



NEWSLETTER

Volume 4, Number 1, 2010

AUSTRALASIAN COLLEGE OF LEGAL MEDICINE
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PRESIDENTIAL REPORT

This is the first Presidential report for 2010 and thus far we have a 50% response rate to our survey of our members and fellows to determine attitudes and expectations for the future of the College. For those of you who have not yet responded, please do so, as soon as is possible, so that we can have the views of the majority to better understand what it is that you, as a representative collection of the College, want the Council to achieve.

Plans for the Annual Scientific Meeting (ASM) are well under way and will focus on "Legal and Forensic Medicine at the End of the First Decade of the 21st Century". The timing will coincide with the ANZFSS meeting in Sydney, which starts on Monday, 6th September 2010. The ASM will be held over the weekend before, namely 4th and 5th September 2010, and will lead into the ANZFSS conference. The ACLM will collaborate to host a workshop on legal and forensic medicine during the ANZFSS symposium but for that to be positive and productive we need abstracts, specific to legal and forensic medicine at the beginning of the 21st century, to be submitted. This is where we rely on you, our membership and fellowship, to step up to the plate.

In June we will conduct a combined expert witness program (18th June) and practical law intensive (19th and 20th June) at the Sheraton Hotel in Noosa. Based on the success of our last program in Noosa last year, this should be a superb course and we suggest early registration. Discussions are also under way to explore the possibility of holding another expert witness training program in New Zealand in 2010.

In August, the World Association for Medical Law will have the World Congress for Medical Law in Zagreb in Croatia. I would love to see a great roll-up from the ACLM and if we have sufficient numbers we may look at trying to organise a package tour. Again this is dependent on the enthusiasm of our members and fellows. If you would like to be part of this, please contact Robert Bishop, our administrative officer, and we will take it from there.

As you can see, there are some exciting plans for 2010 but their success is dependent upon your contribution. As I repeatedly state, this is your College and the more you put into it the more you will get out of it. Enthusiasm is contagious and we want an epidemic of commitment to



Honorary Member:

- Persons who have provided exemplary service to the College.
- Elected by the Board of the College.
- Once elected, an Honorary Fellow is entitled to use the post-nominal FACLM (Hon).

Faculty of Dentistry:

- The College incorporates a Faculty of Dentistry with identical requirements to those of doctors.
- Two board positions on the College Council are reserved for members of the Faculty of Dentistry.

**CONFERENCES & TRAINING COURSES
2010**

Expert Witness & Practical Law Intensive

Noosa
Friday 18th – Sunday 20th June

AAOT Expert Witness

Sydney
November

Annual Scientific Meeting

Sydney
Sydney University Medical Foundation Building
Camperdown
Saturday 4th – Sunday 5th September

Expert Witness

Wellington, New Zealand
Friday 10th – Saturday 11th September

The views expressed in this newsletter are those of the authors of the articles and do not necessarily reflect the official views or opinions of the College.



ensure that 2010 lives up to expectation. I thank each of you for meeting the challenge and helping us move forward.

*Roy G. Beran
ACLM*

INTERFACE BETWEEN PAEDIATRICS AND LEGAL MEDICINE

There are many situations where paediatricians are required to interact with the law and where the legal aspects of medicine become paramount. This will be discussed in brief under several headings in areas that the writer considers to be relevant.

Accidental and non-accidental injury

The most common area is where the paediatrician is asked to do a medical assessment of a child following an injury, whether accidental or non-accidental.

Accidental injury requiring legal-medicine assessment is most likely to be the result of motor vehicle accidents, where the child may be a passenger or a pedestrian. The injuries that result in long-term disability include severe head injury and physical disability affecting one or more limbs. The paediatrician doing the assessment could be working in a teaching hospital setting, a private clinic with several specialists or as a sole practitioner. The paediatrician's role might be that of providing an opinion about causation and the relationship between the injury and the later occurrence of disability, whether physical or intellectual. Alternatively, the paediatrician's assessment might be sought by the legal team in order to establish long-term care needs for that child. These needs are generally related to education, therapy, medical and psychosocial support.

