Plastic, Reconstructive and Aesthetic Surgeons Indemnity Scheme
PRASIS
Protecting Plastic Surgeons

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E-Newsletter

July 2017

Message from the PRASIS Chair *Anita Hazari*

PRASIS continues to be strong with over 180 members in our community. Thank you to all who have given feedback on the new PRASIS website **http://prasis.co.uk** . The link to the EIDO personalised information sheets, also found in the membership benefits/ information sheets, is now active: dc.eidohealthcare.com . You will require your login details for EIDO provided at the time of renewal with CFC Underwriting Ltd.

I am grateful to Clinical Board member Howard Peach for taking over the role as the 'Webmaster'. Howard will be responsible for the website, so please do let us know where you would like to see improvements. With the NTN Trainee Indemnity scheme now accepting applications from plastic surgery trainees, PRASIS board member Stephen Hamilton will be leading its strategic development. Trainee membership key facts and application forms have been circulated by PLASTA to its members.

Some spaces are still available for the first PRASIS educational day for Consultants on **Saturday 16 September**, 2017: **Managing the risk profile of your private practice - Anatomy of a Claim** at the CFC Underwriting Ltd Offices, City of London (nearest tube station: Bank). In addition to talks on Anatomy of a Claim, David Coleman will be speaking about his experiences of 'Being sued- Lessons and Personal Reflections'. The afternoon will see a mock trial, followed by drinks and canapés. The second educational day is a **Dermatoscopy training day** on **Thursday 16 November 2017** in Leeds. Howard Peach, with his dermatology colleagues, will be providing high quality hands-on training. Both educational days are free to PRASIS members. Places will be in order of receipt, so reserve your place soon by emailing Helen Roberts: helen.roberts@bapras.org.uk

The new PRASIS Code of Practice 2017 has been emailed separately to you. It reflects updates following the Montgomery case, GMC guidance on cosmetic surgery and RCSE Professional standards in Cosmetic Surgery. We recommend you read this document to familiarise yourself with its content. It can also be found on our web-site at:
http://prasis.co.uk/_userfiles/pages/files/PRASIS_code_of_practice_2017_P4.pdf

If you have any issues you would like to discuss or be addressed, please contact me:
anita.hazari@nhs.net

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Underwriters Section

CFC Underwriting Ltd: *Sharon Brennan*

Consenting Patients for Breast Implant Associated-ALCL

It seems there is a new healthcare crisis emerging every day, and the current hot topic 'du jour' for plastic surgeons pertains to BIA-ALCL. Whilst BIA-ALCL is well publicised and has received attention from UK specialist associations (BAPRAS, BAAPS & ABS), many surgeons remain uncertain about what to do with this information, and how to apply it to everyday practice. What are the legal and moral duties towards patients, should this be disclosed as part of the consent process and if so, how is this achieved in line with statutory duty?

With these questions in mind I urge you to read the highly informative article: Johnson L, et. al*, 'Breast implant associated anaplastic large cell lymphoma: The UK Experience. Recommendations on its management and implications for informed consent,' Eur J Surg Oncol (2017),* which succinctly deals with these questions.
The key findings can be summarised below: -

- Survey results show that a very high proportion of surgeons are failing to discuss BIA-ALCL with their patients, the most likely cause being the lack of understanding around the issue;
- Where BIA-ALCL has been discussed, this has not impacted on patients proceeding with surgery;
- A cornerstone of the *GMC Guide to Good Medical Practice* reminds surgeons that patient-centred approach to consent is a mandatory requirement;
- The legal precedent of *Montgomery 2015* sets out a surgeon's duty vis-à-vis consent, and the BIA-ALCL issue falls within the criteria to fulfil this obligation;
- Failure to inform patients of this risk exposes the surgeon both to litigation and to GMC hearings.

