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Reporter: Andrew Geoghegan

PATIENT FIGHTS FOR JUSTICE AFTER SURGICAL NIGHTMARE

KERRY O'BRIEN: The NSW hospital system has been reeling in recent months from a series of medical negligence cases.

Symptomatic of the problem has been a failure by medical staff to respond to patients' complaints.

In some cases, it's resulted in death.

After Pat Skinner went under the knife at Sydney's St George Hospital to have part of her colon removed, she was given a clean bill of health.

But over the next 18 months, when she complained of severe abdominal pain she was told she was recovering.

It was only after insisting on having an X-ray that she discovered a pair of 17cm surgical scissors had been left inside her.

But having made that discovery, she's now had to go through another 18-month nightmare trying to get an adequate explanation, let alone compensation.

Andrew Geoghegan reports.

DON SKINNER: I've beaten it but Pat still suffers and I've said to many people that she wasn't a patient, she was a victim.

ANDREW GEOGHEGAN: Pat Skinner knew the surgery to remove part of the colon would be painful.

But she was prepared to put up with the discomfort, after all, she'd had intestinal problems and her specialist at Sydney's St George Hospital Dr David Lubowski warned her that the polyps in the colon could be cancerous.

PAT SKINNER: The day I came out he came out, he came around and he said, "Well I've got good news for you. It wasn't cancerous."

And I said, "That's great. I've got great news for you. My system's working".

ANDREW GEOGHEGAN: But as we shall see, Pat Skinner's good news would be short-lived.

Her operation had been carried out by a hospital registrar who is no longer at St George Hospital.

A mistake on the operating table would leave her in pain for the next 18 months and seriously threaten the health of the 69-year-old.

PAT SKINNER: The pain went for a while and then I started to get pains back again, a different type of pain.

We were going over a bump in the car and I'd be screaming and I'd be saying, "What's wrong with you?"

And I'd say, "It's just so painful. Just don't go over a bump."

ANDREW GEOGHEGAN: Pat Skinner complained to her specialist and her GP.

She couldn't stand, sit or lie down without being in extreme pain.

PAT SKINNER: I did complain and I was told, you know, it takes time.

This was the thing I kept hearing.

It takes time to recover.

I think they thought that maybe I was making a fuss.

I think, yeah.

ANDREW GEOGHEGAN: You felt guilty about that?

PAT SKINNER: Yeah, I think they felt, well, you know, you're going through depression.

ANDREW GEOGHEGAN: Pat Skinner was put on anti-depressants and given counselling which was particularly galling given that she had worked as a professional grief counsellor herself.

PAT SKINNER: I thought if anybody should be able to handle this I should.

ANDREW GEOGHEGAN: However, Pat Skinner could bear the pain no longer and went back to her GP.

PAT SKINNER: I went back to see my doctor again and I said, "Look, I just feel like I've been in a fight, I've fallen on the floor and somebody's been kicking me with steel-capped boots".

I said, "I think my tail bone is crumbling".

She said, "OK we'll send you up for an X-ray."

ANDREW GEOGHEGAN: You said, "I'd like an X-ray."

PAT SKINNER: Yes, that's right.

I did.

DON SKINNER: My wife instigated the X-ray.

That's the amazing thing that in all this time, not one person would suggest the fundamental thing like an X-ray.

ANDREW GEOGHEGAN: Finally, an answer to the mystery.

There inside her abdomen was a pair of 17cm surgical scissors.

PAT SKINNER: I was just in tears.

I was just, you know, there was just such a shock.

ANDREW GEOGHEGAN: Pat Skinner had been living with the scissors inside her for a year and a half.

It's little wonder she felt that her tail bone was crumbling -- the razor-sharp instrument, slightly open, had wedged itself up against her coccyx.

ANDREW GEOGHEGAN: You find that difficult to look at, don't you?

PAT SKINNER: I do, yeah.

ANDREW GEOGHEGAN: Why is that?

PAT SKINNER: I can't believe that I had those things inside me for such a long time.

DON SKINNER: I just think it's obscene.

It's just - that's the only way I can describe it.

To see such a thing inside a person and where they are, it's just - it's just terrible.

ANDREW GEOGHEGAN: An identical pair of scissors reveals just how large and potentially deadly the surgical instrument could be.

DON SKINNER: How can you not see them?

How can you not see them?

And if you haven't seen them, doesn't someone look around and say, "Um, where's the scissors gone?"

