

RESPONSE

When lawyers are let loose

Margaret McCartney*

Fulton Street Medical Centre, Glasgow, UK

Margaret McCartney is both a general practitioner and a freelance journalist.

No one interested in scientific truth could read Peter Wilmhurst's account of events without feeling shame for the current legal system addressing libel in the UK.

I have two main paid occupations. One of these is as a general practitioner. The other is as a writer, mainly about medicine, science and health. I wrote a weekly column in the *Financial Times* for seven years, which ended last year. The *Financial Times* employs lawyers whose job it is to ensure that the newspaper is not sued for what it prints. The process of having my words 'lawyered' was unfortunately frequent: the legal team were highly knowledgeable, experienced and polite.

As a general practitioner, much of my time is spent either thinking about, or working, with uncertainty. Will this statin tablet prevent a heart attack or cause only side effects? Will this flu vaccination be a good defence against flu or am I just wasting resources and time? There is seldom a clear answer to even common questions. I am used to debate, to discussing uncertainty, to hearing both sides of an argument – indeed, it is my role to disentangle all this when I talk with my patients. I do not expect medicine to come in neat packages of 'yes' and 'no'. Transmitting these uncertainties to the printed page becomes more difficult when lawyers are involved.

I had interviewed Peter Wilmhurst for a piece about the difficulties of speaking out when there was a threat of being sued for libel. I had written a factual piece, I had checked all the quotations I wished to use, and had evidence for all the points I wished to make. On return from the legal department, the piece had tripled in length. The article had been lawyered and it was almost impossible to decipher what the point was. After many more hours on both sides, I gave up. I was embarrassed with the article as it then stood: I was not convinced that it would do any more than muddy the waters. What I really wanted to say – that libel laws are bad for patients and doctors and why – was washed away in legalese. I'm not proud of that. I wish now that I had persevered. Why? Because the poor state of libel law in the UK directly affects me as a doctor and you as a (potential) patient. Not publishing dissent makes it worse.

As a doctor, I am always keen to be involved with good quality research; it's the only way treatments get better. A pharmaceutical company once wanted to recruit patients from our practice. The company had ethical approval for research asking an important question and it was working with respected and senior researchers. At a meeting with the company's representatives, I asked if the company was guaranteeing to publish the results, no matter what the findings. They would have to check. Would

*Email: margaret@margaretmccartney.com

I not just sign now? No, I replied. They eventually told me that they ‘probably’ would publish, but this was not guaranteed. So they would not mind if I were to publish whatever results I had, then? No, no: there would of course be a confidentiality clause. I could not say anything without their permission.

I did not get involved. Other people did, though: that trial is up and running. What will happen if the results are not as expected, or even bad for the intervention being tested? We may never know. It is not illegal for a pharmaceutical company, or a medical devices company, not to publish clinical research results it does not like. Imagine that: you may, as a patient, sign up to a study because you want to benefit others and because you want to get good treatment yourself, but if the results are not wanted, they can all, quite legally, go in the bin.

And what if a doctor wants to call time and speak out? At your peril, sir. The bottom line is this: had the results from that company not been published, and had I chosen to write about them, I would have been in the firing line. There is also no doubt that the current state of libel law has an adverse effect on what I choose to write about. One should, of course, always be accurate, honest and fair. One should not write unjust or unsubstantiated stuff that could damage an innocent company or individual.

Yet, science does not fit easily into the innocent/guilty paradigm. Just look through the letters pages of any peer reviewed journal: science is debated, sniffed through, doubted, challenged and argued. No one presents results that everyone else accepts immediately as true. The scientific method is the best we have – randomised, placebo-controlled, blinded and time consuming – but even the best study should be repeated to ensure the findings are true. And as for the ‘best’ study; all are imperfect. All have biases which need to be acknowledged.

If good science, with all its imperfections, is going to make any difference to how well I can do my job, I need it to be as freely available and discussed as possible. I need to know that there is a debate about how useful steroids are in head injury (not useful, potentially dangerous) or how useful is tonsillectomy (rarely). These findings, now accepted, took years of study and debate before they were finally settled and accepted. These results have saved lives and needless operations.

If doctors, scientists and researchers are tormented with the threat of libel for conducting that debate, the biggest losers will be patients. Libel law is the wrong tool with which to debate science. I sometimes wonder if my caution towards the pharmaceutical industry will ever fade: not while pharmaceutical companies are touting research contracts like that, it won’t.