Out of Hours

Law note:

what treatment risks do I have to discuss with my patients?

A Supreme Court Judgment in March this year has changed the law about the discussions we need to have with patients about the risks posed by treatment. 'Doctor knows best' gets another kicking.

THE BUSY-DOCTOR VERSION

Discuss with patients any material risks involved in proposed treatment, as well as reasonable alternative approaches. A risk is 'material' if your patient is likely to attach significance to it. Might she make a different decision if she knew? If so, tell her.

IF YOU'RE MORE INTERESTED

Remember the *Bolam* test? *Bolam*'s the case about breaching your duty of care.¹ You're not negligent if you act in accordance with a practice accepted as proper by a responsible body of medical opinion, so long as that practice isn't nuts.²

Until now, *Bolam* was how the courts determined what we have to tell our patients about the risks of treatment. You didn't have to discuss a particular risk if there were other suitably-qualified doctors who wouldn't have done so.³ *Montgomery*, a recent Supreme Court case, changes that.⁴

Mrs Montgomery was small, had diabetes, and was pregnant with a big baby. Her obstetrician didn't normally warn such women of the risk of shoulder dystocia, believing the risk of serious harm to be small. She thought that discussing it would result in women deciding to have caesareans when it wasn't in their interests to do so. Shoulder dystocia occurred during Mrs Montgomery's distressing vaginal delivery, and her baby was born with severe disabilities. Things have changed, said the Supreme Court:

'Patients are now widely regarded as persons holding rights, rather than as the passive recipients of the care of the medical profession. They are also widely treated as consumers exercising choices ... The idea that patients were medically uninformed and incapable of understanding medical matters

was always a questionable generalisation.'

So doctors must now take reasonable care to ensure that patients are aware of any material risks involved in any treatment, and of any reasonable alternative treatments. And this means discussion with patients, not bombarding them with technical information.

Note the words *any material risk*. What's 'material'? Any risk that a reasonable patient in the same situation would 'attach significance to', or that you know or should know your patient would attach significance to. That means, at least, anything that, if she knew it, might result in her making a different decision.

One caveat is that we can withhold information from patients when we reasonably believe that disclosing it would be seriously detrimental to their health. But this will be rare, and probably needs careful consideration, discussion with colleagues, and documenting. In another case, the Court of Appeal has distinguished between discussions that may cause some distress and those likely to cause physical or psychological harm. The possibility that a patient may find a topic distressing won't usually justify withholding important information from them.⁵

COMMENT

While *Montgomery* was about treatment, it must apply to investigations too, and to decisions not to investigate or treat. If this feels like a load of extra work, try turning it around. How would you feel if you discovered you'd not been told about a treatment risk when, if you had been told about it, you might have chosen a different treatment, or might have decided not to have the treatment?

For GPs, the two risks we most often need to be discussing with patients are probably potential harms from medication, and the risks of decisions not to investigate. If you're not discussing the risk of dependence when you prescribe gabapentin or pregabalin,⁶ or are opting for a wait-and-see approach with

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a frail, older patient who may have cancer without sharing your thinking with her, you may need to think again.

Where to draw the line? Most patients won't appreciate a recital of each recorded side effect to every medication. *Montgomery* doesn't require that. The decision about what to discuss, said the court, depends on things like the nature of the risk, the effects it would have, the importance of the treatment, the alternatives available, the risks involved in those alternatives, and the 'characteristics of the patient'.

Use your judgement. Err on the side of sensitive openness. We're going to have to get used to discussing things often gone undiscussed in the past. The courts are a little ahead of the medical profession on this. But, as patients, most of us would want to be told about the important stuff: indeed, we'd feel entitled to know. That right is what the Supreme Court has recognised.

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You can read more by Adam Sandell at the BJGP blog: <http://bjgpblog.com>

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