

Do Nurses and Midwives have Adequate Knowledge and Understanding of Medical Negligence and the Medico-legal Process?

Medical negligence case costs continue to rise across the UK. In the year 2022/23 NHS resolution report that the amount spent on claims was 2.64 billion, compared to 2.5 billion in the previous year (NHS Resolution, 2023).

From a nursing and midwifery expert perspective, there are common recurring themes evident in many negligence cases, namely; lack of documentation, failure to follow local policy, failure to recognise the deteriorating patient and failure to escalate.

More often than not, failure to recognise a deteriorating patient, and indeed failure to escalate can be attributed to the experience and subsequent knowledge of the nurse or midwife. However, could adequate knowledge of the medico-legal process and the role of the expert witness result in ensuring that standards and policies are followed, along with more accurate and meaningful documentation? Furthermore, would a move to bring knowledge of expert witness work to the forefront result in more interest in the role, and subsequently more experts available to assist the courts?

What is the current status in pre-registration training?

Having always had an interest in law, I was very much looking forward to 'law and ethics' in my pre-registration training, and I was soon disappointed when I realised that there was very little information regarding law, and that the sessions mainly covered ethics in relation to decision making, and a small amount of law in relation to this. This was 24 years ago, when the United Kingdom did not seem quite as saturated with compensation claims. However, from initial enquiries into the current offering in relation to law and medical negligence in pre-registration training, I have ascertained that there does not seem to have been any change.

The relatively new Nursing and Midwifery Council Standards of proficiency for registered nurses (2018) state that *"At the point of registration, the registered nurse will be able to: . . . 1.2 understand and apply relevant legal, regulatory and government requirements, policies and ethical frameworks, including any mandatory duties, to all areas of practice, differentiating where appropriate between devolved legislatures of the United Kingdom."* While medical negligence does sit within this, the broad nature of the point, as well as it covering such a huge area does suggest that it is likely that the subject of medical negligence gets trumped by subjects such as ethical decision making, just as it did during my training all of those years ago. On reviewing the Standards of proficiency for midwives (2019), the wording in relation to law is much the same as for registered nurses. Given the autonomous nature of the midwifery role, I was surprised that the standard was so vague.

The common theme for many of the module titles covering law in pre-registration training across the UK is *"Professional codes, ethics, law and humanities."* Having looked at the content of these modules, I have been unable to find anything concrete in relation to medical negligence.

On questioning a senior lecturer on this subject I was told *"To my knowledge I don't think we cover medical negligence formally anywhere in the pre reg (sic) programme. The importance of documentation in relation to preventing negligence claims will be covered, but I think that is probably all. . . it would be more likely covered in midwifery pre reg (sic) because of the more autonomous nature of the role. . . Most pre reg (sic) struggle to come to terms with what negligence looks like let alone what to do in it's presence!"*

On further enquiry I discovered that there is also very little in the way of medical negligence information within midwifery pre registration training.

And post registration?

Clinically, as an advanced nurse practitioner, I work autonomously making decisions regarding diagnosis and treatment of patients presenting with undifferentiated and undiagnosed conditions. It would be a sensible assumption to make then, that having undertaken courses in advanced practice at both degree and Master's level, that I would be fully informed of the legal implications of my practice. And indeed I am fully informed, but this is entirely due to my work as an expert witness, and very little to do with my post registration training.

I distinctly remember a session very early in my nurse practitioner training (circa 2009), that covered what would happen at court; the lecturers attempting to act out a court scene, where a nurse practitioner was being cross examined. Following my eleven years working as an expert witness, I now know that this session was wholly inaccurate. In addition, we were told, if your documentation was lacking do not fear! Your previous consultations will be reviewed, and providing that they were up to scratch, all would be well (!). Again, in my time as an expert witness I have never been asked to review anything other than a consultation in question.

The Royal College of Nursing Standards for Advanced Level Practice (2018) state that *"Registered nurses working at this advanced level must meet the following standards: . . . Be educated to Masters (sic) level . . . This education will include the following core areas . . . accountability – including legal and ethical issues,"* yet I do

not recall any specific legal based session during my Master's degree. Furthermore, having recently reviewed the core modules of many different advanced practice Master's degrees, I was unable to find anything relating to law, civil or otherwise.

Having previously worked as a guest lecturer on post registration courses, I did plant the seed of introducing a specific medical negligence session, which was gratefully received and was a success the handful of times that I was able to present it. Unfortunately, budget always prevails, and it is not something that was able to continue.

Thoughts for future nursing and midwifery education.

As a trainer and mentor for expert witnesses, I have heard from experts time and time again how their work as an expert witness, along with the training we provide at Somek and Associates, has both improved and informed their clinical practice. My own expert witness and clinical experience mirrors this. There is no doubt that my work as an expert witness dramatically changed my practice and documentation, and I was always a bit of a documentation pedant prior to being an expert! Yet as an expert I understand what constitutes meaningful and thorough documentation, I know what I am looking for to satisfy my enquiries regarding whether the care was within standard. My overarching thought here is – shouldn't every clinician understand this?

The simple answer is yes, every clinician should know what they should be doing, and what they should be documenting, to ensure that the care they have provided was within standard, and that there is evidence of such. I consider that this knowledge is tightly linked with medical negligence, and the role of the expert witness. Awareness of the medico-legal process does, in my experience, assist in underpinning the care we provide as clinicians.

Therefore, it is my opinion that if the medical negligence process, including the role of the expert witness, was explicitly taught in the university setting to nurses and midwives (or any patient facing clinician) there would be a better understanding of the legal implications of practice, and subsequently patient care would improve as a result. Furthermore, if the role of the expert witness was more widely known and understood, it may also result in increased interest in the role, and more experts available to take instructions and assist the court.

For me, being an expert is not about criticism or finger pointing, but about advocating the standard of care that patients are entitled to receive, and equally, recognising when the Defendant has done nothing wrong. I have no doubt that most nursing and midwifery expert witnesses feel the same, yet in my experience the role is so very misunderstood. For me, the introduction of the medico legal process and the role of the expert witness in to nursing and midwifery training can only be a positive move, for patients, NHS Trusts, nurses, midwives, and our legal colleagues alike.

References

NHS Resolution (2023) Annual report and accounts 2022/23.

Nursing and Midwifery Council (2019) Standards of proficiency for midwives.

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Author

Michelle Caton-Richards

Registered Nurse

MSc Advanced Healthcare Practice , PG Cert,

Independent Prescribing , Dip HE Adult Nursing

Michelle qualified as a Registered Nurse in 2003 and has spent most of her clinical career in the accident and emergency department, and more recently, in the urgent and unscheduled care setting. During her career she has worked in many different emergency departments in London, Surrey, Berkshire and Lincolnshire, a deliberate attempt to gain as much varied experience as possible.

Michelle currently work for Somek and Associates as the deputy lead for quality assurance and training (liability). This role involves providing quality assurance and training to new associates, to develop their role as a confident and competent expert witness, as well as responsibilities pertaining to the wider business, such as recruitment, client engagement and process development. She also continues to maintain her own expert witness work through Somek and Associates. Maintaining her clinical credibility through working regular locum shifts as an ANP. She loves to teach and inspire, and was proud to have recently been involved in the roll out of the Community Pharmacy Consultation Service within Primary Care Networks. Her role in this project involved teaching community pharmacists nationwide how to take a detailed history from patients, and how to undertake various clinical skills. During the Covid pandemic, she worked as a Covid vaccinator, assisting in the vaccination programme in her local area.