Staying Out of Trouble
Trevor Warburton BSc FCOptom

Staying out of Trouble
Foresight not Hindsight

Trevor Warburton BSc FCOptom
Clinical Advisor to AOP Legal Dept.
AOP Director

AOP Legal Services Dept.
2012

About me

• In independent practice for 30 years
• In consulting room 3 days/week
• Clinical advisor to AOP Legal Dept.
  • Main provider of malpractice insurance to individual optometrists in UK
  • I see most cases handled by AOP

Common Problems

• Complaints to the practice
• Complaints to OCCS
• Complaints to the GOC
• Civil actions
• Inappropriate referrals

• How big is the problem?

It’s big…

• Civil Cases
  • AOP Cases with hundreds annually
• GOC in 2008/09
  • 150 referred to GOC
  • 31 progressed to full hearing
  • Your records may be your best defence

Trends

• Cases referred

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How does it go wrong?

• Not doing the right thing
• Doing the right thing but not recording it
• Letting complaints get out of hand
  • Nip them in the bud – refund early
• Vexatious complaints
  • More difficult to deal with
  • Refund still might be easiest way out
    – Even if it sticks in your throat...

Common issues

• Retinal detachments
• Wet AMD
• Missed glaucoma
• Not being told (e.g. about cataract)
• Product
• Miscellaneous others

Records

• Record keeping
  • plays a huge part in cases
• Obviously it’s good clinical practice
• Aids future care of the patient
• Monitors trends
• Can provide DEFENCE when things go wrong

Case A

• 60 year old male – routine exam 5 yrs ago:
  • C:Ds 0.4, IOPs 13, VAs 6/6
  • 2 yrs ago
    • Oph NAD, IOPs 18, VAs 6/6,
  • Seen again recently
    • IOPs 21, VAs R 6/12, L 6/6
    • C:Ds...

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The lesson
- Doing the right thing and recording it
  - C:D ratios are an absolute minimum.
  - Check back to see if it has changed

Disc Cupping
- Repeatability
  - To be reasonably sure of change
  - Same observer
    - Difference of 0.2 or more
  - Different observers
    - Difference of 0.3 or more
- But – if different, best to have a backup
  - VF + IOP


Compare images
- And show you have done so

Case B
- Hx: Male, age 55 “Floaters for years”
- Sx: “something in my L eye – not always” “NV↓”
- Rx: Low hyperope, needs more add.
- VA: R 6/6 L 6/6
- Oph: ......
- Ext: Nil found
- Reassured – new specs supplied
  - Are we happy with all this?
Questions

• Should the practitioner
  a) Feel comfortable?
  b) Have done visual fields?
  c) Have dilated?
  d) Have asked more questions?
  e) Leave the country?

• Be honest...
  ▪ It’s easy to do things on paper

Case B

• 3 months later...
  • Attends another practice
  • Left VA 6/36
  • Referred
  • HES says “been there for ages”

Case C

• “something in eye...”
  ▪ Physical or visual?
  ▪ Recent?
  ▪ Myope – risk category
  ▪ Don’t ignore the clues!

<table>
<thead>
<tr>
<th>Patient</th>
<th>Female age 45</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hx, Sx</td>
<td>Myopic, GH OK, always had floaters, now has one new floater last few days. Nil else</td>
</tr>
<tr>
<td>Exam</td>
<td>Oph: NAAD</td>
</tr>
<tr>
<td></td>
<td>Ext: ✓</td>
</tr>
<tr>
<td>Rx</td>
<td>R (-4.25/-.50\times0)</td>
</tr>
<tr>
<td></td>
<td>L (-4.50/-.75\times165)</td>
</tr>
<tr>
<td></td>
<td>Add -</td>
</tr>
<tr>
<td>VA</td>
<td>R 6/6</td>
</tr>
<tr>
<td></td>
<td>L 6/6</td>
</tr>
<tr>
<td>Outcome</td>
<td>Px reassured all is OK. New specs supplied</td>
</tr>
<tr>
<td>Comments</td>
<td></td>
</tr>
</tbody>
</table>

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Case C

<table>
<thead>
<tr>
<th>Patient</th>
<th>Returns 1 week later...</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hx, Sx</td>
<td>“Vision seems a bit off in L eye” Specs give L 6/7.5</td>
</tr>
<tr>
<td>Exam</td>
<td>Opt: NAD Ext: ✓</td>
</tr>
<tr>
<td>Rx</td>
<td>R: -4.25/-0.50x180 Previous: -4.25/-0.50x180</td>
</tr>
<tr>
<td></td>
<td>L: -4.75/-0.75x165 -4.50/-0.75x165</td>
</tr>
<tr>
<td>Add</td>
<td>-4.25/-0.50x180</td>
</tr>
<tr>
<td>VA</td>
<td>R: 6/6 Previous: 6/6</td>
</tr>
<tr>
<td></td>
<td>L: 6/6pt 6/6</td>
</tr>
<tr>
<td>Outcome</td>
<td>Left lens changed at no charge</td>
</tr>
<tr>
<td>Comments</td>
<td></td>
</tr>
</tbody>
</table>

Questions

- Should the practitioner
  a) Look for a new career?
  b) Have kept better records?
  c) Have done more investigations?
  d) Relax?

