

The receptionist's duty of care:

Are practitioners vicariously liable?



Anne Matthew is a Casual Academic and Postgraduate Student at the Faculty of Law, Queensland University of Technology
PHONE 07 3864 2111 **EMAIL** a.matthew@qut.edu.au

The Supreme Court of New South Wales in *Alexander v Heise* [2001] NSWSC 69, 23 February 2001 (unreported) recently considered the vicarious liability of a general practitioner for the acts of his or her medical receptionist. Further, the court examined the circumstances in which a general practitioner and a medical receptionist owe a duty of care to a prospective patient seeking an appointment.

Facts

The plaintiff, Mrs Alexander, sought an appointment for her husband to see a doctor. Mr Alexander had never before consulted a doctor of the surgery. The first defendant was Dr Heise, a General Practitioner. The second defendant was his wife and the receptionist at his medical surgery. The facts were ►

a matter of dispute.

Mrs Alexander, without conveying any 'real sense of urgency', informed the second defendant that she was worried about her husband, as he had been woken the previous evening by an unusually severe headache. He appeared well in the morning and had gone to work after agreeing to see a doctor if Mrs Alexander could get him an evening appointment. The plaintiff alleged that the receptionist expressed concern about making a long evening appointment with her husband, the doctor, as he had been working quite long hours.

The receptionist did not consider the matter urgent and scheduled an appointment for one week later, when the doctor had a lighter evening schedule. Mr Alexander collapsed the day before his appointment with a *Grade V berry* aneurism in the Circle of Wills. This cerebral haemorrhage caused his death.

The plaintiff sought damages for the alleged medical negligence of the first and second defendants. It was alleged that:

- The doctor and his receptionist owed a duty of care to Mr Alexander
- The doctor was vicariously liable for his receptionist's breach of duty, and
- The doctor had breached his duty to address the plaintiff's concerns by not having sufficient protocols in place for the receptionist to follow in these matters.

The defendants argued that:

- there is no duty of care 'on the part of a medical



practitioner to attend upon a person who is sick, even in an emergency, if that person is one with whom the doctor is not and has never been in a professional relationship of doctor and patient¹

- the administrative staff of a medical practice did not owe a duty of care, and
- a doctor could not be vicariously liable for information known to his or her administrative staff.

The Decision

Duty Of Care

The court considered that several factors had a role to play in determining whether Dr Heise owed a duty of care to Mr Alexander. These included:

- Public policy
- The defendant's knowledge of the risk compared to the plaintiff's appreciation of the risk: *Perre v Apand*.²

Unlike Dr Heise, Mr and Mrs Alexander did not have medical knowledge and did not appreciate the sinister risks a severe headache could represent.

- Mr Alexander did not present in person. He relied on his wife to make the appointment for him. The court was prepared to accept that this was not an unusual situation. Indeed, frequently such queries are made over the telephone.

The court found that 'once Mr Alexander's symptoms were described to the receptionist, albeit by his wife, and an appointment was made, Mr Alexander became a patient of the practice'.³ Both defendants owed a duty of care to Mr Alexander.

The court decided that a general practitioner has 'the responsibility to determine whether a patient requires urgent medical attention' and then to ensure that the patients seeking appointments are properly prioritised.⁴ The medical practitioner should have guidelines in place so that where the



**Occupational
Rehabilitation
Unit**

ABN 34 000 025 794

The ORU is a WorkCover & Comcare accredited rehabilitation provider. We offer the following services:

- * **Home Based Assessment**
- * **Occupational Therapy Assessments**
- * **Psychological Assessment**
- * **Consultancy**

We also offer:

- * **Functional Assessment** — An objective measurement of an injured person's physical abilities in relation to work capabilities.
- * **Vocational Assessment** — Retraining and redeployment goals are determined on the basis of medical, physical, psychological and educational factors

If you have any questions or would like to make a referral please ring ORU.

Address: PO Box 6, RYDE NSW 1680

(T) 02 9807 3200 (F) 02 9809 7836

Email ORU@doh.health.nsw.gov.au

“The receptionist did not consider the matter urgent and scheduled an appointment for one week later, when the doctor had a lighter evening schedule.”



receptionist is unsure if the patient's condition is urgent, he or she must consult the doctor 'for the doctor's decision as to whether the patient should be seen' urgently.⁵

The court found that Mrs Heise was an employee of the first defendant and further that the doctor was vicariously liable for her actions.⁶

In addition to the doctor's vicarious liability, it was held that a medical receptionist owes a duty of care to the patient to 'ensure that if he or she presents with a possible urgent medical condition, that patient is seen in a timely manner'.⁷ If the doctor is unavailable, the receptionist should refer the patient to the nearest hospital or another practice. A properly trained receptionist acting prudently would be expected to tell the doctor about a patient complaining of a headache which raised their 'index of concern' and ensure that an immediate appointment was made.


Breach

The court found that neither the doctor nor the receptionist had breached their duties of care. The doctor had protocols in place. In addition the receptionist was trained, albeit in a predominately casual and informal manner, on the 'proper management of patients' presenting with urgent complaints.⁸

A medical receptionist acting reasonably and prudently would have not have appreciated Mr Alexander could have a life threatening condition on the information provided.⁹ The receptionist had been told of the severe headache the evening before, but also that Mr Alexander appeared well next morning and had gone to work. Her index of concern was not raised.

In these circumstances the receptionist was not under an obligation to consult the doctor. The court found that Mr Alexander had made a choice not to see a doctor on an urgent basis, but delegated the making of a medical appointment to his wife. He chose to go to work and was only willing to see the doctor after 6pm, which limited the available appointments.¹⁰

Conclusion

This decision pushes at the boundaries of just who may be a doctor's patient. The court indicated a preparedness to find that a duty may not be limited to the spouse of an existing patient. The court's indulgence may extend to persons presenting in person, over the telephone or by proxy. That duty existed even though the patient's symptoms would not have raised a prudent receptionist's 'index of concern'. Further the court's finding of vicarious liability should not be underestimated given the High Court's recent decision in *Hollis v Vabu*¹¹ where the existence of an employment relationship (and attendant vicarious liability) was determined by expansive reference to work practices rather than detailed contractual terms. 

Footnotes:

- ¹ [2001] NSWSC 69 at para [58].
- ² [1999] HCA 36 at 21 para [216].
- ³ [2001] NSWSC 69 at para [64].
- ⁴ *Ibid* at para [74].
- ⁵ *Id.*
- ⁶ *Id.*
- ⁷ *Id.*
- ⁸ *Ibid* at para [80].
- ⁹ *Ibid* at para [77].
- ¹⁰ *Id.*
- ¹¹ (unreported High Court of Australia, 9 August, 2001) [2001] HCA 44.

ENGINEERING AND ERGONOMICS EXPERT

MARK DOHRMANN AM FIEAust BE (Mech) CPEng CertErg MESA Engineer, Ergonomist



ALL PERSONAL INJURIES

- ◆ Accidents — all sorts (workplace/public)
- ◆ Strain/overuse injuries — backs, shoulders, arms
- ◆ Employer, occupier and product liability
- ◆ Slips and falls
- ◆ Job/task appropriateness
- ◆ Motor vehicle accidents

Over 3000 reports on liability and negligence

completed since 1977.

Regular court attendance.

All states serviced.

Tel: (03) 9376 1844 (24hrs)
mark@ergonomics.com.au
 PO Box 27, Parkville, VIC 3052

Search our cases by keyword at: www.ergonomics.com.au