Non-accidental injury covers the area of child abuse and neglect, where the assessment is complex and many factors have to be taken into account to assess causation of the injury. In the case of child abuse the assessment is done in close cooperation with police and child protection workers. Paediatricians in this setting are usually working in teaching hospitals and in multidisciplinary teams involving social workers, therapists, psychologists and child care workers. The paediatric legal medicine opinion might relate to causation and/or therapeutic intervention for that child.



Where the paediatrician is providing factual evidence, the doctor may have been involved in the medical management and care of the child following the alleged injury. The paediatrician in this situation may be consulted by the plaintiff's defendant's legal team to clarify or comment on the facts of the case. There is no doubt that paediatricians in their work with children act as advocates for the children in their care. The paediatrician who provides factual evidence might feel a sense of conflict between the role as advocate for the child in patient care and the legal obligation to the court. Alternatively, a paediatrician might be engaged by the defence's legal team to provide an expert opinion on the facts of the case. In this instance, the paediatrician is usually not the treating physician involved in the management of the child's condition, but is asked to make comment about the treatment or diagnosis provided by someone else. The paediatrician in either role must comply with the Expert Witness Code of Conduct as set out in the Uniform Civil Procedure Rules.

Medical malpractice litigation and negligence

Injury might also occur following medical intervention and treatment, and here the paediatrician might be asked to provide an opinion about causation in cases of medical negligence. One scenario is that of obstetric malpractice litigation. The presence of cerebral palsy in the child is assessed and the doctor is asked to determine a causal link, if any, to the obstetric care. It is now well recognized that cerebral palsy resulting from intrapartum injury is rare, but may be more likely in the presence of a sentinel obstetric event.

Malpractice litigation also occurs where misdiagnosis of a condition has led to the child being disabled, intellectually or physically. Such conditions include brain injury as a result of missed meningitis, brain tumour and metabolic disorders, to name a few. There are many situations where iatrogenic injury occurs and where the child is left with disability as a result of the medical or surgical intervention. Failure to warn about potential risks is an important factor where informed consent is not obtained.

Disability

Paediatricians frequently also do functional assessments of children with disability due to a variety of causes, to determine long-term care needs in cases brought before the court. In these instances the issue of causation is not under consideration, as liability might already be established, but the level and extent of long-term care is in question. These medical assessments are time-consuming and involve taking a full history, physical



ACLM MEMBERSHIP CATEGORIES-REQUIREMENTS

Associate Membership Status:

- A medical or dental practitioner.
- Registered with appropriate Australian State or Territory licensing board or equivalent.
- Undertake appropriate training in Legal Medicine.

Membership Status:

- Appropriate post graduate qualifications (see handbook)
- Complete a minimum of three years clinical practice subsequent to gaining of full medical or dental registration.
- Complete an internal College training course in Basic Law and Expert Witness.
- Once accepted, a Member is entitled to use the post-nominal of MACLM or MFDACLM - (Faculty of Dentistry of the ACLM - see below).

Fellowship Status:

- Completed at least six years clinical practice after full registration.
- Complete an approved external qualification equivalent to a Bachelor of Laws or Master degree in Legal Medicine or Health and Medical Law or Forensic Medicine.
- Candidates with a Master degree in Health and Medical Law or equivalent, must complete an ACLM Basic Law Intensive and Expert Witness training program.
- Candidates may be required to pass an examination conducted by the College, depending on their external qualifications.
- Candidates who hold the ACLM sponsored Master Degree in Legal Medicine will not require extra training.
- Once accepted, a Fellow is entitled to use the post-nominal FACLM or FFDACLM.

Affiliate Status:

- Category open to approved graduate health professionals who have formal legal training and are not registered medical or dental practitioners.
- Registered legal practitioners.
- A non-voting category without post-nominal.



- Decreased time in Police attending court for hearings where there is an early guilty plea
- Improved evidence collection and briefs
- Increase in number of successful prosecutions
- Stronger prosecution cases put before the Courts
- Less disputed facts
- Decreased workload for prosecutors
- Storage of the case history material at the FMU will enable easy access to material for use by the prosecutor in demonstrating to the court a pattern of violence. Under the current legislation the court "may have regard to any pattern of violence" in domestic violence matters.

