Optometrist found guilty of manslaughter

To start our new Optometry section, editor **Janet Pooley** takes a look at the tragic death of Vincent Barker and asks what lessons can be learned.

In August, Optometrist Honey Rose was found guilty of the manslaughter of eight-year-old Vincent Barker by a jury in Norwich Crown Court. The case is tragic. Vincent had attended for an eye test five months before his death. He was asymptomatic, but retinal photographs taken at the time indicate that there was swelling of the optic discs. For whatever reason these images were apparently not seen by the optometrist and no action was taken.

The parents of Vincent Barker were keen to stress that they wanted the profession to make sure that such a tragedy was never repeated. The case has been widely reported [1-4] and daily summary transcripts from the proceedings are available [5]. Key themes emerge of areas of risk in practice that may help all professionals, not just optometrists, to learn lessons from this case.

Honey Rose was an Optometrist registered with the General Optical Council (GOC) to practice. It is reported that she did her training in India and undertook additional qualifications to become a UK optometrist. She qualified and joined the register in 2010 [6]. As a community optometrist she was working under the General Ophthalmic Services Regulations [7] which support the provision of eye tests in England. She worked as a locum optometrist and when she examined Vincent Barker she was working for the multiple, Boots Opticians.

This is the first case of an optometrist being charged and convicted of manslaughter. Manslaughter is the offence of unlawful killing where broadly there was not the intention to kill. A wide range of circumstances can lead to this charge and for healthcare professionals, most notably doctors [8,9], it is the charge of gross negligence manslaughter that is most commonly levelled. The case law that supports this conviction dates back to 1995 with R v Adomako [10]. This was the trial of an anaesthetist who failed to notice that the endotracheal tube had become disconnected during retinal surgery. The disconnection was apparently obvious and the patient died. In order to be convicted, the court held that the following elements had to be proved:

1. The defendant must have breached their duty of care by virtue of their negligence.
2. The negligence must have caused death.
3. The negligence complained of must amount to 'gross negligence'.

Common themes in manslaughter cases of doctors have emerged over time. These include serious errors by parties other than the accused, associated system errors, and sometimes attempts to conceal or alter medical records [11].

In the case of Rose, she was convicted of gross negligence manslaughter. She had breached her duty of care to her patient, a duty defined under the Opticians Act, 1995 [12] and regulated by the GOC. This act broadly defines that the purpose of a sight test is to detect (and correct) a defect of sight (s36/2). The duties to be carried out must include an internal and external eye examination. In addition, such further examinations as appear to be necessary for the purpose of detecting signs of abnormality.

Contributing factors

In the Boots practice where Rose was a locum, a batch of pre-test procedures are conducted by optical assistants. Vincent Barker had a retinal photograph taken as part of this assessment. Traditionally, the optometrist would conduct all the assessments and investigations themselves as part of an eye test. In optometric practice, automated equipment and increasing commercial pressures mean that some of the eye test is delegated to colleagues. This is typically the work pattern across healthcare, with the more expensive expertise of the professional being utilised as the decision-maker, and a team, often multidisciplinary, supporting the patient assessment.

Professional guidance highlights the need for the optometrist to ensure that the person to whom the task is delegated has the skills and experience to provide the relevant care or undertake the procedure, at the same level that would be provided by the optometrist themselves [13]. That person is responsible for the performance of the task, but the optometrist remains responsible for the outcome; within an optometry practice the optometrist has legal responsibility for the care of their patient. The task of delegation is particularly a challenge for the locum, or indeed anyone new in post. It can be very difficult to have the required trust in a person's ability to safely and competently complete the required test or procedure that the professional guidance requires.

The other change in more recent years is the reliance on reading digital outputs and trusting linked computer networks. These systems ensure that notes don't go missing and test results can be accessed across a practice, hospital, and sometimes in the community. However, impressive as it might be, systems can still fail and human error can still play a part. The clinician needs to be familiar with the digital system to enter and retrieve data. This can be a steep learning curve but it is an essential part of clinical practice. Once again, this can be a challenge for the locum practitioner. Without proper training, navigating around an unfamiliar patient management system can be very stressful and difficult. It can disrupt

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even the most experienced practitioner's routine. IT systems need to have user-friendly interfaces, to be reliable and robust, and for training to be available for any new or temporary staff. IT should enhance patient care, not be a barrier.

The other contributing factor, that has indeed already been highlighted, is that Honey Rose was a locum. In 2010 the GOC commissioned a report to look into 'Risks in the Optical Profession' [14]. The issue was raised by various stakeholders that "locums could pose a risk to patient health and safety." The report found no available data to support this concern. The role of the locum could be seen as one of reduced accountability, but one also of greater experience from working in many different environments. The GOC report concluded that any risk was largely down to the individual practitioner and not necessarily their role as a locum.

Risk around locums is also a concern in medicine, where a General Medical Council (GMC) report highlighted the perceived higher risk to patients and employers because of a peripatetic work-pattern [15]. Working in unfamiliar settings with less effective management, less access to continuing professional development and reduced opportunities for involvement in clinical governance and quality improvement activities were highlighted as confounding issues. The GMC Chief Executive Niall Dickson raised similar concerns in a BBC interview in 2015 [16], highlighting that locums often work in unfamiliar settings and it is a job that attracts risk. He concluded that it is an area of work where the GMC has concerns.

