



# Avoiding easy mistakes

Five medicolegal hazards for Junior Doctors



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## Important – please note

Due to the dynamic nature of medical law we suggest that you access our website at **medicalprotection.org** for the most up-to-date information. July 2021.

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This booklet was produced with junior doctors in mind. It is intended to offer general guidance to help them circumvent the commonest pitfalls encountered in everyday practice. MPS members are always welcome to telephone our medicolegal advice line **+44 113 243 6436** for more specific practical advice and support.

MPS is the world's leading protection organisation for doctors, dentists and healthcare professionals. We protect and support the professional interests of almost 300,000 members around the world. Our benefits include access to indemnity, expert advice and peace of mind. Highly qualified advisers are on hand to talk through a question or concern at any time.

Our in-house experts assist with the wide range of legal and ethical problems that arise from professional practice. This includes clinical negligence claims, complaints, medical and dental council inquiries, legal and ethical dilemmas, disciplinary procedures, inquests and fatal accident inquiries.

Our philosophy is to support safe practice in medicine and dentistry by helping to avert problems in the first place. We do this by promoting risk management through our workshops, E-learning, clinical risk assessments, publications, conferences, lectures and presentations.

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# Introduction

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## Why are medicolegal issues important?

As doctors, we all make mistakes – even an experienced surgeon can slip up. What is important is that you know how to respond to mistakes in the correct way. Most junior doctors are unsure about how medicine and law interact; this reflects a lack of teaching in medical schools, and a lack of understanding of how it works in practice.

Medicolegal principles underpin every move a clinician makes. In a climate where doctors have to justify their actions more and more to patients, colleagues and the Regulator, knowing the medical law and guidance that surrounds your actions, will enable you to justify them. Good doctors apply clinical knowledge in a way that is legally and ethically correct. They will also know when to consult senior colleagues and avoid working in a vacuum. Simple things like writing concise and accurate records, getting valid consent from patients, and knowing when to seek advice can help you practice safely.

This leaflet takes you through the top five medicolegal hazards for junior doctors and includes an example of how problems can arise in practice. If you need any further advice you can contact Medical Protection online or by phone. This will help you go onto the wards more confident that you will be able to practice safely.



# Consent

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Junior doctors should not feel pressured to do anything beyond their knowledge, experience and competence, this includes obtaining consent for a procedure that they are not familiar with. Always get a senior to explain or demonstrate it as part of training.

Failure to take consent properly can lead to medicolegal problems including complaints, claims and disciplinary proceedings. If your actions are scrutinised by the Regulator you'll need more than a signature on a consent form to fight your corner.

Consent is a process, rather than a form-filling exercise.

## Survival tips

- Always act in your patient's best interests.
- Record in the notes what a patient has been told.
- Use your common sense – consent is patient-specific and depends on the individual's circumstances, including age, lifestyle, occupation, sporting interests, expectations etc. It may well be that you are not in a position to advise fully, eg professional sportspeople.
- Patients are presumed competent to consent unless proved otherwise.
- Any competent adult can refuse treatment.
- The law concerning incompetent adults, who are unable to give valid consent, is more complicated. Next of kin, hospital administration, or legal representatives and the court may also consent in this situation. If you are in doubt consult senior colleagues.
- Remember there are circumstances where a child can give consent without reference to a parent – if in doubt consult a senior colleague.

## Scenario

Dr U is in his first week as a registrar in ENT. He is sitting at the desk in the ward filling in forms, when a nurse tells him that there is a patient going to theatre, within the next few minutes, who seems to have the consent form missing from his notes. She insists that the consultant “will get very cross” if the patient turns up in theatre without all the appropriate documentation. The nurse mentions that the patient’s operation has already been cancelled once, and it would be terrible if it happens again. Dr U explains that he has never consented a patient for a tonsillectomy before, and doesn’t think he should do it, but the nurse insists that “it is only a tonsillectomy, not rocket science”.

Dr U rightly ignores the pressure, and hurries to theatre to ask one of his senior colleagues to sort out the consent form. He agrees, takes the patient’s consent, and the operation goes ahead on time.



Consent is implied when taking blood pressure if the patient sticks out their arm

# Prescribing

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When prescribing, the hazard warning lights in your brain should be flashing persistently. This is one of the most dangerous areas for all clinicians. From over-prescribing, transferring incorrectly to new charts and prescribing for the wrong patient, to forged prescriptions and overdoses, incorrect dosages, interactions and allergies, prescribing is fraught with complications. It is imperative that you have a good knowledge of the pharmacology and the legislation surrounding drugs, and the trust protocols and controlled drug routines – if unsure, ask.

