Contents

List of Contributors xv		
PART I: THE WRITING OF REPORTS AND RELATED PROBLEMS		
1 The Medico-legal Consultation		
J.P. Jackson	3	
Arranging to See Patients	3	
Accompanying Persons	4	
The Consultation	6	
The History	6	
Examination	8	
Further Investigations	9	
2 Medico-legal Reports		
J.P. Jackson	11	
Obtaining Additional Information	12	
Compiling the Report	13	
The First Page	13	
The Accident		
Present Complaints	14	
Past History	14	
The Examination		
The Opinion	15	
Occupation	17	
Sport and Social Activity	17	
Prognosis	17	
3 Consent and Confidentiality		
R.N. Palmer	19	
Consent	19	
General Principles	19	
Age of Consent	20	
Intimate Samples	21	
Implied and Express Consent	21	
Oral and Written Consent		
Obtaining Consent	22	



X CONTENTS

Emergencies and Consent	22
The Mental Health Act 1983 and Consent to Treatment	23
Sterilisation: Medical and Social Grounds	25
Consent to Abortion and Contraception	27
Girls under 16 Years of Age	27 27
Consent and Research, Clinical Trials	2/ 29
Consent and Jehovah's Witnesses	20
Consent and Radioisotopes	29
Consent Forms	50
Consent to Post-mortem Examination and to Removal of	31
Human Tissue	31
Surgical Implants	35
Confidentiality	35
Venereal Disease	35
The General Rule and Exceptions	36
Some Practical Problems	38
Death and Confidentiality	38
Confidentiality and Non-medical Staff	39
Fitness to drive	39
Non-accidental Injury to a Child	39
The Occupational Health Physician	40
Non-clinical and Administrative Medical Officers	40
170.0	40
AIDS: HIV Status	
AIDS: HIV Status Audit	40
AIDS: HIV Status Audit PART II: THE MOST CONTENTIOUS PROBLEMS IN THE HIGH-RISK SPECIALITIES	40
PART II: THE MOST CONTENTIOUS PROBLEMS IN THE HIGH-RISK SPECIALITIES	40
PART II: THE MOST CONTENTIOUS PROBLEMS IN THE HIGH-RISK SPECIALITIES 4 Anaesthesia	40
PART II: THE MOST CONTENTIOUS PROBLEMS IN THE HIGH-RISK SPECIALITIES 4 Anaesthesia A.R. Aitkenbead	40
Audit PART II: THE MOST CONTENTIOUS PROBLEMS IN THE HIGH-RISK SPECIALITIES 4 Anaesthesia A.R. Aitkenbead Cerebral Damage	40 45 47
Audit PART II: THE MOST CONTENTIOUS PROBLEMS IN THE HIGH-RISK SPECIALITIES 4 Anaesthesia A.R. Aitkenbead Cerebral Damage Hypoxaemia	40 45 47
Audit PART II: THE MOST CONTENTIOUS PROBLEMS IN THE HIGH-RISK SPECIALITIES 4 Anaesthesia A.R. Aitkenbead Cerebral Damage Hypoxaemia Failure of Oxygen Delivery	45 47 47
Audit PART II: THE MOST CONTENTIOUS PROBLEMS IN THE HIGH-RISK SPECIALITIES 4 Anaesthesia A.R. Aitkenhead Cerebral Damage Hypoxaemia Failure of Oxygen Delivery Consequences of Cerebral Hypoxaemia or Ischaemia	45 47 47 51
Audit PART II: THE MOST CONTENTIOUS PROBLEMS IN THE HIGH-RISK SPECIALITIES 4 Anaesthesia A.R. Aitkenbead Cerebral Damage Hypoxaemia Failure of Oxygen Delivery Consequences of Cerebral Hypoxaemia or Ischaemia Prevention	45 47 47 51 53
Audit PART II: THE MOST CONTENTIOUS PROBLEMS IN THE HIGH-RISK SPECIALITIES 4 Anaesthesia A.R. Aitkenhead Cerebral Damage Hypoxaemia Failure of Oxygen Delivery Consequences of Cerebral Hypoxaemia or Ischaemia Prevention Conclusion	40 45 47 51 53 55 58
Audit PART II: THE MOST CONTENTIOUS PROBLEMS IN THE HIGH-RISK SPECIALITIES 4 Anaesthesia A.R. Aitkenbead Cerebral Damage Hypoxaemia Failure of Oxygen Delivery Consequences of Cerebral Hypoxaemia or Ischaemia Prevention Conclusion Anaphylaxis	40 45 47 51 53 55 58 58
Audit PART II: THE MOST CONTENTIOUS PROBLEMS IN THE HIGH-RISK SPECIALITIES 4 Anaesthesia A.R. Aitkenhead Cerebral Damage Hypoxaemia Failure of Oxygen Delivery Consequences of Cerebral Hypoxaemia or Ischaemia Prevention Conclusion Anaphylaxis Incidence	40 45 47 51 53 55 58 58 59
