



AMPERSAND

ADVOCATES

Clinical Negligence Conference 2024: Case Law Update (2)

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SCOTTISH CASES

- DS v NHS Grampian [2024] SC ABE 11
- SD v NHS Grampian [2024] CSIH 7
- B's representative v NHS Grampian [2024] CSOH 72



DS v NHS Grampian [2024] SC ABE 11

- Aberdeen Sheriff Court, Sheriff Bovey KC
- Delay in diagnosing and treating pineal cyst
- Breach of duty established for actions of pathologist
- Causation established, restricted to period 2013-2015
- Solatium - £7,500 for insomnia, visual distortion and tinnitus



SD v GRAMPIAN HEALTH BOARD [2024] CSIH 7

- Reclaiming motion - Lord Justice Clerk, Lord Pentland and Lord Malcolm
- Cerebral palsy case regarding actions of midwives and an obstetrician
- LO found breach of duty not established
- Evidence-based appeal
- Refused



ISSUES TO BE CONSIDERED

1. Whether the on-call registrar negligently failed to arrange an emergency c-section,
2. The decision the doctors took during the induction ward rounds, and
3. Whether there was a sufficient connection between any negligent acts or omissions on their part and the injuries suffered by LD following the pursuer's transfer to the labour ward.



FAILURE TO ARRANGE AN EARLIER EMERGENCY C-SECTION?

- Evidence was not that c-section only realistic mode of delivery, not put to registrar
- *[57] “Despite the submissions to the contrary, in our view an argument for a particular course of action, or that at 0410 hours some obstetricians would have decided on a caesarean section, is not sufficient to meet the Hunter v Hanley test for professional negligence”*



THE DECISION THE DOCTORS TOOK DURING THE INDUCTION WARD ROUNDS

- Case on record directed at midwives
- *[67] “It is remarkable to press a case of fault against doctors who have not been identified, who had no awareness that their care of the pursuer was being challenged in court, and who had no opportunity to refute the serious allegations made against them. There is no information as to what they were told, if anything, on the matters in issue, and what decisions, if any, they made. It is also remarkable to propose that the various ward round doctors should seemingly be held negligent as a homogenous group without any differentiation between them, as if they shared some sort of collective responsibility. The professional assessments that each of them must be taken to have made and the reasons for such judgements cannot simply be assumed to have been identical.”*



CONNECTION BETWEEN ACTIONS OF WARD ROUND DOCTORS AND INJURIES

- No evidence that earlier transfer to the labour ward would have altered the outcome.
- [81] *“In short the question of liability regarding any negligence on the induction ward can be explored by reference to traditional causation principles.”*



B'S REPRESENTATIVE v NHS GRAMPIAN [2024] CSOH 72

- Action raised by family of B
- Child removed from family home for 10 months following suspicion of fabricated or induced illness (“FII”)
- Sought declarator and damages
- Refused – reasonably held belief
- If there had been a violation, would have awarded damages



INTERESTING POINTS

- What makes a good expert witness? *[para 93]*
- What organ of the State caused the interference? *[paras 102-107]*
- Appropriate remedy for violation of Convention Rights'? *[para 122]*