Benefits identified by SWAHS included:

- Improved referral pathways for victims of domestic violence
- Improved outcomes for victims of domestic violence
- Improved relationship with Police Local Area Commands
- Broadens experience of forensic examiners
- Increase skills base of forensic examiners (e.g. injury interpretation)
- Improved variety of workloads of forensic examiners

Funding is currently being sought to continue the project and to expand services to other LACs.

Maria Nittis
ACLM

STOP PRESS
WAML CONFERENCE ZAGREB
Deadline for abstracts has been
extended till 1st May.



examination and assessment of the child's skills in order to determine functional ability and degree of impairment.

Advocacy

Paediatricians play a role in advocacy for children. Examples include access arrangements when instructed by the Family Court and in providing opinions to the Juvenile Justice courts in situations where the action of a young individual brings them into contact with the law. The child may have a mental health condition, which the paediatrician is asked to assess. Paediatricians who do these assessments have mental health training and have usually worked in child psychiatry units of teaching hospitals. They work closely with child psychiatrists who are also involved in assessing children with mental health problems.

Paediatric advocacy for children is often necessary where the issue of Human Rights becomes a factor. Here the paediatrician may be asked to assess the health and care needs of children in unusual circumstances. Examples include situations where countries are at war or where there is civil unrest, resulting in displaced persons and their children seeking asylum from neighbouring countries.

Policy and Government

Governments often make requests for specific guidelines to assess the special needs of children, so that policy can be developed and implemented. This usually occurs in policy related to education and the health needs of children. Indirect issues like poverty, socioeconomic disadvantage, broad lack of education within a community and social unrest impinge on the development of children. In these areas paediatricians play a crucial role in ensuring that government decisions take the well being of children into account. This in turn affects the long-term "health" of the society in general.

Education

Paediatricians who practice in legal medicine may play a role in the education of the trainee paediatricians and medical undergraduates. Teaching of paediatrics to registrars and undergraduates at teaching hospitals is always rewarding. The coordinators of teaching programs are becoming more aware of the lack of knowledge about legal issues for most doctors. Consequently, the paediatrician who has legal medicine experience can play a valuable role. There may be a future role for paediatricians with legal medicine experience to teach in medical schools.



Subjects like duty of care, consent, negligence and forensic assessment are of particular interest to doctors who work with children.

Paediatricians, like other specialists in medicine, also play a part in the broader education of the community, for example to teachers and to parent support groups. Educational aspects that relate to legal medicine include special care needs of children with disabilities, the needs of children that have come into conflict with the law and the needs of children in care and detention.

Conclusion

Legal medicine provides a body of knowledge for the training and ongoing education of paediatricians and other doctors who are interested in learning more about legal issues in relation to their work.

Legal medicine will become a growing discipline in medicine in general because doctors are becoming more aware of the need to educate themselves about matters related to the law.

*Sandra Johnson
ACLM Council*

WHAT DOES THE CENSOR IN CHIEF LOOK FOR IN PEOPLE APPLYING TO JOIN THE COLLEGE?

As Censor in Chief (CiC) of the Australasian College of Legal Medicine (ACLM), the main focus which the Censor in Chief requires is to determine if the information contained in the application document satisfies the requirements set out in the memorandum and articles of association of the College and in the updated information handbook, both of which stipulate the qualifications and medical practice experience necessary to qualify to be accredited as Fellows, Members, Associates or Affiliates of ACLM.

As the founding President of the College, I insisted that the law firm which drew up the memorandum and articles association, namely Deacons Graham and James Lawyers, incorporate in the Fellowship requirement prerequisite Australian medical specialists experience and ongoing research and education expected of specialists in the field thus the memorandum and articles of association of the ACLM at the time that it was



The examinations were conducted by appointment in business hours at the Nepean Hospital FMU, and victims were not charged a fee for this service.

The examination package included:

- Diagrammatical representation of the injuries
- History of events as given by the patient
- Photographs of images (A4 and DVD presentation)
- Expert certificate
- Attendance at Court as expert witness, if required.