Always document allergies and double-check names, doses, frequency and in some cases, eg anticonvulsants, brand names. You should not feel pressured to do anything beyond your competence; always get a senior to do it. If you are unsure about a prescription, or mishear on a ward round, always seek clarification, never guess. If a patient is admitted and there is any doubt regarding their current medication then consult the ward pharmacists or the GP.

Handovers are another tricky area. Teams must work together in the allotted time to ensure that the clinically unstable patients are identified, plans for further care are put in place and tasks not yet completed are clearly understood by seniors and juniors. Make sure that the patient information is written clearly for the handover team.

## Survival tips

- Prescriptions should clearly identify the patient, the drug, the dose, frequency and start/finish dates, be written or typed and be signed by the prescriber.
- Be aware of a patient's drug allergies.
- Good handovers require good leadership and communication.
- Refer to your practising country's guidelines. It is accessible online if your copy goes walkabout.
- Verbal prescriptions are only acceptable in emergency situations and should be written up at the first available opportunity. Particular care should be taken that the correct drug is used.



## Scenario

Dr S is on duty in the children's area in A&E. He has just seen Jack, a two-year-old child with a high temperature. He sits down to write his notes and takes the opportunity to ask one of the nurses to give Jack 180mg of paracetamol (appropriate to weight). She asks for it to be prescribed, but Dr S insists that he needs the A&E card to write his notes, and the child is in the cubicle opposite the nursing station (he points to it), "you cannot miss him", he says. The nurse agrees reluctantly and goes to get the medicine and Dr S concentrates on writing on the card. The nurse walks into the cubicle and gives the child the paracetamol. Dr S finishes his writing and approaches the cubicle to find out that there is now a different child sitting there – Alex. He anxiously turns to the nurse to find out if she has given the medication to the boy who is now in the cubicle, and she says "yes".

Dr S informs Alex's family of what has happened and explains that the paracetamol was not prescribed for their child. He apologises profusely and immediately calculates whether the paracetamol could cause an overdose. Luckily Alex was a bigger child, and had not taken any paracetamol recently, so no harm was done. Dr S makes sure Jack gets his paracetamol and fills in an incident form; he apologises to the nurse involved and they discuss what happened and agree that it was an easily preventable mistake. Later that day Dr S discusses the incident with his consultant.



Prescribing is one of the most dangerous areas for all clinicians

# Confidentiality

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Confidentiality is the cornerstone of a successful doctor–patient relationship. Indeed, the word “confidence” derives from the Latin *con* “with” and *fidere* “to trust”. Doctors who break a patient’s confidence can undermine trust in the medical profession and this may have regulatory implications or result in disciplinary proceedings.

## Survival tips

- Before breaching confidentiality, always consider obtaining consent.
- Take advice from senior colleagues.
- Remember that confidential information includes the patient’s name.
- Competent children have the same rights to confidentiality as adults  
[medicalprotection.org/caribbean-and-bermuda/casebook-resources/factsheets/medicolegal-factsheets/factsheets/cb-confidentiality-disclosures-without-consent](https://medicalprotection.org/caribbean-and-bermuda/casebook-resources/factsheets/medicolegal-factsheets/factsheets/cb-confidentiality-disclosures-without-consent)
- Doctors can breach confidentiality only when their duty to society overrides their duty to individual patients and it is deemed to be in the public interest.
- Doctors are required to report to various authorities a range of issues, including notifiable diseases (eg TB), births, and in cases where there is likelihood of harm to self, or the public.
- The courts can also require doctors to disclose information, although it would be a good idea to contact Medical Protection if you find yourself presented with a court order.
- High-risk areas where breaches can occur are lifts, canteens, computers, printers, wards, A&E departments, pubs and restaurants.
- Be careful not to leave memory sticks or handover sheets lying around.



## Scenario

Dr A is working in the minor injuries unit, where he sees a variety of patients. One of them is a young man who attends with several cuts on his hands. The man claims that he was washing a glass at home and accidentally shattered it, injuring himself. Dr A believes that the pattern of cuts is unlikely to be caused by that mechanism of injury, but the patient sticks to his story.

Later that day, a police officer comes to A&E enquiring about any men, who may have attended with cuts to the hands. A young man had broken into an empty property, through a glass window, and stolen some goods. The police officer suspects the man was injured in the process. There were no victims; and no suggestion of threat to public safety, it was a case of burglary.

Dr A is unsure whether he can mention anything about his earlier patient. He talks to his consultant, who advises him not to mention this to the police, as he owes a duty of confidentiality to the patient. The consultant points out that there is no obvious risk to the general public, even if his patient was really the burglar.



