

Case Update

THE TIME TO WARN

Rooke v Minister for Health and Ors

In the matter of *Rooke v the Minister for Health and Ors* [2008] WADC 6, SRB Legal represented the Minister for Health and the three medical practitioners who were Defendants.

The principal allegation by the Plaintiff against the Defendants was that there had been a failure by each to properly warn him of possible post operative complications that may arise from surgery that he was to undergo.

The Second Defendant was a plastic surgeon from whom the Plaintiff sought advice in relation to his Dupuytren's contracture problem. Following a consultation, the Plaintiff decided to undergo surgery and this was carried out a few months later by the Third and Fourth Defendants.

The Third and Fourth Defendants only came into contact with the Plaintiff immediately prior to and during the process of preparation for the surgery.

Her Honour Judge Deane found that the Second Defendant did provide appropriate warnings to the Plaintiff at the time of the consultation a few months prior to the surgery.

In relation to the claims against the Third and Fourth Defendants, Her Honour found that at the time they saw the Plaintiff they were not, as alleged by the Plaintiff, under a duty to provide further warnings as to possible post operative complications.

Her Honour found that the consultation with the Second Defendant was clearly the time or the occasion for advice or warnings to be provided to the Plaintiff and not when he had been admitted to hospital and was about to undergo surgery as the Plaintiff had by that stage already made a firm decision to undergo the surgery.

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