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Medical professionals and the 'right to be forgotten' – Dutch surgeon wins landmark case

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For medical professionals, the rise of information on social media and unofficial websites about their fitness to practice and professional reputation is a serious concern, but it can be difficult to control the information which is available on the internet. Nevertheless, there are signs that the courts now recognise that allowing inaccurate and outdated information about clinician to remain on the internet is unfair to clinicians and can lead to an unfounded loss of patient confidence.

In a recent landmark legal decision thought to be the first 'right to be forgotten' case involving medical negligence, a Dutch court has ruled that a surgeon can compel Google to remove inaccurate search results relating to her fitness to practise.

Following a disciplinary panel's finding of negligence relating to her post-operative care of a patient, the Dutch surgeon's licence to practise was initially withdrawn, but after appeal this was changed to a conditional suspension under which she could still treat patients.

However, when searching Google using the surgeon's name the first result was an unofficial blacklist which recorded only the original withdrawal of her license to practise. The surgeon's competence was also discussed by members of the public on a social media forum. The surgeon claimed that potential patients had found the information on the unofficial website and this had unfairly damaged her professional reputation.

Google and the Dutch Data Protection Authority rejected the surgeon's claim on the basis that she was still conditionally suspended due to the negligence and therefore the information remained relevant. Google also claimed that most people would have difficulty in finding the information about the surgeon's negligence using the official register of health professionals maintained by the Dutch Ministry of Health.

But in what is considered to be an important extension to health professional of the 'right to be forgotten', the district court of Amsterdam ruled in favour of the surgeon, saying that protection of her professional reputation by removing the information relating to the withdrawal of her licence to practise was more important than allowing members of the public to access the information via the unofficial website.

The Dutch court also ruled that whilst the information regarding the surgeon's negligence was accurate, the pejorative name of the unofficial website suggested she was unfit to treat patients, but this was not the ultimate finding of disciplinary panel. The court also rejected Google's argument that information regarding the surgeon's negligence was not readily available on the official register of health professionals.

The right to erasure of personal data in certain circumstances is contained Article 17 of the General Data Protection Regulation (GDPR). Decisions on whether data should be erased will often depend on balancing the individual's objections against other legitimate interests which require publication. As the GDPR has been incorporated into UK law by section 47 of the Data Protection Act 2018 (DPA 2018) the 'right to be forgotten' will continue after the UK has exited the European Union.

The 'right to be forgotten' was first established in the 2014 case of Google Spain v AEPD and Mario Costeja González in which the European Court of Justice ruled that there is a right to correction or erasure inaccurate and irrelevant information on the internet.

Around 3 million people in Europe have exercised their 'right to be forgotten' since 2014. It is clear from the Dutch case that the courts now acknowledge that there is an important public interest in ensuring that information about clinicians on the internet is accurate and relevant in order to protect the reputation of clinicians and maintain patient confidence in the medical profession.

In clinical negligence court cases, clinicians are named as Defendants or witnesses and so their anonymity is not protected and the 'right to be forgotten' will never exist.

It is, however, always important to ensure that where admissions are made, these are for the purposes of the litigation only in order to limit their wider application. Where fitness to practise hearings are held by the Professional Standards Authority, General Medical Council, Medical Practitioners Tribunal Service, Nursing and Midwifery Council or General Dental Council, the fact that a hearing has taken place and the outcome is published on their websites. Regulatory bodies must hold this information in accordance with their legal obligations under the GDPR, DPA 2018 and Freedom of Information Act 2000 and so the information is likely to remain available for some time.

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