Converse with colleagues carefully

# Record keeping

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Legible notes must be kept primarily to assist the patient when receiving treatment. But, secondly, should there be any future litigation against your hospital, the notes will form the basis of the hospital's defence. Notes are a reflection of the quality of care given, so get into the habit of writing comprehensive and up-to-date notes.

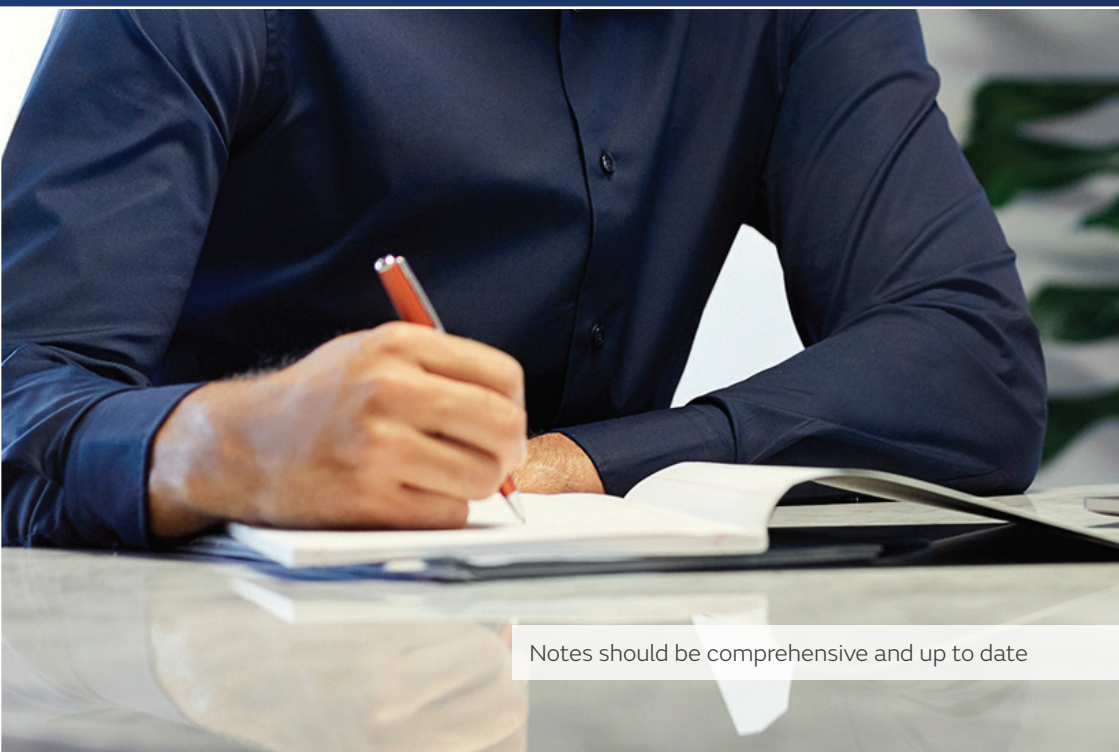
## Survival tips

- Always date and sign your notes, whether written or on computer. Don't change them. If you realise later that they are factually inaccurate, add an amendment.
- Any correction must be clearly shown as an alteration, complete with the date the amendment was made, and your name.
- Making good notes should become habitual.
- Document decisions made, any discussions, information given, relevant history, clinical findings, patient progress, investigations, results, consent and referrals.
- Medical records can contain a wide range of material, such as handwritten notes, computerised records, correspondence between health professionals, lab reports, imaging records, photographs, video and other recordings and printouts from monitoring equipment.
- Do not write offensive or gratuitous comments – eg racist, sexist or ageist remarks. Only include things that are relevant to the health record.

## Scenario

Dr P is working in a medical ward when she sees Mrs G, a patient referred from A&E, after she suddenly collapsed. She takes a comprehensive history and does a complete examination. Dr P then notices that some blood samples were taken from her in A&E and checks on the results server on the hospital intranet. She finds out that the samples “have clotted” and new samples need to be sent. The nurses are quite busy, but they agree that they’ll do it as soon as possible. Dr P finishes her shift by writing the history, examination findings and results, she also writes “bloods”, followed by a tick, meaning that they have been sent. During the handover she doesn’t tell the next doctor that the blood results need checking. Mrs G becomes unwell within the next few hours, and the registrar on duty comes to see her. He is reassured by the notes that recent blood results were normal and checks on the results server himself. It is only at this stage that it is discovered that the patient is severely anaemic.

Dr P failed to ensure that the documentation was clear indicating what had, and what had not been done. Luckily Mrs G came to no harm.