The inclusion criteria for victims was aligned to the NSW Health definition of domestic violence (i.e. abuse and violence between adults who are partners or former partners) and later broadened to include some of the legislative criteria in the Crimes (Domestic and Personal Violence) Act 2007. As such, the criteria for the service was refined to the following; a patient must have obvious documentable injuries, they must have been perpetrated by a partner or ex-partner OR an immediate family member living in the home OR a blood relative where there is an imbalance of power e.g. child to elderly parent.

Results

From December 2008 to December 2009, there were a total of 243 DV related assaults with injury reported to St Marys and Penrith Local Area Commands. During the same time period, a total of 39 victims attended the FMU for examination. Of the 39 cases, 31 offenders were charged, 1 juvenile offender was cautioned under the Young Offenders Act, and 7 cases are pending further enquiry. Of the 31 offenders that were charged, 9 matters are pending court mentions or hearings. Of the 22 finalised matters, 12 guilty pleas were received and 10 matters proceeded to hearing. Of the 22 finalised matters, convictions were recorded in 20 of the matters. Conviction penalties ranged from 10 month to 2 year bonds including probation and parole supervision, attendance to counselling, anger management and DV programs, section 9 & 10 bonds, fines and court costs, community service order, suspended sentences, and custodial sentences.

Benefits

Benefits identified by NSW Police included:

- Decreased time in preparation of full briefs where an early guilty plea is entered
- Increased ability to hold offenders to account through charging



not the case manager will need to instruct the claimant how to obtain them (letter of release etc). Letters to claimants must contain:

- Full details of the expert they will be seeing
- Detail the type of examination (“Dental”)
- Emphasise they must bring all records and x-rays with them
- Inform the dentist is an independent dental assessor will not be advising or treating them, but if necessary he/she may carry out tests and investigations, and take x-rays and photographs.
- Instructions on who to call if they are unable to attend their scheduled appointment

Conclusion

The diagnosis is easy. The causation is difficult

In order to provide the best outcome for all parties, the expert needs the case manager to arrange an examination/assessment appointment as soon as is possible and to ensure all pre and at time of injury dental records, original x-rays and photographs are available. It may be necessary to help the claimant obtain their records. The letter of instruction to the expert needs to be informative (details of the case) and expectations clearly stated. The letter of instruction to the claimant needs to be informative (details of the expert and type of examination) and emphasise the need to ensure all records and X-rays are available on the day.

*Paul Nichols
ACLM*

DOMESTIC VIOLENCE

A pilot program commenced in December 2008 under the management of Dr Maria Nittis (Staff Specialist Forensic Medical Unit (FMU) Sydney West Area Health Service (SWAHS)) and in partnership with Penrith and St Marys Local Area Commands. The pilot program aimed to assist victims of domestic violence who come to the attention of police and consented to undergoing a forensic medical examination for the documentation of injuries. The pilot program was conducted within existing FMU resources.



formulated, most definitely did focus on ensuring that all applicants for Fellowship of the College did fulfil all the requirements of Australian qualified medical practitioners to be accredited as specialists. The current information handbook, attached to the College website, does incorporate the qualifications required for applicants to be accredited appropriately for the College.

Prospective Fellows must be able to confirm that they are active practicing medical practitioners in an area of medical practice resulting in the suitability of accreditation of them as Fellows of the ACLM that is not medical practitioners only practicing as qualified Lawyers. The main areas of medical practice in Australasia where Fellows of the College engage in professional medical activities incorporate medical indemnity, forensic medicine, legal medicine, and also forensic activities incorporating other specialties including forensic psychiatry, forensic gastroenterology and other such sub specialties of forensic medicine.

Fellows of the ACLM are required to have been engaged in suitable medical practice, incorporating legal medicine training for six years. Fellowship applicants with a law degree do require to incorporate suitable optional subjects in their law degree, such as occupational health and safety law or medical law. Applicants who have completed a master degree in medical or health law still require to attend the ACLM Basic Law Intensive, Practical Law Intensive, and sponsored Expert Witness Intensive courses to ensure that they have a full understanding of the general legal system in addition to purely medical law.

