

TUESDAY, FEBRUARY 17, 1998

The Sydney Morning Herald

Courts can no longer trust medical 'experts', says MP

By DEBRA JOPSON

NSW needs to overhaul urgently the way "so-called expert medical evidence" is given in court in personal injury cases because doctors' credibility is in doubt under the present system, the head of a key NSW parliamentary committee, Mr Bryan Vaughan, said yesterday.

Both plaintiff and defendant law firms have a stable of medical practitioners available to give evidence in litigation matters, "and a plaintiff's attorney would choose a medico from a defendant stable at the peril of his client", he said.

Speaking at the National Medico-Legal conference in Sydney, Mr Vaughan revealed that the NSW Attorney-General, Mr Shaw, had told the Standing Committee on Law and Justice, which he chairs, that trial judges were concerned

about the credibility of competing experts and their medical reports.

The judges had remarked "that in some cases the difference between medico-legal reports tendered by the parties are so great as to cast doubt as to whether they relate to the same person", Mr Shaw had told the committee.

To rectify this, NSW needed "heroic legislation" which might be ahead of community attitudes, Mr Vaughan said.

His committee agreed with the director of the Newcastle Bone and Joint Institute, Professor Nikolai Bogduk, that "evidence-based medicine" rather than "so-called expert medical opinion" should be used for court.

The committee adopted his view that "the courts need to decide whether they will indulge the

medieval practice of respecting the opinion of any expert, that whatever the witness says is reliable, valid and admissible, or that somehow the courts will inquire about the reliability and validity of so-called evidence and respect that which is emerging as the scientific evidence in this field".

Professor Bogduk's views were highly controversial and he had "nearly started World War III" when he aired them, Mr Vaughan said.

One doctor said yesterday there was "a kind of despair about evidence-based medicine", which in some specialties was "very vague indeed". The defendant could win every time if the courts favour evidence-based medicine, he said.

Mr Vaughan said doctors should be allowed to give court evidence by video-conference.

Reproduced with permission of Sydney Morning Herald

The role of medical negligence special interest groups in branches

Dylan McKimmie, Brisbane

There can be no doubt that members of APLA's Medical Negligence Special Interest Group benefit greatly from the educational role the group plays. In Queensland, the Medical Negligence group has had a successful series of guest speakers from the medical ranks discuss medical negligence issues within their own area of expertise. They provide information the APLA member can take away and apply to individual cases within their own caseloads.

However, the greatest threat to medical negligence plaintiffs is not the level of medical knowledge possessed by their lawyer, but the increasing push by interested parties (and medical defence organisations) to restrict common law access to victims of medical negligence. This is a battle that cannot be fought by individual practitioners. It needs the lobbying power

and strength of APLA on a national level to ensure plaintiffs' rights are not eroded.

The medical negligence special interest group is ideally placed to contribute significantly to the fight against misinformation and propaganda being disseminated by interested medical practitioners and medical insurers. With its membership of dedicated and experienced practitioners, the special interest group can act as a valuable research tool for the preparation of briefing material for APLA to use in the fight against moves towards restricting common law access in medical negligence actions.

The Queensland branch group plans to invite senior lawyers practising within the area of medical negligence litigation to talk to the special interest group thus

broadening the focus of the group to including the development of members legal skills. This approach, the combination of lawyers and non-lawyers educating members, has been utilised successfully during the Litigation at Sunrise seminars. We hope that this continues the important educational role the group plays. We also hope to take the initial step towards assisting the national lobbying effort by identifying what contributions the group can make by way of lobbying and information gathering on state-based medical negligence issues. ■

Dylan McKimmie is Branch Chair of the APLA Queensland Medical Negligence Special Interest Group, and is an Associate at Carew & Company in Brisbane.
Phone 07 3236 1528 or email carewco@ozemail.com.au