

THE MOST INTERESTING AND FAMOUS MEDICAL MALPRACTICE CASES IN HISTORY

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“Medicine is not only a science; it is also an art. It does not consist of compounding pills and plasters; it deals with the very processes of life, which must be understood before they may be guided.”

(Paracelsus¹)

ABSTRACT: *Being a victim of medical malpractice can be a frighteningly eerie ordeal, especially when it involves extreme negligence. This paper examines some of the most unusual and intriguing medical malpractice cases ever recorded, some of which have dramatically transmuted the face of health care over the years. “The Case of the Mutilated Penis” is one of the examples shown in the paper. Another one is “The Case of Carol Wehrer” who had long suffered pain in her right ocular perceiver, and at the advice of her medico, decided her quality of life would be ameliorated if she had the ocular perceiver abstracted. The surgery was five and a half hours long, out of which Carol was aroused for two. She was so traumatized by the ordeal that she has slumbered in a reclining chair since, being too trepidacious to lie down. Cases like these are kenned as Anesthesia Cognizance, and it is estimated that up to 42.000 people in the US alone experience it every year. These famous medical malpractice cases are shocking, and go to show that wrongdoings can transpire any time and anywhere. According to the Journal of the American Medical Sodality (JAMA), medical negligence is the third leading cause of death in the U.S.—right behind heart disease and cancer.*

KEYWORDS: *Medical malpractice, famous cases, mutilated, the Journal of the American Medical Association (JAMA)*

JEL CODE: *K 4*

1. THE COMPLEXITY OF THE MEDICAL PROFESSION

Taking into consideration that the word “medicine” is derived from the Latin “ars medicina”, betokening the art of healing, we can naturally assert that this wondrous vocation is a combination of science and art. Anyone who culls the medical vocation will

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¹ Paracelsus born Philippus Aureolus Theophrastus Bombastus von Hohenheim (1493-1541), was a Swiss German philosopher, physician, botanist, astrologer, and general occultist. He is credited as the founder of toxicology. He is also a famous revolutionary for utilizing observations of nature, rather than referring to ancient texts, something of radical defiance during his time

not only need extensive cognizance and congruous skills but additionally to be plenarily committed to a set of posture and a code of comportment commonly kened as medical professionalism in the international medical community.

Patients always invest trust in doctors who are obliged to keep fixated on offering the best they can do. Doctors ought to provide cognizance, skills and judgment for accommodating the people they work for, with the firm aim of promoting health, obviate, treat illnesses and amend their wellbeing.

Because of the involution of the medical vocation, the legislator has developed a body of rules designed to organize and bulwark the medical vocation. The first and most paramount is to sanction the breach of medical practice, to fight against the people who claim their business as practicing medicine without having the erudition required to undertake a medical procedure. This is criminal law. Consequently, the breach of rules to access medical vocation has to be sanctioned, identically tantamount to, the unrightful practice of the medical act. (Mistretta, 2013, pp. 45-47)

Medical malpractice is an act or omission by a doctor, or other healthcare provider, that deviates from accepted standards of practice in the medical community, consequently causing injury to the patient. Medical malpractice is called the law of errors and omissions. After a patient consents to medical care, the facility has a licit obligation to provide care according to medical standards.

As stated in his book *"Malpractice a Medico-Legal Story"* by Nelson Ancalmo, 2010, one of the rudimentary elements in a doctor - patient relationship is communication. When a physician takes a patient under his or her care and concentrates only on the patient, ignoring this intricate structure that gravitates around him or her, he is engendering a reaction that will trigger a wave of discontent, apprehensiveness, and even vexation. This relationship, that should have been one of trust and gratitude, and even comity, becomes one of injunctive authorization, incriminations, and revenge and ultimately turns into a licit action against the doctor or doctors involved. (Ancalmo, 2010)

The relationship between a doctor and a patient, or the medical world and society, has now become more of a gregarious contract, a partnership. The trust between patient and doctor is timeless and withal imperative to maintain the efficacy of any medical encounter. This trust is essential in maintaining the national health accommodation.

2.NEGLIGENCE vs. MALPRACTICE

Doctors, hospitals and healthcare providers are professionals who undergo extensive training and who are required to be licensed by the state in which they practice medicine. The licensing and training requisites that subsist are designed to ascertain that physicians and other professional healthcare providers are able to offer diagnosis and treatment to patients who require medical assistance. Haplessly, while doctors and healthcare providers are expected to provide quality care to patients, they are not impeccable. In fact, medical mistakes are committed daily and estimates betoken that as many as 200,000 people in the U.S. die each year due to preventable medical error. (Lowe, 2010)

Malpractice is a type of negligence, often called "professional negligence". It occurs when a professional (doctor, lawyer or accountant) fails to provide accommodations as per the standards set by the governing body, subsequently causing harm to the plaintiff. It is prevalent cognizance that malpractice lawsuits are mostly brought against medical and legal professionals.

