Letter to the Editor

To the Editor: —I enjoyed Alice Brandfonbrener's editorial "But I Didn't Ask to Be a Lawyer" in the June 2002 issue of MPPA.[1] I understand and sympathize with her. Many physicians who, like her, are involved in these cases for altruistic reasons rather than pure commercial—and I believe that this is more common in the world of performing arts medicine—must find themselves in the same predicament. However, in the words of an eminent English lawyer, who qualified and practiced as a gynecologist before turning to the law, when considering medical and scientific evidence (or in many cases, including performers, non-scientific evidence!). ". . . However scientific the subject matter of the claim and however recondite the evidence and the argument, the legal definitions must apply in a Court of Law; the problem for the lawyer is in making the scientist understand a totally different concept of proof required by the court."[2] Therefore physicians involved, whether altruistic or not, must understand the basis of these claims.

Whether the claim is under workman's compensation (WC) or Personal Injury (PI), the basis of these claims both in the United States and in the UK, is within the tort of negligence.[3] For any such action to be raised, there has to be a breach of duty (a legal and not a medical issue) and a consequential and foreseeable loss or injury. If the case is WC the injury may fall under local WC regulations and causation is not an issue. If the medical condition does not fall under WC or is part of a PI claim then the issue of causation is uppermost and most vexing for physicians. This is because legal "causation" is completely different from medical causation, and the tests are different.

Scientific causation of a specific medical condition requires the fulfillment of strict scientific criteria (strength of association, consistency, specificity, temporality, and biological gradient").[4] Smoking and lung cancer meet such criteria, but carpal tunnel syndrome (CTS) and keyboard usage do not. Legal causation, on the other hand, requires only that on the balance of probability (51%) such an injury or loss could have occurred. Put in another way, absent the act or omission of the defendant, is it more likely than not that the injury would have occurred? Under this legal test it is quite possible in a given situation in a given patient for keyboard or piano usage to have "caused" CTS. The degree of injury or loss should be calculated on a mathematical basis (measured loss of grip strength, AMA disability tables, cost incurred, and loss of earnings) and the final rewards are defined either by the WC system or in PI by the judge or the court where U.S. juries are notorious for grossly unrealistically high settlements.

This is, of course, a highly simplistic summary of a much more complex process, but it behooves any physician involved in this type of work to understand the basis of these actions and to be able to provide the best expert advice to all sides in language that is useful to the lawyers in addressing the issues the court requires. —IAN WINSPUR, L.L.M., F.R.C.S., F.A.C.S., *Hand Surgeon, The Hand Clinic, London, UK*

REFERENCES

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