEGLIGENTLY FAILED TO PREVENT THE HARM
- CF *S V KRAMER* 1987 (1) SA 887 (W)

WHEN HEALTH CARE PRACTITIONERS CAN BE ABSOLVED

HEALTH CARE PRACTITIONERS CAN BE ABSOLVED FROM LIABILITY :

- WHERE THEY DID NOT NEGLIGENTLY OR INTENTIONALLY CAUSE HARM TO THE PATIENT OR ANYONE ELSE.
- WHERE THEY ARE FACED WITH AN EMERGENCY SITUATION AND HAVE ACTED REASONABLY OUTSIDE THEIR SPECIALITY BECAUSE NOBODY ELSE IS AVAILABLE TO ASSIST – THEY WILL BE JUDGED BY THE STANDARD OF HOW A REASONABLY COMPETENT PRACTITIONER WITH THEIR SKILL AND EXPERIENCE WOULD HAVE ACTED IN THE SAME SITUATION.
- WHERE THEY ARE FACED WITH A SHORTAGE OF RESOURCES SUCH AS DRUGS OR EQUIPMENT, IF THEY ACTED IN THE WAY A REASONABLY COMPETENT PERSON IN THEIR BRANCH OF THE PROFESSION WOULD HAVE ACTED IN THE SAME SITUATION.
- WHERE A ‘MATERIAL RISK’ AGAINST WHICH A PATIENT WAS WARNED MANIFESTS ITSELF AND THERE WAS NO NEGLIGENCE BY THE HEALTH CARE PRACTITIONER.

[NOTE: WHERE HARM IS CAUSED BY THE FAULT OF BOTH HEALTH CARE PRACTITIONERS AND ADMINISTRATORS THEY MAY BE HELD JOINTLY AND SEVERALLY LIABLE TO THE INJURED PERSONS – DAMAGES WILL BE APPORTIONED].

SCENARIO

- A HEALTHY, ACTIVE, 40 YEAR PATIENT PRESENTS AT A STATE HOSPITAL EMERGENCY ROOM COMPLAINING OF SHORTNESS OF BREATH ON EXERTION AND CHEST PAIN. HE IS SUBJECTED TO A NON-STRESS TEST (DURING WHICH HE FAINTED); A CT SCAN WITHOUT CONTRAST ('BECAUSE IT WOULD BE TOO HARD ON HIS KIDNEYS'); A D-DIMER BLOOD TEST (WHICH WAS ABNORMAL AND ELEVATED); A V/Q PERFUSION LUNG SCAN (IN WHICH PART OF HIS LUNGS WERE HIDDEN BY HIS ARMS AND THE RADIOLOGIST INTERPRETED AS 'LOW PROBABILITY OF PE'); AND AN ECHOCARDIOGRAM (INDICATING MASSIVE ENLARGEMENT OF THE RIGHT VENTRICLE AND RIGHT ATRIUM, PULMONARY HYPERTENSION, AND MODERATE TRICUSPID REGURGITATION). A CARDIOLOGIST AND PULMONOLOGIST ARE CONSULTED.
- THE CARDIOLOGIST AFTER SEEING THE OTHER TEST RESULTS, RELIES SOLELY ON THE V/Q SCAN AND DIAGNOSES OBSTRUCTIVE SLEEP APNEA.
- THE PULMONOLOGIST DOES NOT EXAMINE THE ECHOCARDIOGRAM AND DIAGNOSES ASTHMA AND OBSTRUCTIVE SLEEP APNEA AND LIKE THE CARDIOLOGIST INDICATES THAT THE RESULTS OF THE V/Q SCAN ARE SUFFICIENT TO RULE OUT PULMONARY EMBOLISM (PE).
- THE PATIENT'S DISCOMFORT CONTINUES AND AT ANOTHER HOSPITAL HE IS DIAGNOSED AS HAVING A 'MASSIVE' PE AND HAS TO HAVE AN INFERIOR VENA CAVA FILTER INSERTED. HE CONTINUES TO SUFFER FROM SHORTNESS OF BREATH AND CAN NO LONGER WORK.
- WERE THE CARDIOLOGIST AND PULMONOLOGIST NEGLIGENT? WHY OR WHY NOT? IF THEY WERE, WOULD THE STATE BE VICARIOUSLY LIABLE FOR THEIR NEGLIGENCE?