A rare case

Cases of raised intracranial pressure in children are incredibly rare. This case was particularly so as it was asymptomatic until the last stages. Expert opinion as part of the trial suggested that the condition was very treatable and that referral at the time of the eye test would have been life-saving [5]. The retinal photograph that was taken by an optical assistant as part of the pre-assessment apparently clearly shows the disc swelling. Rose claimed in court not to have seen these images and that if she had, the patient would have been referred urgently for medical care. However, she clearly failed to conduct, or correctly interpret, an internal examination of the eyes as part of the sight test. The jury concluded that Ms Rose's failure was an act of gross negligence.

In sentencing Honey Rose the judge concluded that she was unlikely to ever practice again, and that her case had caused such a high level of publicity and concern to the wider profession, that the importance of optometrists properly discharging their duty of care to their patients has been well made [4]. Consequently, the profession needs to ask whether this is an isolated case, or if this is a situation that could be repeated.

Leadership and management training has become an integral part of the undergraduate course in medicine [17]. There is now a widespread appreciation that being a good doctor means more than simply being a good clinician. The requirement to take a leadership role in managing patients, supporting multi-disciplinary team working, developing and improving services, and managing resources has become an important part of medical education. Optometrists and other healthcare professionals need to undertake similar initiatives to develop these leadership skills [18]. The clinician has a role in managing their patient's care, delegating tasks and taking responsibility for the quality of these assessments. It is this leadership role that is so important in creating a safety net to prevent future tragedies.

Safe, productive and efficient workplaces are vital in healthcare. Widely known as a human factors approach, the discipline supports a workplace where it is "easy to do the right thing" [19,20]. Often in significant adverse events like this present case, there are multiple contributing factors including failures of process, behaviours and systems. While it is essential that optometrists are clinically sound, it is also important that the profession reflects on the cases where things went wrong, benchmarks itself against good practice in other disciplines and takes a more holistic approach when developing systems to ensure that this can never happen again.

References

1. Optometrist Honey Rose guilty over Vincent Barker death. *BBC News* 2016 http://www.bbc.co.uk/news/uk-england-suffolk-36804297 Last accessed October 2016.
2. Optometrist who missed swelling in boy's brain guilty of manslaughter. *The Guardian* 2016 https://www.theguardian.com/uk-news/2016/jul/15/optometrist-honey-rose-guilty-manslaughter-negligence-vinnie-barker-boots Last accessed October 2016.
3. Optometrist convicted of boy's manslaughter after missing "obvious" signs of lethal fluid build-up. *The Telegraph* 2016 http://www.telegraph.co.uk/news/2016/07/15/optometrist-convicted-of-boys-manslaughter-after-missing-obvious/ Last accessed October 2016.
4. Optom found gulity of gross negligence manslaughter. *Optometry Today* 2016 https://www.aop.org.uk/ot/professional-support/clinical-and-regulatory/2016/07/15/optom-found-guilty-of-gross-negligence-manslaughter Last accessed October 2016.
5. Criminal trial of optom. *Optometry Today* 2016 https://www.aop.org.uk/ot/professional-support/clinical-and-regulatory/criminal-trial-of-optometrist-begins Last accessed October 2016.
6. General Optical Council Register, 2016 https://www.optical.org/en/utilities/online-registers.cfm Last accessed October 2016.
7. General Ophthalmic Services Contract Regulations SI 2008, 1185, NHS http://www.legislation.gov.uk/uksi/2008/1185/pdfs/uksi_20081185_en.pdf Last accessed October 2016.
8. Ferner RE, McDowell SE. Doctors charged with manslaughter in the course of medical practice, 1795-2005: a literature review. *J R Soc Med* 2006;**99(6)**:309-14.
9. Hubbeling D. Criminal prosecution for medical manslaughter. *J R Soc Med* 2010;**103(6)**:216-8.
10. R v Adomako (1995) 1 AC 171.
11. Gillespie G. Medicine and Manslaughter. *Casebook* 2014;**22(2)**:10-2.
12. Opticians Act 1989. http://www.legislation.gov.uk/ukpga/1989/44/pdfs/ukpga_19890044_en.pdf Last accessed October 2016.
13. College of Optometrists, Guidance for Professional Practice (2014) – Delegation C172-C177 http://guidance.college-optometrists.org/guidance-contents/communication-partnership-and-teamwork-domain/working-with-colleagues/ Last accessed October 2016.
14. GOC, Risks in the Optical Profession, Final Report. A report for the General Optical Council by Europe Economics, London (2012).
15. GMC (2015) Secondary Care Locums Report, Revalidation Advisory Board, 10 June 2015 http://www.gmc-uk.org/6___Secondary_care_locums_report.pdf_62067417.pdf Last accessed October 2016.
16. Diagnosing the problem with locum doctors. *BBC* 2015 http://www.bbc.co.uk/news/health-34702933 Last accessed October 2016.
17. GMC (2012) Leadership and Management for all Doctors http://www.gmc-uk.org/static/documents/content/Leadership_and_management_for_all_doctors_-_English_1015.pdf Last accessed October 2016.
18. Court H. No time to retreat. *Optometry Today* 23 September 2016.
19. Catchpole K. Spreading human factors expertise in healthcare: untangling the knots in people and systems. *BMJ Qual Saf* 2013;**22**:793-7.
20. Bowie P, Jeffcott S. Human Factors and ergonomics for primary care. *Educ Prim Care* 2016;**27(2)**:86-93.

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