

# ROUTINE INJECTION LEADS TO NERVE DAMAGE, WITH A NURSE'S 'INVARIABLE PRACTICE' TESTIMONY UNCONVINCING

OCTOBER 3, 2019 | HEALTH LAW

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A hospital operator was found vicariously liable for a negligently administered heparin injection into a patient's left thigh by a nurse.

## In Issue

- Whether the nurse pinched the plaintiff's skin before administering the injection, so to avoid injecting the needle into the deeper subcutaneous region of the lateral femoral cutaneous nerve and damaging the nerve.
- Whether the nerve injury suffered was a result of how the injection was administered.

## The background

On 11 August 2014 the plaintiff underwent an abdominoplasty and a breast augmentation procedure at the National Capital Private Hospital, for treatment of excess skin, following earlier significant weight loss. Following the surgery, her doctor prescribed the administration of twice daily subcutaneous heparin injections. The second of these injections was administered by a nurse at around 8pm on 12 August 2014. The plaintiff complained that after the injection she had pain on the left-hand side of her mid-thigh area of her left thigh. The next morning she noticed a lump in the area of the injection. She continued to experience numbness and sensitivity to touch, swelling with increased sensitivity after long periods on her feet or after walking for long distances, a limited ability to squat and kneel and difficulty with stairs. Because she has not been able to exercise freely she also put on much of the weight she had lost in the lead up to the surgery.

The defendant denied that the nurse was negligent and relied on evidence of the nurse's "invariable practice" when administering subcutaneous injections, his good reputation and years of experience. The nurse did not remember the injection in question but said, if there were any issues, he would have recorded these in his notes. No issues were recorded.

The plaintiff, who had been trained in giving this particular injection herself, gave evidence that the injection was administered without pinching the skin. It gave her an immediate sharp pain and she made an exclamation to that effect. Both the plaintiff and her husband witnessed the injection and testified to this effect.

The plaintiff complained to hospital staff of the injury the following day, and later made a written complaint. She also made consistent complaints to her general practitioner.

The defendant's expert neurologist believed that the injury may actually have resulted from a post-surgical

compression garment. This opinion was formed after the expert had heard from the doctor who performed nerve conduction studies, and believed that the injury was not wholly consistent with the presenting symptoms.

## THE DECISION AT TRIAL

The trial judge had difficulty accepting that human nature allowed for strict adherence to an “invariable practice” at all times, especially given the busy nature of the nurse’s workload and the routineness of the task. In the circumstances the trial judge found the injection was negligently administered, which had most likely caused the nerve injury.

The plaintiff was awarded \$259,706.66 in damages plus costs. This primarily constituted global economic loss awards (the plaintiff was 57 at trial and her changing jobs, and frequent interstate moves following her husband’s work, made precise calculations difficult) and care awards.

### Implications for you

This decision is a timely reminder that evidence of an invariable practice, even if led by an experienced and well respected professional, may not be preferred by a court in the presence of competing evidence. The decision also highlights the factors a judge may consider when deciding a conflict of factual evidence between a health care provider and a patient.

[\*Kempster v Healthscope Operations Pty Ltd\* \[2019\] ACTSC 248](#)

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