GPs 'likely' to face litigation from 'ambulance chasers' due to electronic patient record access

2 March 2015 | By Jaimie Kaffash

The opening up of GP patient records could leave every GP practice open to litigation from lawyers looking for medical negligence claims, a leading primary care academic has warned. Professor Tom Marshall, professor of public health and primary care at the University of Birmingham, said that GPs have to be more prepared to justify decisions departing from...
agreed NICE guidelines as electronic records will be easier to search for lawyers looking for examples of potential medical negligence. This could affect prescriptions of anticoagulants for patients with AF and the prescription of statins for patients with a 20% to year CV risk.

Under new contractual requirements, GPs must provide electronic access to all summary care records by next month, and full access to coded information by April 2016.

But writing in the March issue of the British Journal of General Practice, Professor Marshall claims that these moves may have ‘previously unforeseen consequences for medical litigation’.

He said that failure to follow NICE guidelines have been the basis of medical negligence claims in the past, including those relating to anaesthetic practice.

The article, titled Electronic ambulance chasing: patient records, guidelines and the law, states: ‘If a doctor departs from clinical guidelines, fails to record a rationale for doing so and their patient suffers a foreseeable adverse outcome as a result of this departure, this could be the basis for a medical negligence claim.

‘Do electronic patient records have implications for this? Quite possibly. Electronic records must be disclosed to claimants on request and it has been suggested that extensive electronic documentation is likely to affect the conduct of litigation. I would argue that it is also likely to affect the likelihood that litigation is initiated in the first place.’

He argues that previously, a patient who suffered an adverse event would first take legal action, and then request medical records.

With the opening up of medical records, he says: ‘Lawyers could actively seek permission from everyone who suffered an adverse event to search their records in the hope of identifying an opportunity for medicolegal action. We could think of this as a kind of electronic ambulance chasing.’

Professor Marshall says that an analysis of electronic patient records reveals that 84% of patients with AF meet criteria for the prescription of anticoagulants, but only 51% of them are on the treatment.

He adds: ‘This means that about 12.3% (84.5% × 50.7% × 28.8% = 12.3%) of first strokes occur in patients with AF whose electronic patient records show that they are eligible for anticoagulants but not receiving them.

‘To put it another way, from the perspective of a medical negligence lawyer this means that the records of only eight stroke cases need to be screened to find one possible negligence claim. Across the UK this amounts to 8,456 cases per year (12.3% × 68,536): about one per general practice per year.’
Dr Caroline Fryar, head of advisory services at the Medical Defence Union, said: ‘Guidelines inform clinical practice but don’t dictate it. They do not replace the knowledge and skills of clinicians. Doctors are expected to be familiar with any nationally recognised guidelines that are relevant to their specialty, as well as any local guidelines. This does not mean they cannot depart from guidance in specific situations when they consider it to be in the patient’s interests to do so.

‘Doctors must be prepared to explain and justify their decisions and actions, especially if they depart from guidelines produced by a nationally recognised body. It is also important to keep a record of the reasons for their decision, including any discussions with the patient.’