Negligence is, in fact, failure to exercise the care that a plausibly prudent person would exercise in like circumstances. In tort law, negligence applies to harm caused by carelessness, not intentional harm. (Postema, 2002)

The cases of negligence or malpractice are generally arduous to prove. To obtain an auspicious judgment, a clear causal relationship must be established between the negligent act and the injury caused.

There are four elements to take into consideration when proving negligence or malpractice:

- Duty: The defendant had an obligation or an obligation to the plaintiff
- Breach: The defendant breached this obligation
- Causation: The harm suffered by the plaintiff was a direct result of this breach of obligation
- Damages: The damages being sought are directly cognate to the harm caused

Cases of negligence or malpractice are filed customarily in civil courts to get monetary emolument for noetic or physical injuries caused.

Negligence can either be an act of omission or commission, not doing something that ought to have been done or doing something that shouldn't have been done. Some forms of negligence are: failing to apprise the patient opportunely regarding medical care, negligent care or treatment during a procedure, negligently deciding to perform a procedure, failing to do an obligatory procedure, failing to consult a more cognizant specialist, failing to utilize assistance when it is pellucidly needed, giving a negligent diagnosis, discharging the patient albeit he requires more medical care.

Some of the most common areas of medical malpractice are: removing the wrong body part, giving a wrong diagnosis, recommending unnecessary surgery, prescribing the wrong medication, using unsterilized equipment,

sexual acts on a medicated patient, working while intoxicated, the doctor disclosing private patient information to an uninvolved third party.

In the 19th century, civil actions for malpractice, plaintiffs often sought recourse for breach of contract, whereas in the 20th century, virtually all malpractice actions have been tortious, predicated on the licit concept of negligence. As actions shifted from contract disputes to tortious liability, courts formulated the concept that medicos must practice within the circumscriptions of the medical professions' consensus of the „standard of care”. (Hogan, 2003)

According to William Sullivan “the term ‘standard of care’ has been misused and abused”. (Sullivan, 2016)

Presently, it would be felicitous to supersede it with a phrase which more accurately conveys the realities of modern medicine. In some cases, the term “standard” is utilized felicitously. For example, it is considered standard treatment to prescribe antibiotics for bacterial pneumonia. Even in what we consider “standard” treatment for pneumonia, there is considerable variance. Perhaps a salubrious patient with a community-acquired pneumonia might only need a mild antibiotic while a patient with multiple co-morbidities would require hospitalization and multidrog treatment.

As medicine is as much of an art as it is a science, the focus has to be not only upon the medical pathophysiology, but withal upon each patient's unique body, mind and soul. For this reason alone, each medical interaction is distinct, and there can be no “standard” that applies in every circumstance. (Sullivan, 2016)

3. SOME EXAMPLES OF THE MOST FAMOUS MEDICAL MALPRACTICE CASES IN HISTORY

The laws to deal with the medical malpractices are different from one country to another. Afore the 1830s, lawsuits against medical malpractices were virtually unheard of, but after that, there was an excess in the number of such cases.

In medical lawsuits, the patient is considered the plaintiff, while the healthcare provider is taken as defendant. In most cases this is a medico, but it can withal be the case of a nurse, dentist or therapist.

Some of the medical malpractice cases ever recorded have dramatically transmuted the face of health care over the years.

3.1 The Case of the Mutilated Penis

In 1994, Nelu Radonescu was the subject of a routine operation upon a testicular malformation in Bucharest, Romania. During the surgery, Dr. Naum Ciomu, lecturer in anatomy, fortuitously cut the patient's urinary channel, and lost his temper. He cut off the man's penis, sliced it into pieces, and then angrily departed the operating theater. When he was endeavored for grievous bodily harm, Dr. Ciomu admitted that he "over-reacted". The penis was reconstructed from tissue taken from Mr. Radonescu's arm. (Chilman, n.d.)

The doctor's comment on his emotional outbreak was "personal problems". Damages of \$100.000 were injunctively authorized to be paid, in additament to \$20.000 for the reconstructive surgery. The medico had his medical license suspended.

3.2 A Rod is a Rod

Dr. Robert Ricketson an orthopedic surgeon at Hilo Medical Center, performed a spinal surgical operation on a patient. During the operation he realized that the required titanium rods were not available and, due to loss of blood, he could not wait. So he improvised and cut a screwdriver to the required size and inserted it in the spine. After some time, the screwdriver broke inside the patient's body. The patient had to undergo several surgeries and after two years died of the associated complications.

After his death, a malpractice suit against the medico was brought and the jury found the medico 65% liable and the Hilo Medical center 35% liable for the act. (Weekly, 2015)

3.3 The Case of Carol Wehrer

"A Scream That Can't Be Heard" was the headline story of The Guardian in 2005, describing the living hell that Carol Wehrer went through while being aroused during surgery. Her body was paralysed by drugs but she could optically discern and auricularly discern everything around her on, while she had one of her ocular perceiver abstracted. The medico adviced her to undergo this operation as she had long suffered pain in her right ocular perceiver. The surgery was five and a moiety hours long, out of which for twohours, Carol was aroused.