Audit PART II: THE MOST CONTENTIOUS PROBLEMS IN THE HIGH-RISK SPECIALITIES 4 Anaesthesia A.R. Aitkenbead Cerebral Damage Hypoxaemia Failure of Oxygen Delivery Consequences of Cerebral Hypoxaemia or Ischaemia Prevention Conclusion Anaphylaxis Incidence Prevention	40 45 47 51 53 58 58 58
Audit PART II: THE MOST CONTENTIOUS PROBLEMS IN THE HIGH-RISK SPECIALITIES 4 Anaesthesia A.R. Aitkenbead Cerebral Damage Hypoxaemia Failure of Oxygen Delivery Consequences of Cerebral Hypoxaemia or Ischaemia Prevention Conclusion Anaphylaxis Incidence Prevention Awareness During Anaesthesia	40 45 47 51 53 58 58 58 60 60
Audit PART II: THE MOST CONTENTIOUS PROBLEMS IN THE HIGH-RISK SPECIALITIES 4 Anaesthesia A.R. Attkenbead Cerebral Damage Hypoxaemia Failure of Oxygen Delivery Consequences of Cerebral Hypoxaemia or Ischaemia Prevention Conclusion Anaphylaxis Incidence Prevention Awareness During Anaesthesia Spontaneous Recall	40 45 47 51 53 58 58 59 60 63
Audit PART II: THE MOST CONTENTIOUS PROBLEMS IN THE HIGH-RISK SPECIALITIES 4 Anaesthesia A.R. Aitkenbead Cerebral Damage Hypoxaemia Failure of Oxygen Delivery Consequences of Cerebral Hypoxaemia or Ischaemia Prevention Conclusion Anaphylaxis Incidence Prevention	40 45 47 51 53 58 58 59 60 63
Audit PART II: THE MOST CONTENTIOUS PROBLEMS IN THE HIGH-RISK SPECIALITIES 4 Anaesthesia A.R. Aitkenbead Cerebral Damage Hypoxaemia Failure of Oxygen Delivery Consequences of Cerebral Hypoxaemia or Ischaemia Prevention Conclusion Anaphylaxis Incidence Prevention Awareness During Anaesthesia Spontaneous Recall Prevention of Spontaneous Recall	40 45 47 51 53 55 58 58 59 60 63 65 70
Audit PART II: THE MOST CONTENTIOUS PROBLEMS IN THE HIGH-RISK SPECIALITIES 4 Anaesthesia A.R. Aitkenbead Cerebral Damage Hypoxaemia Failure of Oxygen Delivery Consequences of Cerebral Hypoxaemia or Ischaemia Prevention Conclusion Anaphylaxis Incidence Prevention Awareness During Anaesthesia Spontaneous Recall Prevention of Spontaneous Recall	40 45 47 51 53 55 58 58 59 60 63 65 70
Audit PART II: THE MOST CONTENTIOUS PROBLEMS IN THE HIGH-RISK SPECIALITIES 4 Anaesthesia A.R. Aitkenbead Cerebral Damage Hypoxaemia Failure of Oxygen Delivery Consequences of Cerebral Hypoxaemia or Ischaemia Prevention Conclusion Anaphylaxis Incidence Prevention Awareness During Anaesthesia Spontaneous Recall Prevention of Spontaneous Recall 5 General Surgery N. Keddie	40 45 47 51 53 55 58 59 60 63 65 70
Audit PART II: THE MOST CONTENTIOUS PROBLEMS IN THE HIGH-RISK SPECIALITIES 4 Anaesthesia A.R. Aitkenbead Cerebral Damage Hypoxaemia Failure of Oxygen Delivery Consequences of Cerebral Hypoxaemia or Ischaemia Prevention Conclusion Anaphylaxis Incidence Prevention Awareness During Anaesthesia Spontaneous Recall Prevention of Spontaneous Recall 5 General Surgery N. Keddie What is General Surgery?	40 45 47 51 55 58 58 59 60 63 65 70
Audit PART II: THE MOST CONTENTIOUS PROBLEMS IN THE HIGH-RISK SPECIALITIES 4 Anaesthesia A.R. Aitkenbead Cerebral Damage Hypoxaemia Failure of Oxygen Delivery Consequences of Cerebral Hypoxaemia or Ischaemia Prevention Conclusion Anaphylaxis Incidence Prevention Awareness During Anaesthesia Spontaneous Recall Prevention of Spontaneous Recall 5 General Surgery N. Keddie What is General Surgery? General Causes for Claims	40 45 47 51 53 58 58 59 60 63 65 70 77
Audit PART II: THE MOST CONTENTIOUS PROBLEMS IN THE HIGH-RISK SPECIALITIES 4 Anaesthesia A.R. Aitkenbead Cerebral Damage Hypoxaemia Failure of Oxygen Delivery Consequences of Cerebral Hypoxaemia or Ischaemia Prevention Conclusion Anaphylaxis Incidence Prevention Awareness During Anaesthesia Spontaneous Recall Prevention of Spontaneous Recall 5 General Surgery N. Keddie What is General Surgery?	40 45 47 51 53 58 58 59 60 63 65 70 77 77