Case C

- 2 weeks later patient noted further floaters and flashes
- attended A&E with VA of L 6/36...

Retinal detachment

Case C

- Patient sues
- Was it missed?
  - Maybe
  - Not dilated
  - No evidence of adequate peripheral exam
  - No evidence of check for Schafer’s sign
  - No evidence of advice and warnings
- Difficult to defend

Records

- College Guidelines Section 35:
  - The optometrist has a duty to ensure that he keeps complete and legible records of the patients under his care.
- GOC cases show:
  - Failure to keep adequate records may constitute IFTP
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The abnormal...

• An example that should keep you safe
• Not typical
• If only more seen by the AOP were like this

Record features

Oph.
R Post. Pole:
CD 0.4
Inf Disc haem halo of ppa
A/V: 2/3
Early dry pigmentary mac changes
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**Principles**

- Keep notes of other Px interactions
  - Advice by phone
  - Advice in the waiting room
  - Give advice in writing if necessary
    – And record the fact
  - Document all dispensing and repairs
  - Keep it legible

**Tell the patient**

- Common complaint
  - I wasn’t told.....

**Shorthand**

- NAD
  - not actually done
  - unless specific
- ✓ or ✗
  - Means what, exactly?
  - Needs defining

**Litigation**

- Key to a successful defence
  - The right actions
  - A good record of those actions
    – Fully addresses the presenting symptoms
    – Details your investigations

**Regulation**

- A quick look at some rules, regulations and legislation....

**The Sight Test**

- Opticians Act
  - essentially refraction with the intent to prescribe
- Sight Test Regs 1989
  - SI 1989 No 1230...
The Sight Test

...when a doctor or optician tests the sight of another person, it shall be his duty:

(a) to perform, for the purpose of detecting signs of injury, disease or abnormality in the eye or elsewhere –

(i) an examination of the external surface of the eye and its immediate vicinity,
(ii) an intra-ocular examination, either by means of an ophthalmoscope or by such other means as the doctor or optician considers appropriate
(iii) such additional examinations as appear to the doctor or optician to be clinically necessary;

Opticians Act

When a registered medical practitioner or registered ophthalmic optician tests the sight of another person, it shall be his duty immediately following the test to give the person whose sight he has tested a written statement:

(i) that he has carried out the examinations that the regulations require, and
(ii) that he is or (as the case may be) is not referring him to a registered medical practitioner.

GOS Contract

• When referring
  • to an ophthalmic hospital
    – In writing
    – Inform the GP that you have done so
  • to the GP
    – In writing
  • Give the Px a written statement you have done so
    – with details of the referral

GOC Rules

• On referral for instance
  • Updated in 1999, amended in 2005
  • Allow for discretion on referral
  • Allow for referral via booking centres
  • Require a record of referral to be kept
  • Require a written report
  • With booking centres, the urgency of the case to be indicated

Common Law

• Duty of Care
  • A practitioner should provide the same standard of care as that offered in a similar set of circumstances by a reasonably competent optometrist possessing up to date skills.
    i.e. The peer view
  May or may not be the same as guidelines

A Sight Test Record...

• No internal examination?
• No external examination?
• One eye...?
Case D...

- Male age 67
- Sl.diff near; nil else
- GH OK
- Ophth
  - Sl. cat R&L.
  - Mild dry AMD R&L.
- Ext normal
- Old Rx
  - R +1.50/-0.50 x 110
  - L +1.25/-0.50 x 90
  - Add +2.25
- New Rx
  - R +1.50/-0.50 x 100
  - L +1.50
  - Add +2.50
- R 6/7.5 L 6/7.5pt
- New bifs supplied
- OK on collection
- Returns after Sws
  - “specs don’t feel right”
  - First optom rechecks
    - Finds
      - R +1.50/-0.50 x 100
      - L +1.75/-0.50 x 90
      - Add +2.75
      - R 6/7.5 L 6/9
    - Lenses changed FOC
- Returns after another 8 wks
  - Vision feels worse
  - Different optom rechecks
  - Finds
    - R +1.75/-0.50 x 100
    - L -2.25/-0.50 x 90
    - Add +2.75
    - R 6/7.5 L 6/12pt
- R 6/7.5 L 6/7.5pt
- New bifs supplied
- OK on collection

Questions

- What to do next?
  a) Pass the Px to your least favourite colleague?
  b) Do more tests?
  c) Change the lenses?
  d) Refer?
  e) None of the above?