All of this information is helpful in setting out your duty of care to patients. Yet on a more practical level, how do you comply with all regulations and guidelines and incorporate them into your daily working life? Your first instinct might be to add a note at the bottom of your consent form, in effect treating this as a "tick box" exercise, but with the backdrop of the Montgomery ruling and subsequent case law, the consent form will only go so far. The focus around litigation and regulatory investigations will scrutinise your overall communication and record-keeping, and also include an assessment of whether you are satisfied that the patient has adequately understood what has been discussed in order to make an informed decision.

To help ensure you follow protocol, and as part of CFC's indemnity product, PRASIS members are entitled to utilise EIDO information sheets (B07, B10, B12) for patients, which state: "*There is a reported link between having an implant and a rare type of cancer called anaplastic large-cell lymphoma but the increase in risk is small*". This statement is adequate and passes the Montgomery test since it explains to patients that there is a risk of an adverse outcome. We urge you to not only utilise these documents, but also to ensure you communicate clearly and transparently with your patients. As we have seen time and again, one of the best ways to avoid litigation is effective communication since the likelihood of litigation is increasing – even since starting to write this article I have found an article in one legal journal dramatically entitled "Breast Implants Causing Rare and Deadly Cancer".

The Medicolegal Section

Weightmans LLP: *Melanie Isherwood*

Performing hand surgery in minor surgical facilities.

Modern operating theatres (OT) use ventilation rates at 25 air changes per hour, with filtering to rigorous standards and positive pressure differential of at least 25 Pa with respect to outside air [1]. The primary objective is to protect patients from surgical site and other infections, the main source of airborne contamination being from the skin of theatre staff [2] as well as removal of anaesthetic gases.

Most hand surgery may be carried out with local or regional anaesthesia. Hand surgery has relatively low rates of infection [3]. May this be carried out, in safety, in less expensive facilities such as general practice procedure rooms or minor operations rooms without the required ventilation, thereby streamlining services and reducing cost? The types of procedures include treatment of Dupuytren's disease, carpal tunnel decompressions, needle release of trigger finger and treatment of ganglia.

What is the risk of complaint or litigation if a patient were to develop infection?

The evidence on patient safety to date is promising but remains inconclusive. In a recently published study [4], six articles were compared, discussing hand surgery conducted in facilities other than an OT, only three of which were large prospective studies with clear methodology. Regrettably, there was no standardisation between studies regarding sterility attributes of each location used for surgery and the authors concluded, *the quality of evidence provided from these six studies is not sufficient to change surgeons' practices or satisfy infection control organisations that a global change of practice is required. However, infection rates are undoubtedly low, even when operating outside the main OT environment.*

The authors recommend further research including randomised controlled studies possibly involving multi-centre trials. Until such a study is published we recommend that before hand surgery is conducted outside an OT, specific consent is taken including discussion of risk of infection in this environment and the alternative of operating within an operating theatre environment.

The Supreme Court decision in *Montgomery v Lanarkshire Health Board (2015)* demonstrates that all *material risks* must be discussed with the patient before treatment. A material risk is defined as being a risk that the reasonable person in the same position as the patient would consider to be significant. Where elective surgery to the hand is contemplated, we recommend that there be discussion regarding risks and benefits to the patient of surgery carried out outside an OT. This should be carefully documented. If surgery is contemplated in facilities such as GP procedure rooms, then please contact us for advice.

References

1. Department of Health. *Health Technical Memorandum 03-01; Part A, Specialised ventilation for healthcare premises.* London . DoH; 2007.
2. Anonymous. Sepsis of surgical wounds. In: Willis RRO, Blower R, Garrod LP, Shooter RA; editors. *Hospital infections; cause and prevention.* 2nd edition. London: Lloyd-Luke; 1966. P 77-115.
3. Calkins ER. Nosocomial infections in hand surgery. Hand Clin. 1998, 14:531-40.
4. Jogodzinski NA, Ibish S and Furniss D. The European Journal of Hand Surgery 2017,Vol.42 E (3) 289-294.

