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Health Insights

A case study in causation

Chester v WA Country Health Service [2019] WADC 152

The facts

Mr Chester (**Plaintiff**) was a 26 year old male who worked as plasterer by trade. On 31 July 2009 he suffered an injury to his left shoulder and presented to the Busselton Regional Hospital (**Hospital**) complaining of pain, general bruising and some grazing of his skin. The clinical presentation was that of a left acromioclavicular joint subluxation[1]. The Plaintiff was referred to an x-ray service, prescribed analgesia, given an ice pack and put in a broad arm sling. He was asked to return the following day.

The radiological diagnosis of the injury was reported as a "dislocation of the left AC joint."[2] This was properly recorded in the Hospital notes. However, when the Plaintiff returned to the Hospital the following morning, the attending medical practitioner incorrectly noted in the discharge summary that he suffered an "AC joint subluxed L shoulder."[3] The Plaintiff was given analgesia and told to keep his arm in the sling for four to six weeks. He was also told to consult his general medical practitioner in two weeks. The Hospital had no further involvement in his care.

On 12 August 2009 he attended Dr Lim (in the absence of his regular GP Dr Taylor), who measured his range of arm movement. He continued to be managed conservatively with a sling and was advised to return in two weeks for review.

On 2 September 2009 the Plaintiff attended a review with Dr Taylor still complaining of difficulty moving his left shoulder. Dr Taylor recorded the reason for his visit as "AC joint subluxation" and prescribed medication[4]. The Plaintiff gave evidence that Dr Taylor told him to continue using the sling and that he did so for another four to six weeks.

Dr Taylor gave evidence that while he had available both the discharge summary from the Hospital which indicated a subluxation, and the diagnostic imaging report which indicated a dislocation, he based his decision as to treatment on what had been reported to him and the Plaintiff's clinical presentation.[5] In his view, it is a matter of degree whether an injury was one of subluxation or dislocation and there is no difference between treating a grade 3 AC joint subluxation or dislocation -

[1] *Chester v WA Country Health Service* [2019] WADC 152, paragraph 11 - 12.
[2] Ibid, paragraph 13.
[3] Ibid, paragraph 14.
[4] Ibid, paragraph 18.
[5] Ibid, paragraph 20.

either way, the treatment is to use a sling, pain relief and rest and that this conservative treatment ought to take place over period of up to three months.[6]

When the Plaintiff returned to Dr Taylor on 25 September 2009 still complaining of pain, he was referred for orthopaedic review and on 7 December 2009 ultimately consulted Mr Openshaw (deceased at the time of trial). Mr Openshaw placed the Plaintiff on a public waiting list as a semi-urgent case for shoulder surgery, being a reconstruction of his acromioclavicular ligaments probably in combination with excision of the distal clavicle. The wait time for this surgery was 13 months.[7]

Presumably in an effort to have the surgery performed sooner, the Plaintiff borrowed funds from his brother to have the surgery performed as a private patient, and it subsequently took place on 24 February 2010. Although later x-rays reveal that this surgery produced a good anatomical result, the Plaintiff continues to suffer pain and restriction in terms of his daily activities.[8]

The issue

The contentious question in this case was not one of breach of duty. There was clearly an error made by the Hospital in that the radiological finding was wrongly recorded as a subluxation instead of a dislocation in the Plaintiff's discharge summary. Further, the Hospital omitted to record the need for the Plaintiff to seek immediate orthopaedic review as to his choice between conservative or surgical treatment.

Rather, the turning point for this case was whether these failures could be said to be the cause of the Plaintiff's ongoing issues. The relevant question, as put by Justice Goetze, was therefore:

> *but for the negligent diagnosis noted in the discharge summary of a subluxation, rather than a dislocation, and the omission to advise [the Plaintiff], either orally or in the discharge summary, to consult an orthopaedic surgeon, without delay, to determine the choice of surgical or conservative treatment, would the unsatisfactory result of which [the Plaintiff] now complains have occurred?*[9]

In considering this question, His Honour reinforced the need to consider what the Plaintiff would have done had the Hospital noted the correct diagnosis and correctly advised the Plaintiff who to consult (as per section 5C(3) of the *Civil Liability Act 2002* (WA)).