At which point did it go wrong?

- Male age 67
- Sl.diff near; nil else
- GH OK
- Ophth
  - Sl. cat R&L.
  - Mild dry AMD R&L.
- Ext normal
- Old Rx
  - R +1.50/-0.50 x 110
  - L +1.25/-0.50 x 90
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    - R +1.75/-0.50 x 100
    - L -2.25/-0.50 x 90
    - Add +2.75
    - R 6/7.5 L 6/12pt
- R 6/7.5 L 6/7.5pt
- New bifs supplied
- OK on collection
- Remember the ST
  - Refract to prescribe
    - Internal exam
    - External exam
  - Recheck and change Rx = sight test
  - Be alert to wetAMD
    - Don’t assume always Rx change
    - Have a [quick] look
    - Use an Amsler?
Another situation

• “My eye was all red this morning”
  - My GP said to see you...
  - I can see OK
  - It’s not sore
  - It looks a mess

Questions

• What to record?
  - Nothing - it isn’t necessary
  - Nothing - I wouldn’t have seen the patient
  - Nothing - they aren’t my patient
  - Something

• If I said they are a CL wearer does it make a difference?

What to record?

c/o red eye from this am. Sent by GP. No pain or discomfort. Vision OK
Explanation this is sub-conj haem. Will clear in a week or 2. If it doesn’t, or if any discomfort, see me or GP.
VA: R 6/6 L 6/6 (as previous)
IOP: R 15 L 16 (as previous)
See pic IA0xxx
For CL wearer: Cornea Clear, no stain.

Where to record?

• For an existing patient
  - On their record
• For a new patient
  - Create a record
    - or as a minimum...
  - Make a note in a day book
    -Px name
    - Brief advice

Case E

• Age 56; Laser for hyperopia 4m ago
• Still low plus, ST & specs supplied
• 9 month later, complains:
  - Poor vision
  - Went elsewhere, Rx Changed
  - Wants refund....
Questions

a) Is laser for hyperopia stable?
b) Is the patient justified?
c) Does the patient deserve a refund?
d) Has the practitioner got it wrong?
e) None of the above

- Let’s Google “complain about optician”

Complaining

- CAB
- Trading standards
- OCCS
- Investigating Committee
- FTP Panel

Case E

- Age 56; Laser for hyperopia
- Still low plus, ST & specs supplied
- 9 month later, complains:
  - Poor vision
  - Went elsewhere, Rx Changed
  - Wants refund....
- Records are poor....
  - Very poor in fact... Give a refund.

Complaints

- To stand your ground
  - Ensure you are bullet proof
  - Even if you are found to be in the clear
    - A GOC investigation will consume your life for 12m or more
- Think about it
  - How many complaints do you actually get?
  - Does the odd refund really matter?
    - For a quiet life?

What does the panel think?

- GOS 18 to GP
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Questions
a) What are “grade 2 floaters”?
b) Is this referral OK?
c) Anything else to be done?

What does the panel think?
• GOS 18 to GP

Referrals
• Get the urgency right
  - Sudden onset floater
    – RD or tear till proven otherwise
  - Investigate fully
    – Dilate
    – Indirect
    – Schafer’s
    – Written advice
    – Or
  - Refer urgently (Note: GPs don’t do urgent...)

Urgent Referrals
• You don’t pass liability by referring to the GP
• Consider where they need to go?
• Phone/fax/NHSmail
  • Who did you speak to?
  • Note it on the record and/or on the referral letter
  • Consider phoning for confirmation of receipt
• Send the letter with the patient (or fax in advance)

Urgent referrals
• Common causes of problems
  • wetAMD to GP or wrong pathway
    – GPs don’t do urgent...
  • Potential tears referred as routine
• When referring by phone or fax
  • Note who you spoke to
  • Follow up a phone call with written referral
  • Consider checking the fax was received
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Referral Letters
- These form part of your record
- They may provide more detail than your record
- Make sure they don’t get lost
- Make them legible

Are we any good?
- 114 GP referrals – 114 typed and legible
- 322 optometrist referrals
  - 11% typed
  - 85% hand written
  - 9% illegible name
  - 8% no name
  - 22% illegible in part
  - 2 fully illegible

Assessment of referrals to the hospital eye service by optometrists and GPs in Bradford and Airedale
Christopher J Davey, Clare Green and David B Elliott

- Illegible
- No DoB
- ? Glaucoma
  - NoVF
  - No Disc appearance
  - No reason?
- No practice name
- No address
- No practitioner

- Typed
- Word processed

www.stockportloc.co.uk/pub/gos18.exe
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Writing referrals
- Include all necessary information
  - Px name
  - Address
  - Dob
  - Sight test date and info
  - Previous VAs
  - Your name
  - Your practice

- Details of the referral
  - What’s the problem
  - What should be done
  - If it is urgent, say so (but don’t expect a GP to act)
  - Keep it short and to the point
  - Don’t waffle
  - On a GOS18 – if there isn’t enough space you are probably writing too much!

