

is often difficult to find out the facts, secure evidence of how the incident occurred, or determine responsibility for it; and this gives rise to particular difficulty for hospital solicitors when complaints or claims are made, or legal proceedings commenced without previous warning. Similarly without a contemporaneous report it may not be possible to take action urgently needed to prevent the occurrence of the same mishap again.

3. It is therefore most desirable — as is already the practice of many hospitals — that a brief report should be prepared by the Secretary of the Board of Governors or Hospital Management Committee as soon as possible after any occurrence of the kind in question, giving the name of any person injured, the names of all witnesses, details of the injuries and the full facts of the occurrence and of the action taken at the time. This report should have attached to it a statement from each of the persons present in the form attached to this memorandum. It should be regarded as the responsibility of the senior hospital officer present at any such occurrence to make a statement in this form immediately to the Secretary, and the responsibility of the Secretary to obtain a similar statement from all others present at the occurrence who have evidence to contribute. In mental and mental deficiency hospitals where arrangements already exist for reporting accidents involving patients (and for reports to the Board of Control in certain instances) this procedure should not be regarded as replacing the existing one but rather as supplementing it in such manner as may be necessary to meet the special requirements of this memorandum.

4. If these reports and statements are to be of full value to the hospital's solicitor it is essential that they should be confidential and privileged documents. In order that professional privilege may be claimed for them they must be regarded as, in essence, communications between the hospital's solicitor and his client.

5. Since, however, it may be necessary for the hospital authority — Regional Board, Management Committee or Board of Governors — to be informed of the circumstances to enable immediate action to be taken, and since the authority may be sued jointly with an officer alleged to be responsible for the occurrence and it will be the hospital authority who are instructing their solicitor if they are sued, there is no reason why the report should not be put before the authority for consideration. But it should in no circumstances be given any general circulation to the hospital's staff. It must also be borne in mind that privilege cannot be claimed for any correspondence or other documents relating to action in connection with the occurrence (including the minutes of the hospital authority's meetings), other than the report itself or documents made in connection with its preparation.

6. No report or copy of it should be given to any member of the staff

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particulars of the nature of the invention, of the circumstances in which it was made (including the extent to which hospital facilities or funds have been provided) and of any claim made by the employee. This will enable the Ministry to examine the legal position and to consider, at an early stage, whether any special action is needed — for example, whether help is required with patenting the invention or with its subsequent exploitation, whether any financial help should be provided, whether the inventor might be put in touch with other workers in the same field, and so on. At a later stage, the need for disseminating information about the new development throughout the health service would also be examined.

5. The Ministry should also be kept informed of whatever arrangements are proposed for exploitation, including the granting of licences, royalty payments, etc. This will present little difficulty when, as seems likely often to be appropriate, patenting and exploitation are handled by the National Research Development Corporation, with which the Department has special liaison arrangements. In the case of inventions which are being handled by other agencies, it is hoped that where a hospital employee has been in any way concerned in making the invention, or National Health Service facilities or funds have been used, the inventor(s) would, whether or not the Common Law rule applied, agree to the employing authority, or perhaps in some instances the Minister, becoming a joint patentee. The effect of this would be that the Minister, or his agent, would be able to prevent the exploitation of the inventions in a way, or subject to terms, which would be prejudicial to the interests of the National Health Service. A Board or Committee which became a joint patentee would be asked to keep the Ministry in touch with all action in relation to the invention.

28th September, 1967.

REPORTING OF ACCIDENTS IN HOSPITALS

(Text of Ministry circular H.M. (55) 66)

1. From time to time accidents or other untoward occurrences arise at hospitals which may give rise to complaints followed by claims for compensation or legal proceedings, and which may also call for immediate enquiry and action to prevent a repetition. Though comparatively few in number, such occurrences cover a very wide range: cases where the treatment of a patient is unsuccessful through some mishap, cases such as a patient's being given wrong medicine or burnt with a hot water bottle, and accidents to patients, visitors or staff such as a fall on hospital premises.

2. Unless statements about any occurrences of this kind are obtained at the time, and a report based on the statements drawn up at once, it