Applicants for Fellowship who have a qualified master degree in legal medicine as compared with a medical law degree do have a full component of qualifications and they are therefore not required to engage in the Basic Law Intensive or the Practical Law Intensive but it is very beneficial for accredited fellows to engage in those programs in order to ensure that they achieve suitable CPD points.

Applicants who do not have a law degree, master degree in medical law or legal medicine but who have completed a graduate diploma in medical law, forensic medicine or formal law incorporating suitable subjects such as occupational health and safety law, are able to be accredited as Members of the ACLM. Members wishing to advance to full Fellowship can do so by completing suitable external qualifications and satisfying College



requirements by attending College courses and passing College written and oral examinations.

Australian medical practitioners who do not have a law degree, a master degree of medical law or legal medicine or a graduate diploma, do qualify for accreditation as Associates of the College if they have been engaging in active medical practice for at least one to two years after they have been registered as practitioners and Affiliation is open to non-medical, suitably qualified individuals, such as lawyers practicing in health law.

Based on the above required qualifications for Fellows of the ACLM, to be assessed as qualified specialists, the CiC needs provision of the necessary information in the application documents. These documents must include a photocopy of the legal qualifications degree, a photocopy of the actual medical registration certificate, a document from the State Medical Board, but in the future Australian Medical Board, that the applicant has not been removed from the accreditation due to abnormal activities and that other information relating to certificates of medicine and birth certificates are available.

A significant focus is to ensure that the applicants, that is the Fellows, Members and Associates do have an understanding of the contents of the information handbook and also preferably the memorandum and articles of association of the ACLM in order to be fully aware of the requirements to engage in appropriate ongoing legal medicine training, research and also attending the annual scientific conference, annual general meeting and College activities when that is suitable.

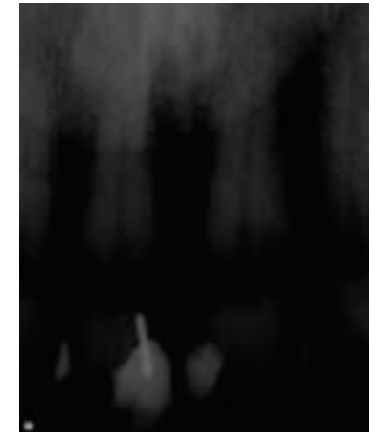
Non Australian applicants do require being able to ensure that they have a medical qualification which would normally be acceptable in Australia by the Australian Medical Council if they did migrate to Australia and to commence engaging in medical practice in Australia.

A very significant focus of the CiC assesses the availability of information provided by the applicants for Fellowship, in particular that they have a full understanding of the medical practice activities of Fellows of the ACLM and that they are available to engage in assistance to the College relating to the education of a very wide range of non ACLM medical practitioners in order to provide them with the opportunity to have a better understanding and competence to suitably engage in management of their patients.



X-rays (originals ONLY)

Radiographs are nearly always required to determine pre-existing condition, diagnosis of the injury, causation and appropriate treatment. Case managers need to be aware that original films or digital images are required. X-rays do not photocopy well enough to be diagnostic. The original exposed films need to be posted, or digital images emailed, to the expert (the latter is preferred). High quality duplicates of films are acceptable. "No x-rays were available" is the second most common cause of the need for a supplementary report and delays.



Right: Original PA x-ray showing tooth 11 with pin retained composite filling that has fractured and with recurrent decay. Note decay in adjacent teeth (unrelated to the incident). Left: Same X-ray photocopied is not diagnostic! Pre-incident records and original X-rays show the claimant had a long history of failure of fillings in his front teeth and was advised 5 years before the incident that the filling was temporary and he would need a crown. Causation was apportioned only 20% to the incident

Letters of instruction to claimant

The letter of instruction from the case manager to the claimant is critical. Too often it is a form letter that says "medical examination" and has no request to bring records and x-rays. The claimant should be contacted before the letter is sent to ask if they have appropriate records and x-rays. If



posted, or digital emailed, to the expert. If they need a letter of release, prepare, have claimant sign, then fax to dentist.

