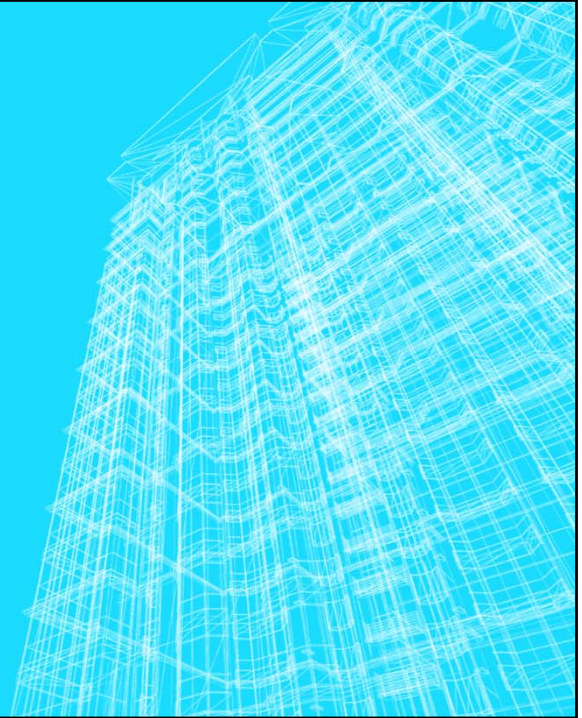


# FUTURE DOCTORS: MEDICO-LEGAL CHALLENGES

Scott Chapman, TressCox Lawyers  
Bill Madden, Slater + Gordon Lawyers



## THE PAST -NOT SO DIFFERENT TO NOW?

Medico-Legal Society of Victoria

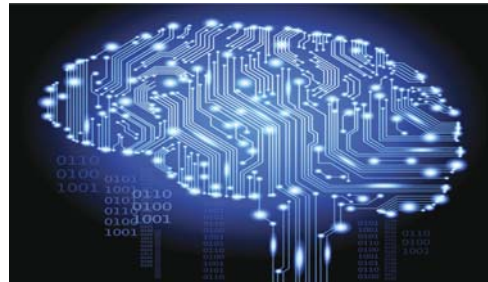
- 1948 – Legal problems of artificial insemination.
- 1953 – Are modern awards of damages for physical injuries becoming excessive.
- 1958 – Intersexuality.

## FIRST TWO POINTS



Scrutiny by data.

Clinical developments in the genetics field.



## GENETICS - CLAIMS & LAW

### ▪ Settlements

- Cystic fibrosis & 13q deletion cases – Loss of opportunity to terminate pregnancy.

### ▪ Interlocutory

- *Eastbury v Genea Genetics* [2014] NSWSC 1793
- Limitation period extension granted (1999 treatment).
- Mother aware of Fragile X family history.
- Before pregnancy sought testing to determine carrier status.



## GENETICS - CLAIMS & LAW

### ▪ Judgments

- **Waller v James:** NSWCA held that an obstetrician providing IVF information and treatment owed a duty of care which extended to the provision of information as to the importance of seeking genetic counselling (special leave appl'n pending).



## GENETICS – NOT ONLY BIRTH CASES

### ▪ Familial cancers

- Australia – current case.
- UK – ABC v St Georges Healthcare NHS Trust & Ors [2015] EWHC 1394 (QB).

### ▪ Sudden cardiac events

- Zenter & Ors, *The Cardiac Genetics Clinic: A model for multidisciplinary genomic medicine* MJA 21 September 2015.



## GENETICS – NOT GOING AWAY

- **UK Biobank**

- 500,000 participants.
- Information from UK death and cancer registries is being linked to the main dataset.
- Data from NHS hospital inpatient records is being linked to the main dataset.
- Links to information held in general practice would allow participants' health to be followed over many years.



## GENETICS - IMPACTS

- **Three features:**

- Wide range of plaintiffs – patient, spouse, sibling, child.
- Wide range of defendants - general practitioners, obstetricians, oncologists, cardiologists.
- Long lead time for claims.



## SCRUTINY BY DATA

- PRONE score research of Marie Bismark predicting doctors' risks of formal patient complaints (and the lack, so far, of equivalent claims analysis).
- Research of Duckett et al. focusing on analysis of hospital discharge data, to identify and act on potentially inappropriate care



## SCRUTINY BY DATA

- The recent interest of Medibank and other private health insurers as to who should pay for pre-defined adverse events;
- Increasing data collection as part of clinical practice, such as planned real time recording of procedures and unplanned recording of consultations by patients.