Lymph Node Biopsy	92
Local Anaesthetic Overdose	
Inguinal Hernia Repair	92
Testicular Atrophy	
Vasectomy	93
Miscellaneous Problems	93
6 Dermatology	
K.V. Sanderson	95
The Medical Report	
Occupational Dermatitis	9 7
Nomenclature	
Clinical Considerations	
Evidence in Favour of Occupational Dermatitis	
Patch Testing	100
Constitutional Factors in Workers with Dermatitis	
Prognosis of Industrial Dermatitis	

Treatment	103
Prevention of Industrial Dermatitis	104
The Management of Skin Diseases	104
Errors of Diagnosis: the Circumstances	10
Negligent Treatment: Some of the Circumstances	100
Degrees of Medical Responsibility	100
The Cosmetic Factor	110
Avoiding Medico-legal Actions	11
Child Abuse and the Dermatologist	112
Child House and the Definatologist	112
7 Ear, Nose and Throat	
K.P. Gibbin	119
Personal Injury and the Otolaryngologist	110
Otological Aspects	110
Noise Induced Hearing Loss	110
Head Injury and Deafness	
Trauma and Facial Palsy	
Ototoxicity	121
Trauma and the Nose and Paranasal Sinuses	122
Trauma and the Throat and Neck	123
Informed Consent and For None and Threat Consent	127
Informed Consent and Ear, Nose and Throat Surgery	129
Ear Surgery	130
Thyroid Surgery	133
Tonsillectomy and Adenoidectomy	133
Endoscopy	134
Nasal and Sinus Surgery	134
8 Neurology	
R.B. Godwin-Austen	137
Head Injury	139
Concussion	140
Post-traumatic Epilepsy	141
Brain Damage	142
Neck Injury	143
Root Damage	
Cervical Spinal Cord Injury	140
Peripheral Nerve Injury	144
Cranial Nerve Damage	
Traumatic Peripheral Mononeuropathies	145
Psychiatric and Psychological Aspects of Organic Brain Injury	146
Stress Peastions	
Stress Reactions	148
Post-concussional Syndrome	149
Focal Brain Damage	
General Damages	152
9 Neurosurgery	
J. Punt	167
Head Injury	17/
Review of Fssential Documents	157