The Brokerage Team

MPI Group (a division of Lucas Fettes and Partners Ltd): *Hugo Merison*

Impact of the recent change in Discount Rate to insurance premiums - Why do you need to know about it?

In an accident, the amount of compensation to an injured person with a life-changing injury will depend on the victim's potential earnings and age expectancy. The actual amount they receive is also adjusted according to the interest they can expect to earn by investing it.

For example, if a 30 year old is expected to earn £100,000 per annum to age 65, then 35 x £100,000 = £3.5m is a reasonable starting point. When inflation is factored in, damages are likely to increase to £5m. Investment returns on the £5m have to be taken into account. Until recently these investment returns were expected to be +2.5% and therefore there was a "discount" rate of 2.5% per annum which would reduce the damages down to approximately £4m. These sums can be much larger where someone is disabled and needs care on a daily basis.

The discount rate is a figure used to help set compensation pay-outs when people suffer serious injuries, for example following medical negligence or a car crash. In finalising the compensation amount, courts apply a calculation called the Discount Rate – with the percentage linked in law to returns on the lowest risk investments, typically Index Linked Gilts.

On 27 February 2017, The Lord Chancellor announced a change in the discount rate, made in accordance with the law, reducing it from 2.5% to -0.75, effective from 20 March 2017.

This decision, as well as seeing compensation payments rise, is also likely to have a significant impact on the insurance industry and a knock-on effect on public services with large personal injury liabilities – particularly the NHS and medical negligence cases. The first case to be settled under the new system by an NHS trust saw the compensation for a 10 year old girl increase from £3.77m to £9.29m.

For further information please see the following link to the ABI information on the discount rate:

https://www.abi.org.uk/products-and-issues/topics-and-issues/personal-injury-claims/discount-rate

Facts about PRASIS Policy Cover

Two things you may not know about PRASIS cover (CFC Underwriting Ltd only)

- Extended reporting period is for 25 years and includes cover for claims arising from your medical and clinical professional services, medico-legal work, review boards or committees and defamation.
- Cover is also provided for Cyber and Privacy liability. This includes cyber threats and extortion resulting in a specific threat made against you, which may prevent access to your computer systems or any third party systems hosting your applications or data.

Contact Details

Medicolegal advice

Please check your policy and call the appropriate 24 hour Medico Legal helpline for advice. You must report all circumstances which may reasonably be expected to give rise to a claim.

For policies underwritten by CFC Underwriting Ltd contact:
Weightmans LLP
1st Floor
Temple Row
Birmingham
B2 5AF
Tel: **0845 0131574**
Email: surgeon.helpline@weightmans.com

INCIDENT RESPONSE HOTLINE (CYBER & PRIVACY cover only): In the event of an actual or suspected privacy breach (e.g. you lose your laptop or your computer is compromised in any way) please call our free emergency 24-hour Data Breach Hotline: 0800 975 3034.

For policies underwritten by W. R. Berkley Syndicate Management Limited (WRB) contact:
MPI Group Ltd (previously TWG Resources Ltd)
7 Blighs Walk
Sevenoaks
Kent
TN13 1DB
Tel: **0845 5194393**
Email: advice@mpi.group

Adverse Events

Notification of adverse events

The Indemnity Schemes arranged by PRASIS provide members with indemnity for costs and damages incurred in clinical negligence claims, through claims made insurance policies. You must report all circumstances which may reasonably be expected to give rise to a claim to the appropriate 24 hour Medico Legal Helpline, as soon as it is reasonably practicable. Your policy will also provide other covers such as Public Liability, and these claims should also be notified to the same helpline. Please refer to your policy documentation for full details of the policy cover, terms and conditions, which will also include details of the Medico Legal helpline that is applicable to your policy.

Failure to notify cases or to co-operate with the claims management team may jeopardise the indemnity available.