Pre-existing Condition



An example of a pre-existing condition (decay) of the subject fractured tooth upper right central incisor (tooth 11). Pre-incident records show there was an old filling with recurrent decay diagnosed 3 years before the incident. The claimant was advised to return for restoration but did not. The expert was able to opine the major causative factor was the failure to return for recommended treatment, at best the pre-existing condition was aggravated by the incident and the insurer had diminished liability. Note the evidence of a history of poor oral hygiene.

At time of incident records (injury)

As the expert rarely sees the claimant at the time of incident, he or she relies on the examining dentist for description and diagnosis of any injury as a result of the incident. Clinical notes (with typed transcript), report (with results of investigations, diagnosis, treatment plan and estimate of fees) and x-rays are required. Clinical photos are very helpful and should always be requested when contacting the examining/treating dentist.



I confirm that as CiC of the ACLM, it is essential to ensure that College applicants are qualified active medical practitioners, that are qualified doctors with law degrees are not simply purely practising as lawyers. As such, legal medicine is therefore an active medical practice specialty which, from the time of founding of the College, has been focusing extensively on providing suitable training to College Fellows, Members, Associates and also a wide range of other medical practitioners incorporating such allied disciplines as physiotherapists or occupational therapists, to have a full understanding of law issues which provides them with a wide range of benefit to assist their patients.

*Maurice Wallin
ACLM Council*

ASSESSMENT OF DENTAL INJURIES



Abstract

Diagnosis and treatment planning of dental injuries, for an experienced dentist, is usually not difficult. The assessment of causation and liability can be difficult if the case is not well presented (by the case manager or lawyer) and is not supported by appropriate pre and at time of incident dental records and original x-rays.



Timeliness (Duty to mitigate against further damage)

All parties have a duty (of care) to ensure the provision of timely (as soon as is possible) assessment and treatment of the injuries. More often than not, delays result in the need for more extensive (and expensive) treatment, and the party responsible for the delay (claimant, insurer, lawyer or treating dentist) may be deemed liable for the extra expense. Where the treating dentist has proposed extensive treatment; it is in the interests of all parties to arrange immediate referral for assessment by an expert witness. Also, initially, injuries may appear minor but are in fact more serious (commonly internal stress fractures or loss of vitality), and the expert can predict future problems and advise appropriate preventative treatment.



This claimant fractured a front tooth in an MVA. Due to delays on the part of the insurer he did not receive timely treatment (a simple filling \$200.00) and eventually required root canal therapy and post crown costing \$3,500.00. The insurer was deemed liable!!

All parties have a duty to ensure appropriate and timely treatment is provided.



Quality of the Letter of Instruction (LOI)

The quality of the letter of instruction from the case manager will determine the quality of the expert witness report. Too often a form letter is used where names and dates have been inserted, irrelevant questions have not been deleted (for example, “need for home care”) and no supporting information accompanies. Case managers should be encouraged to:

- Use font size 13 or larger (to ensure photocopied and faxed letters can be read)
- Provide their assessment of the incident and injury with as much information as possible
- As a minimum, attach :
 - Ambulance report
 - Hospital Discharge Report
 - All medical reports
 - Treating dentist’s clinical notes, report and x-rays
 - Pre-incident dentist’s clinical notes and x-rays
- Delete inappropriate questions and add appropriate questions
- Check they have not duplicated questions
- Conclude with a summary of the expectations they have of the report
- Provide full details of the case manager (including telephone and email)

Pre-incident records (causation)

It is not possible to determine pre-incident condition and make definitive comment on causation without pre-incident records (including x-rays). Pre-incident records (their unavailability) are the most common cause of requests for supplementary reports and delays. Case managers need to be aware of this and inform all claimants they need to have their pre-injury records and x-rays to enable progression of their claim. The claimant may need help compiling a letter of release (under the Act) to give to their dentist. Ideally, 5 year and 1 year pre-incident x-rays are required (originals or digital, not photocopies). Clinical notes are often cryptic and illegible so there may be a need for a typed transcript (if case manager can’t read it then usually neither can the expert, so need to ask for a typed transcript). The best procedure is to contact the claimant and ask for the name of pre-incident and treating dentist(s). Call dentists and request original x-rays