The evidence

There appeared to be agreement between the expert witnesses that the Plaintiff had suffered a grade 3 dislocation.[10] However, based on the evidence and medical literature provided to the court, His Honour

[6] Ibid, paragraph 21.
[7] Ibid, paragraph 25
[8] Ibid, paragraph 27.
[9] Ibid, paragraph 33.
[10] Ibid, paragraph 42.

found that both conservative and surgical treatments are widely accepted as competent professional practice for AC joint dislocations of this kind.[11]

If the elected treatment is surgical, then the Plaintiff's experts agreed it ought to be carried out within two to four weeks post injury by way of reduction surgery. If not undertaken within this time, but required later on, then the necessary surgery will likely be a reconstruction including excising the distal end of the clavicle.[12] If conservative treatment is elected, then the arm is to be immobilised in a broad arm sling for between four and eight weeks, with physiotherapy to follow.[13]

The experts all agreed that the Hospital ought to have referred the Plaintiff for orthopaedic review. Disagreement arose, however, as to which method of treatment was most appropriate in the case of the Plaintiff, being a plasterer by trade.[14] Two experts believed that the Plaintiff's employment as a plasterer supported a preference for early reduction surgery, because "his occupation demanded a functional recovery expected from surgery that might not be obtained from conservative treatment."[15] However another expert maintained that conservative treatment was the superior option[16]. One expert considered that the delayed surgery may have impaired the final outcome, but also made mention of the risks of failed surgeries and those which produce complications. Another of the experts commented that there are numerous types of repair surgeries and that no one of them is necessarily effective.[17]

The finding

In considering the evidence, His Honour was not persuaded by the experts who contended that earlier surgery was the preferable course of action in this case. There was a lack of evidence pointing to a better outcome from reduction surgery and in his view, it could not be found that surgery was the preferred treatment or that early surgery would have probably resulted in a better outcome than conservative treatment handled correctly. In His Honour's words:

> *The requirement of causation is not overcome by redefining the mere possibility that [the Plaintiff's] ongoing problems might not have eventuated as a chance and then saying that that chance has been lost, given that he now does have problems with his left shoulder.* [18]

The loss of a chance of a better outcome is insufficient to prove causation. The Plaintiff "cannot argue that his loss and damage result from the possibility that the present position would have been less severe had he proceeded to early reduction surgery.[19]"

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[11] Ibid, paragraph 44.
[12] Ibid, paragraph 45 – 46.
[13] Ibid, paragraph 47.
[14] Ibid, paragraph 48.
[15] Ibid, paragraph 71.
[16] Ibid, paragraph 82.
[17] Ibid, paragraph 89.
[18] Ibid, paragraph 121.
[19] Ibid, paragraph 120 and citing *Tabet v Gett* [2010] HCA 12.

Further, there was insufficient evidence to conclude that even if a surgical option had been discussed with the Plaintiff, he would have elected to proceed to early surgery (in the face of inconclusive evidence that it would produce a better outcome), or that he would have been able to raise funds for that surgery privately and without delay. It also could not be said that earlier surgery would have been more successful, in any event, than the reconstruction surgery which ultimately took place[20].

Finally, His Honour found that the Plaintiff's issues in proving causation had been further compounded by the fact that he suffered an additional AC joint injury as a result of a motor vehicle crash in November 2011. A CT arthrogram performed in November 2012 also revealed a tear in the left shoulder supraspinatus and labral detachment, neither of which had been investigated. Their role in the Plaintiff's ongoing shoulder pain was therefore unclear. Further, the Plaintiff did not properly adopt a conservative treatment protocol following the initial injury, in that he failed to properly immobilise the left shoulder, which may have been a contributing factor to the failure of the treatment. These matters precluded a finding in the Plaintiff's favour and his claim was dismissed.

Meridian Lawyers regularly assists health practitioners to respond to patient complaints and allegations of professional negligence. This article was written by Principal Shannon Mony and Associate Anna Martin. Please contact us if you have any questions or for further information.

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[20] Ibid, paragraph 101.