Notes should be comprehensive and up to date

# Probity

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Doctors have an obligation to be honest and trustworthy when signing forms, reports and other documents. They must also make sure that any documents they write, or sign, are not false or misleading. This means that doctors must take reasonable steps to verify the information in the documents and must not deliberately leave out anything relevant. You may encounter families who don't want certain information visible on the death certificate, but doctors have a legal and professional obligation to complete the certificate truthfully.

Falling under this category is the requirement for any junior doctor to inform their Regulator if they have accepted a caution, been charged with a criminal offence, or if they have been found unfit to practise by a professional body anywhere in the world.

## Survival tips

- If you are uncertain double check your work with a senior.
- Take steps to verify what you are saying. Never sign a form unless you have read it and you are absolutely sure that what you are saying is true.
- Probity means being honest and trustworthy and acting with integrity.
- Be honest about your experiences, qualifications, and position.
- Be honest in all your written and spoken statements, whether you are giving evidence or acting as a witness in litigation.
- You must be open and honest with any financial arrangements with patients and employers, insurers, and other organisations or individuals.
- Assume that all records will be seen by the patient and/or others, eg the Regulator, or court.

## Scenario

Dr T is in the second week of his surgical training. Following a successful cholecystectomy, Dr T is delegated the responsibility of writing up the operation notes from the surgery. He gets to work immediately, but in his haste he forgets to write up the postoperative instructions for hourly urine output monitoring, and continues to work through his list of patients. A few hours later the patient experiences problems, so he visits her again and realises the mistake on the records. Dr T alters the records to include what he had previously omitted. Dr A, a registrar, saw Dr T alter the record.

Dr A confronts Dr T about his actions, but Dr T pleads with him not to say anything. Dr A calls Medical Protection for advice. A medicolegal consultant suggests that Dr A raise the matter with Dr T's consultant or supervisor. Dr A does this, and Dr T receives a stiff word from his consultant, who addressed it as a training issue. If his actions were to be repeated, Dr T could face disciplinary action.



Doctors must fill in forms truthfully

# Useful links

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## Medical Protection Factsheets – Confidentiality General Principles

[medicalprotection.org/caribbean-and-bermuda/casebook-resources/factsheets/medicolegal-factsheets/factsheets/cb-confidentiality-general-principles](https://medicalprotection.org/caribbean-and-bermuda/casebook-resources/factsheets/medicolegal-factsheets/factsheets/cb-confidentiality-general-principles)

## Medical Protection Factsheets – Disclosures Without Consent

[medicalprotection.org/caribbean-and-bermuda/casebook-resources/factsheets/medicolegal-factsheets/factsheets/cb-confidentiality-disclosures-without-consent](https://medicalprotection.org/caribbean-and-bermuda/casebook-resources/factsheets/medicolegal-factsheets/factsheets/cb-confidentiality-disclosures-without-consent)

## The Caribbean Association of Medical Council (CAMC)

[camcouncils.org](https://camcouncils.org)

## Bahamas Medical Council

[bahamasmedicalcouncil.org/publications](https://bahamasmedicalcouncil.org/publications)

[gov.bm/sites/default/files/Standards-of-Practice-for-Medical-Practitioners-2013.pdf](https://gov.bm/sites/default/files/Standards-of-Practice-for-Medical-Practitioners-2013.pdf)

## Medical Council of Guyana

[medicalcouncil.org.gy/index.php/docs](https://medicalcouncil.org.gy/index.php/docs)

## Medical Council of Jamaica

[jamaicamedicalcouncil.org/publications](https://jamaicamedicalcouncil.org/publications)

## Medical Board of Trinidad and Tobago

[mbtt.org](https://mbtt.org)

## St. Vincent and the Grenadines Medical Association

[svgmeda.com](https://svgmeda.com)

## Department of Health Regulatory Services – Cayman Islands

[dhhs.gov.ky/portal/page/portal/hrshome/hpc/hpcforms](https://dhhs.gov.ky/portal/page/portal/hrshome/hpc/hpcforms)





## Medicolegal enquiries

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## Membership enquiries

T: +44 113 241 0727

E: [caribbeanandbermuda@medicalprotection.org](mailto:caribbeanandbermuda@medicalprotection.org)

Calls to Membership Services may be recorded for monitoring and training purposes. Please direct all comments, questions or suggestions about Medical Protection service, policy and operations to:

Chief Executive  
Level 19, The Shard,  
32 London Bridge Street,  
London SE1 9SG  
United Kingdom

In the interests of confidentiality please do not include information in any email that would allow a patient to be identified.

**[medicalprotection.org](https://www.medicalprotection.org)**