ANDREW GEOGHEGAN: Within hours of discovering the scissors, Pat Skinner was back on the operating table at St George Hospital, where the mistake had been made.

Again, she was undergoing major surgery.

This time, the operation was performed by her specialist, Dr Lubowski.

DON SKINNER: Tissue had grown over the point of the scissors and they couldn't remove the scissors without removing bowel as well.

He explained that, but he said she should return to a normal functioning, there should be no effect- he was quite strong about this.

I thought, well, these are early days.

How does he know that?

ANDREW GEOGHEGAN: Pat and Don Skinner expected St George Hospital would apologise, as well as offer an explanation and compensation for Pat's suffering.

They got the apology from Dr Lubowski.

PAT SKINNER: He said, "Well, the system normally works very well. Large items are not counted because scissors, items like scissors, are considered too big to lose."

I said, "Well, that's a nonsense."

He said, "Well, yes, obviously this has proven that that doesn't work."

ANDREW GEOGHEGAN: But to the Skinners' astonishment, the hospital did not admit liability.

PAT SKINNER: We did ask if we could talk to somebody that was in the operating theatre on that day that could perhaps give us some closure, but nobody wanted to talk to us or was able to talk to us.

None of those eight people there would have talked to us.

I think I found that really hurtful.

Really distressing.

ANDREW GEOGHEGAN: In a statement to the 7.30 Report, St George

Hospital says the surgeon primarily responsible for Pat Skinner's care, Dr Lubowski, met with her and that "the hospital has responded to all enquiries made by Mr and Mrs Skinner".

The Skinners made an official complaint to the NSW Health Care Complaints Commission, which was subsequently referred to the South-Eastern Sydney Area Health Service.

The service then, to the further amazement of the Skinners, instructed St George Hospital to conduct the investigation.

The Skinners were informed that their complaint had prompted a review of the standard procedures for handling all surgical instruments in NSW.

Yet a NSW Health Department letter to the Skinners stated that "The investigation concluded that procedures were correctly followed and that there was no definitive explanation as to how the incident occurred."

Only now, a further 18 months after the scissors were removed, has the hospital admitted a breach of the duty of care.

But there's a catch.

BERNARD McHARDY, SOLICITOR: The defendant says, "Yes, we did these things that were wrong, but we put you to proof as to the extent of your loss and damage."

ANDREW GEOGHEGAN: St George Hospital is asking Pat Skinner to prove to a court that she suffered an impairment to her health that is at least 15 per cent of the most extreme case.

BERNARD McHARDY: There is a threshold that you have to cross before you have any entitlement to what we call general damages or your non-economic loss.

Because you're a retiree, Pat, you're not suffering an income loss and what your damages are really about are the pain and suffering.

ANDREW GEOGHEGAN: Two years ago, the NSW Civil Liability Act was changed, fixing the maximum amount of damages for non-economic loss at \$350,000.

PROFESSOR REG GRAYCAR, UNIVERSITY OF SYDNEY: Non-economic losses are all those things other than hospital and medical expenses, loss of earning capacity.

Some of them are often quite intangible, like pain, suffering, loss of amenity.

ANDREW GEOGHEGAN: Reg Graycar is a professor of law at Sydney

University and claims that very few people injured by negligence successfully recover damages.

She cites research from the British Medical Association, which indicates there's often a more effective alternative to legal action.

PROFESSOR REG GRAYCAR: Clients who get clear explanations and, indeed, in some situations where appropriate apologies, are far less likely to bring legal action or to seek compensation.
BERNARD McHARDY: In the event that you don't cross that threshold, penalties that would operate against you in costs.

ANDREW GEOGHEGAN: The Skinners also face a \$10,000 limit on claims for legal costs.

Their legal bill could climb above \$50,000.

PAT SKINNER: There's no sake in it for people that have got really genuine claims, because it's been changed in such a way that even if you win a case, you can lose in that you're still landed with a huge legal - huge legal costs.

ANDREW GEOGHEGAN: Pat Skinner still doesn't know the extent the damage caused by the scissors.

But both she and her husband know the mistake has for the past two years ruined their retirement.

DON SKINNER: At our age there is a window of opportunity, but it's pretty small - or it gets smaller.

So, in our minds, we feel that we've missed this opportunity.

That was two years or more of our lives taken out through no fault of our own.

KERRY O'BRIEN: Just don't know how you do measure the cost of all that.

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