## THE FUTURE FOR DOCTORS

- **Administrative Tools**
  - Professional conduct and related matters
  - Significant increase in complaints, hospital based investigations
  - Traditional methods
  - New technologies
  - Telemedicine
  - Systems issues
  - Effective communication



## THE PRESENT

- **Traditional methods**
  - Young v Central Australian Aboriginal Congress Inc [2008] NTSC 47
  - Coronial Inquest – Marjorie Aston
  - Coronial Inquest – Wright & Carter



## THE FUTURE

- Social media
- Texting
- Use of internet for appointments
- NCAT case of Dr Nikolova-Trask
- Matter of the Human Fertilisation and Embryology Act 2008
- The surgical 'Black Box'



## THE FUTURE

- Structures through which health services are provided
  - Hospitals
  - Large medical centres
  - Large corporations



## THE FUTURE

- **Case Study**
- ***Idameneo (No 123) Pty Ltd v Gross and Another*** [2012] NSWMA 423
  - Three doctors carried on practice as general practitioners in a large medical practice in Eastern Sydney in 2004
  - Between March and April 2004 a patient consulted the various doctors in relation to testing for HIV
  - Due partly to poor record keeping the patient was not informed that the tests for HIV were unresolved and had unprotected sexual intercourse with the plaintiff, resulting in transmission of the disease



## THE FUTURE

- **Case Study – Continued**
- ***Idameneo (No 123) Pty Ltd v Gross and Another*** [2012] NSWMA 423
  - The patient's partner sued the treating doctors and the medical practice for negligence
  - Settlement of the proceedings between the plaintiff and Drs Goss and Johnson was reached in July 2009
  - Drs Gross and Johnson filed a cross-claim against Idameneo on the basis that the employees of the company were negligent in failing to maintain proper records, namely the current address of the patient





## COMMUNICATION

- Effective communication with a patient will inevitably reduce the risk of subsequent claim or complaint
- Also required the *Good Medical Practice: A Code of Conduct for Doctors in Australia*, clause 3.3



## COMMUNICATION

- *Good Medical Practice: A Code of Conduct for Doctors in Australia*, clause 3.3: Good 'communication' involves:
  - Listening
  - Seeking information
  - Providing information
  - Discussing options, including potential benefit and harm
  - Confirming instructions
  - Responding to questions
  - Keeping patients updated
  - Meet any specific language / cross-cultural requirements

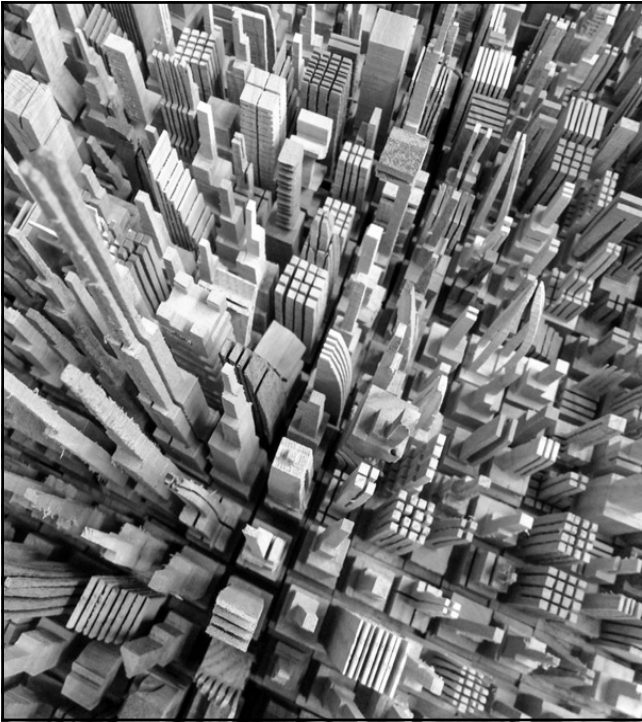
## COMMUNICATION

- Manage adverse events proactively
- Discuss with patients when things go wrong
- Talk to your MDO as soon as you become aware of a claim or potential claim



## PRACTICAL TIPS

- Make excellent and thorough patient notes
- Ensure systems in place to remind you to follow up pathology and test results
- Ensure your practice maintains up to date patient contact details
- Always advise patients of problematic test results
- Practice evidence based medicine and only order tests or write scripts that are clinically relevant



# FUTURE DOCTORS: MEDICO-LEGAL CHALLENGES

Scott Chapman, TressCox Lawyers

Bill Madden, Slater + Gordon Lawyers

