Practicing Surgery and Legal Issues

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Hammurabi’s Code (1772 B.C.)

In the provisions 215-223 the code have proven to be the first set of lows governing the practice of medicine and surgery
The Edwin Smith Surgical Papyrus
(circa 1600 B.C.)
Attic bowl (circa 500 B.C.)
The badge of the Hellenic Surgical Society

(circa 350 B.C.)
ΑΣΚΛΗΠΙΟΣ (ASCLEPIOS, AESCULAPIUS)
ΙΠΠΟΚΡΑΤΗΣ Ο ΚΩΣΗΣ

(460-370 Β.Σ.)
The Hippocratic oath
12th century

Ο βίος βραχύς
Η τέχνη μακρά
Ο χρόνος οξύς

Vita brevis
Ars longa
Occasio praeceps

Life is short
Art is long
Occasion fleeting
The complexity of surgery ceaselessly increases. There are many areas where patients may suffer adverse outcomes or misadventures. Society in general has higher expectations and less tolerance of these perceived failures. Patients are therefore now more likely to complain or take legal action against their doctor, hospital or both, as most usual.
The duties of a doctor

- Make the care of your patient your first concern
- Treat every patient politely and considerately
- Respect patients’ dignity and privacy
- Listen to patients and respect their views
- Give patients information in a way they can understand
- Respect the right of patients to be fully involved in decisions about their care
- Keep your professional knowledge and skills up to date
- Recognise the limits of your professional competence
- Be honest and trustworthy
- Respect and protect confidential information
- Make sure that your personal beliefs do not prejudice your patients’ care
- Act quickly to protect patients from risk if you have good reason to believe that you or a colleague may not be fit to practise
- Avoid abusing your position as a doctor
- Work with colleagues in the ways that best serve patients’ interests
- In all these matters you must never discriminate unfairly, against your patients or colleagues. And you must always be prepared to justify your actions to them.”

(Quality in Health Care C McManus et al.2000;9: 14-22)
Duty

- Duty is the primary legal test
- Surgeons often have to take very difficult decisions with and on behalf of their patients
- Surgeons need to have in mind that they have a duty of care
To prove negligence it must be proved that:

- The doctor have a duty of care
- This duty was breached with the claimant suffering as a consequence
- Any resulting damage was due to this breach in care
What level of skill and care does the low require??

1. First and most general
   A fair, reasonable and competent degree of skill is brought to the procedure

2. Circumstances
   Failure to act in a way that a surgeon of ordinary skill would have done

3. The casual chain
   A direct causal link justified in terms of logic and medical knowledge must exist between the alleged negligent act and the damage or loss that has been sustained would have done
Consent

- Consent is not just obtaining a signature on a form prior to an operation.
- Informed consent is a legal entity.
The following principles must be satisfied for the consent to be valid:

- Consent must be voluntary
- The patient must have the capacity to give consent
- The patient must have adequate knowledge to understand what they are consenting to
Mental illness and capacity

- Unconsciousness
- Jehovah’s Witnesses
- Undue influence
- Children of Jehovah’s Witnesses
- Age of consent
Can a patient ever be fully informed?

- What is adequate information?

It is in everyone’s interests – doctor and patient- to make the process transparent and to an agreed national standard

Conclusion

- All medical practitioners need to be aware of the legal issues related to their practice. Surgeons may be taken to court by a patient seeking compensation where negligence is deemed to have occurred. Surgeons may also face allegations of negligence through complaints made to the ethnic medical councils.
Conclusion

To prevent and protect

- Medical insurance (personal)
- Legal cover from the surgical associations
- Cover from the legal department of UEMS, in cooperation with the national surgical societies
- Accreditation of the surgeons practice by UEMS
- Even senior surgeons should have to confirm their practice and capability in surgery
- The UEMS section of Surgery should have to establish, as a first step, a committee which will put the key notes and the proposals for the foundation of a legal department dealing with the issues in the practice of surgery.
- It is absolutely necessary the creation of a uniformal form of consent has to be used through out Europe.
"Could you recommend a fruit that works for lawyers?"
Dear colleagues
Ladies and Gentlemen....... 

.......See you in court