Questions
a) Where does responsibility lie?
b) Is the sight test complete?

Retinal detachment 2 wks later: “been there for a while”

Case F
- Locum in a practice that uses assistants for VF
- Vague symptoms of “blurriness”
- Normal IOP, normal discs, nil else found
- VF requested
  - “can’t be done today – booked for Saturday”
- Locum isn’t in Saturday – in fact not often in at all
- Another optom looks at VF – says OK

Locums
- Not always around to follow up
  - May have lower threshold for referral
    - Understandably
- If it’s a part of the sight test
  - You need to do it, or ensure it is done, before issuing the prescription and signing the GOS form where applicable
- For repeat checks
  - If you aren’t around
    - Keep a log and check they get done
      - Next time you are in the practice
      - Or phone and check
    - and/or
      - Refer to another practitioner in the practice
        - In writing
        - Keep a copy with the record
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Remember GOC Rules

7A – what you must do when referring other than to a medical practitioner:
• Record the date and fact of the referral
• Record a sufficient description of the condition
• Record advice given
• Provide to the person to whom you are referring:
  • a written report
  • the urgency and
  • where the Px should go next

Repeat checks

• Practitioners get caught out by repeat tests that don’t get done
  • Locums are especially vulnerable
  • Many practices have poor failsafe systems for follow up tests

Records - principles

• Record everything you do
  • and do everything you record!
• Spot “out of the ordinary” cases
  • Go the extra mile on recording
• Think defensively
  • How would this look if…?
• Consider recording findings which prove:
  • You looked / investigated
  • You considered alternatives

Records - principles

• Record
  • What the patient said
  • What you said and did
  • What you found
  • What you didn’t find!
  • Your conclusions
  • Your advice
    – Patients have selective memories
    – Symptoms become clearer with every professional they see!!

Backup

• Vital for safety of your data
• Somewhere in the world
  • A hard drive crashes every 15 secs
  • 31% of PC users have lost all data
• Lifetime failure rate for hard drives is 100%
  • They all fail eventually…

Backup

• Make regular backups
• Take them off site
• Keep them safe and secure
• Check the backup is working…
• I’m a fan of automated online backups
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**How long to keep them?**

- AOP advise:
  - 10 years for adults
  - Children till they are 26
    - And it is 10 years since you last saw them
  - The deceased for 10 years
- If your employer destroys them sooner
  - It may be you that suffers

- Treat appointment diaries as records
  - Patients get confused about where they went
- If you are accused
  - And you can’t find a record
    - You may have a problem
  - If the diary and your records show you were seeing other patients
    - You may be home and dry

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**Audit**

- Quality in Optometry
- [www.qualityinoptometry.co.uk](http://www.qualityinoptometry.co.uk)
- New practitioner checklist
- Level 1 revamped
- Now contract compliance
- Includes records audit
  - Provides evidence for contract compliance visits

---

**Quality in Optometry**

- A toolkit for clinical governance in optometric practice
- [www.qualityinoptometry.co.uk](http://www.qualityinoptometry.co.uk)
- New practitioner checklist
  - Level 1 revamped
  - Now contract compliance
  - Includes records audit
    - Provides evidence for contract compliance visits

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*Interactive Checklists*

**Level 1 Checklist**

GOS contract compliance

**Checklist for contract compliance**

Section A: All contracts

<table>
<thead>
<tr>
<th>Patient details</th>
<th>Totals on record</th>
<th>Paper on record</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1.</strong> Patient details</td>
<td>31</td>
<td>28</td>
</tr>
<tr>
<td><strong>2.</strong> Changes in patient details</td>
<td>5</td>
<td>4</td>
</tr>
<tr>
<td><strong>3.</strong> Death certificate</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td><strong>4.</strong> Marital status</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td><strong>5.</strong> Birth certificate</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td><strong>6.</strong> Date of birth</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td><strong>7.</strong> Other patient details</td>
<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>

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Complaints

- In the event of a complaint
  - **CONTACT YOUR INSURERS IMMEDIATELY**
  - Most policies only respond if you have notified insurers of a potential claim
  - **DO NOT ADOPT THE OSTRICH APPROACH**

Thank you

[www.tjwarburton.co.uk/southampton.pdf](http://www.tjwarburton.co.uk/southampton.pdf)