AUDITIONAL RECOMMENDATIONS	158
Additional Recommendations	
Medical Negligence	15
Children, Neurosurgery and the Law	16
Non-accidental Injury	16
10 Obstetrics and Gynaecology	
E.M. Symonds	16
Obstetric Brain Damage Claims	16
Perinatal Asphyxia and Cerebral Palsy	16
The Statute of Limitations	16
Defence	
Impacted Shoulders	
Multiple Pregnancy	16
Prenatal Diagnosis	
Advice on Avoiding Litigation in Obstetrics	
Evaluation of Quantum for Brain Damage	
Gynaecological Problems	
Failed Sterilisation	
Complications of Abortion	
Surgical Complications of Hysterectomy	169
The Misdiagnosis of Cancer	
Contraceptive Problems	
Conclusions	170
11 Orthopaedics	
J.P. Jackson	
Repetitive Stress Injury	17
Those Cases with a Definite Pathology	17
Work-related Upper Limb Disorders	17: 17:
Work-related Upper Limb Disorders Malingering	17: 17: 17:
Work-related Upper Limb Disorders Malingering Anterior Knee Pain (Chondromalacia Patellae)	17: 17: 17:
Work-related Upper Limb Disorders Malingering Anterior Knee Pain (Chondromalacia Patellae) Relationship to Osteoarthritis	17: 17: 17: 17:
Work-related Upper Limb Disorders Malingering Anterior Knee Pain (Chondromalacia Patellae) Relationship to Osteoarthritis Relationship to Trauma	17: 17: 17: 17: 17:
Work-related Upper Limb Disorders Malingering Anterior Knee Pain (Chondromalacia Patellae) Relationship to Osteoarthritis Relationship to Trauma Summary	17: 17: 17: 17: 17: 17: 17:
Work-related Upper Limb Disorders Malingering Anterior Knee Pain (Chondromalacia Patellae) Relationship to Osteoarthritis Relationship to Trauma Summary Whiplash Injuries of the Neck	17: 17: 17: 17: 17: 17: 17: 18:
Work-related Upper Limb Disorders Malingering Anterior Knee Pain (Chondromalacia Patellae) Relationship to Osteoarthritis Relationship to Trauma Summary Whiplash Injuries of the Neck Cervical Spondylosis	17: 17: 17: 17: 17: 17: 18:
Work-related Upper Limb Disorders Malingering Anterior Knee Pain (Chondromalacia Patellae) Relationship to Osteoarthritis Relationship to Trauma Summary Whiplash Injuries of the Neck Cervical Spondylosis Radiographic Changes	17: 17: 17: 17: 17: 17: 18: 18:
Work-related Upper Limb Disorders Malingering Anterior Knee Pain (Chondromalacia Patellae) Relationship to Osteoarthritis Relationship to Trauma Summary Whiplash Injuries of the Neck Cervical Spondylosis Radiographic Changes Mechanism of Injury	17: 17: 17: 17: 17: 17: 18: 18: 18:
Work-related Upper Limb Disorders Malingering Anterior Knee Pain (Chondromalacia Patellae) Relationship to Osteoarthritis Relationship to Trauma Summary Whiplash Injuries of the Neck Cervical Spondylosis Radiographic Changes Mechanism of Injury Osteoarthritis and Trauma	17: 17: 17: 17: 17: 17: 18: 18: 18: 18:
Work-related Upper Limb Disorders Malingering Anterior Knee Pain (Chondromalacia Patellae) Relationship to Osteoarthritis Relationship to Trauma Summary Whiplash Injuries of the Neck Cervical Spondylosis Radiographic Changes Mechanism of Injury Osteoarthritis and Trauma Epidemiology	17: 17: 17: 17: 17: 18: 18: 18: 18: 18:
Work-related Upper Limb Disorders Malingering Anterior Knee Pain (Chondromalacia Patellae) Relationship to Osteoarthritis Relationship to Trauma Summary Whiplash Injuries of the Neck Cervical Spondylosis Radiographic Changes Mechanism of Injury Osteoarthritis and Trauma Epidemiology Joint Incongruity	17: 17: 17: 17: 17: 18: 18: 18: 18: 18:
Work-related Upper Limb Disorders Malingering Anterior Knee Pain (Chondromalacia Patellae) Relationship to Osteoarthritis Relationship to Trauma Summary Whiplash Injuries of the Neck Cervical Spondylosis Radiographic Changes Mechanism of Injury Osteoarthritis and Trauma Epidemiology	177 177 177 177 177 187 188 188 181 183 183
Work-related Upper Limb Disorders Malingering Anterior Knee Pain (Chondromalacia Patellae) Relationship to Osteoarthritis Relationship to Trauma Summary Whiplash Injuries of the Neck Cervical Spondylosis Radiographic Changes Mechanism of Injury Osteoarthritis and Trauma Epidemiology Joint Incongruity Aggravation of Osteoarthritis	17 17 17 17 17 17 18 18 18 18 18 18
Work-related Upper Limb Disorders Malingering Anterior Knee Pain (Chondromalacia Patellae) Relationship to Osteoarthritis Relationship to Trauma Summary Whiplash Injuries of the Neck Cervical Spondylosis Radiographic Changes Mechanism of Injury Osteoarthritis and Trauma Epidemiology Joint Incongruity Aggravation of Osteoarthritis	17: 17: 17: 17: 17: 17: 18: 18: 18: 18: 18: 18:
Work-related Upper Limb Disorders Malingering Anterior Knee Pain (Chondromalacia Patellae) Relationship to Osteoarthritis Relationship to Trauma Summary Whiplash Injuries of the Neck Cervical Spondylosis Radiographic Changes Mechanism of Injury Osteoarthritis and Trauma Epidemiology Joint Incongruity Aggravation of Osteoarthritis 12 Litigant's Backache J.H.S. Scott	17. 17. 17. 17. 17. 17. 18. 18. 18. 18. 18. 18.
Work-related Upper Limb Disorders Malingering Anterior Knee Pain (Chondromalacia Patellae) Relationship to Osteoarthritis Relationship to Trauma Summary Whiplash Injuries of the Neck Cervical Spondylosis Radiographic Changes Mechanism of Injury Osteoarthritis and Trauma Epidemiology Joint Incongruity Aggravation of Osteoarthritis 12 Litigant's Backache J.H.S. Scott Presentation	17: 17: 17: 17: 17: 17: 18: 18: 18: 18: 18: 18:
Work-related Upper Limb Disorders Malingering Anterior Knee Pain (Chondromalacia Patellae) Relationship to Osteoarthritis Relationship to Trauma Summary Whiplash Injuries of the Neck Cervical Spondylosis Radiographic Changes Mechanism of Injury Osteoarthritis and Trauma Epidemiology Joint Incongruity Aggravation of Osteoarthritis 12 Litigant's Backache J.H.S. Scott	17: 17: 17: 17: 17: 17: 18: 18: 18: 18: 18: 18: 18: 18: 18:

History	190
Examination	191
Comment on Examination	192
Radiographic Examination	193
Summary	
Appendix. Examination Techniques and Tests	105
reported. Danimution reciniques and rests	17)
13 Paediatrics	
D. Hull	100
Advicing Departs Africa Transday	199
Advising Parents After a Tragedy	200
What Was the Cause?	200
Could It Have Been Avoided?	200
Was Anyone at Fault?	201
Was It Negligence?	202
Problems of Causation When Child Is Injured	203
Cause: Unknown	203
Incorrect Presumption of Cause	204
Inadequate Evidence	206
Circumstances Long Passed	208
Delayed Outcome	208
Multiple Causes	210
Fault	211
Duty of Care	211
Omission: A Service That Is Not Good Enough	212
Making a Mistake	213
Experience and Training	213
Negligence and Consequence	214
Shared Responsibilities: Parents as Partners	215
Quantum: Assessing the Future	216
14 Psychiatry	
G.L. Harrison	217
Some Legal Principles	217
Law of Torts	217
Liability	217
Compensation for Pain, Suffering and "Psychiatric Injury"	218
Psychiatric Injury: Some Special Problems	218
Causation and Vulnerability	218
Pre-existing Conditions	220
Problems of Defining Illness Boundaries	220
Lack of Objective Validation and Malingering	221
"Functional" Disorders and "Hysteria"	223
Common Psychiatric Disorders in a Medico-legal Setting	225
Post-traumatic Stress Disorder	225
Post-concussional Syndrome	220
Other Psychiatric Sequelae of Head Injury	233
Preparing a Medical Report	234
Appearing in Court as an Expert Witness	226

Part III: LEGAL ADVICE FOR DOCTORS INVOLVED WITH MEDICO-LEGAL PROBLEMS

15 The Solicitor's Problems	
G.C. Reed	
Instructing the Doctor	24
Reports from the Treating Doctor	24
When Should the Doctor Be Instructed?	24
The Doctor's Role	24
Choosing the Doctor	
What Investigations May the Doctor Undertake?	
Access to Medical Records	
Disclosure of Medical Evidence	
Joint Examination and Reports	
Provisional Damages	
Arrangements for Attending Court	25
Attailgements for Attending Court	2)
16 Counsel's Advice to the Medical Expert	
R. Maxwell, QC	25
Preliminary Considerations	
Keep Within Your Expertise	
Are You Adequately Instructed?	
Are You Sufficiently Informed?	259
The Golden Rules	
Be Independent	
Always Have in Mind the Trial	
The Medical Report: Achieving Clarity of Communication	
Layout	
Subject Headings	
The Medical Expert as Witness	
The Trial	
The Subpoena	
Arrangements for Attendance	
Pre-trial Conference	
Preparation	
Patience and Discretion	
Giving Evidence	
Other Evidence	276
17 The Legal Basis of Medical Negligence	
B. Knight	277
The Duty of Care	
The Breach of the Duty of Care	
Negligence Versus Error of Clinical Judgement	
The Patient Must Suffer Damage	
The Damage Must Flow from the Breach of the Duty of Care	292
Novus Actus Interveniens	
Contributory Negligence	205
'Res ipsa loquitor", the Facts Speak for Themselves	
	/="

xvi Contents

Subject Index	 289