Michael Wang, a psychologist at Hull University, has spent more than 15 years working with patients who have woken up during operations. He believes part of the quandary is that anaesthetists themselves do not realise just how prevalent anaesthetic cognizance is. (Guardian, 2015)

Anaesthetic vigilance is an infrequent but inevitably ineluctable consequence of the balancing act anaesthetists must strike. The amount of anaesthetic a patient needs, is not

facile to calculate, depending not just on the body weight, or on the amount of muscle and fat, but additionally on the kind of operation the patient is facing.

3.4 The “Surgeon of Love”

Numerous women were drawn to the practice of Ohio gynecologist Dr. James Burt in the 1970s and 1980s, partly because he promised them “pain free births.” What he did not tell them was that after giving birth, he orchestrated to “reconstruct” their vaginas in an effort to increment their sexual replications. Several women reported arousing two and a half days after giving birth and being in extreme pain. (Berger, 2014)

Dr. Burt published a book titled *Surgery of Love* in 1975, in which he admitted performing operations on women without their consent. Lawsuits totaling \$21 million were filed.

3.5 Risk of Fire Possible

When having an organ transplant, most people never contemplate being burned in the process. That is precisely what transpired to a man in Vancouver, Canada in 2005 while undergoing a liver transplant. It seems that the man’s heart ceased beating during the surgery, at which time an emergency procedure was commenced. The disinfecting alcohol utilized on his skin prior to that procedure caught fire, causing astringent burns to his head, neck and shoulders. (Berger, 2014)

To make matters worse, Reeves required an adscititious surgery six months later to abstract a broken sterna wire in his chest cavity. His initial liver transplant additionally failed, requiring to undergo another one in 2007. In an ensuing lawsuit, the patient claimed the medicos attending him failed to provide plausible standard of care, thereby causing his burns as well as the desideratum for adscititious surgeries.

3.6 Jessica and Jeanelle

No one who follows the medical news is liable to forget Jessica Santillan, who died after receiving a heart and lung transplant at Duke University Hospital in February 2003.

During her operation a fundamental, facilely avoidable and tragic mistake occurred. When she received the transplant, it turned out to be the erroneous blood type. Her body commenced repudiating the incipient organs even afore the transplant surgery was over. Jessica Santillan was the second girl in seven months to die after receiving a transplant with the erroneous blood type. (CBS, 2003)

4. THE MYTH OF MEDICAL MALPRACTICE

American health care is in crisis because of exploding medical malpractice litigation. Indemnification premiums for medicos and malpractice lawsuits are skyrocketing, rendering medicos both trepidacious and unable to afford to perpetuate practising medicine. Undeserving victims sue at the drop of a hat, egged on by cupidinous lawyers, and receive ocular perceiver-popping awards that indemnification companies, hospitals, and medicos themselves struggle to pay. The plaintiffs and lawyers always win; medicos, and the nonlitigious, always lose; affordable health care being the authentic victim.

This, according to Tom Baker, is the myth of medical malpractice, and as an authenticity check he offers *The Medical Malpractice Myth*, a stunning dismantling of this familiar, but erroneous, picture of the health care industry. Are there an exorbitant quantity of medical malpractice suits? No, according to Baker; there is authentically a great deal more medical malpractice, with only a fraction of the cases ever optically discerning the inside of a courtroom. Is an exorbitant amount of litigation to incriminate

for the malpractice indemnification crisis? No, for that we can look to financial trends and competitive department in the indemnification industry. Are these lawsuits frivolous? Very infrequently. Point by point, Baker—a leading ascendancy on indemnification and law—pulls together the research that demolishes the myths that have taken hold about medical malpractice and suggests a series of licit reforms that would avail medicos manage malpractice indemnification while withal ameliorating patient safety and medical accountability. (Baker, 2008)

5. CONCLUSIONS

All these famous medical malpractice cases presented are shocking, and go to show that wrongdoings can happen any time and anywhere. Although most of the professional healthcare providers are very careful in the discharge of their professional duties, being humans, they are susceptible to errors. Statistics reveal that 195,000 people die of medical errors only in U.S. annually. An average of 15,000 lawsuits are filed against health providers on account of medical malpractices, but more than 80% are rejected due to lack of sufficient evidence.

Medical negligence is a three-part test whereby a duty of professional care is owed to a patient and, as a consequence, of a breach of that duty, the patient suffers harm. All parts of the test must be satisfied.

Civil considerations of negligence require doctors to act to an appropriate standard usually but not exclusively judged by the standard of their peers, whereas for criminal negligence the standard of practice has to result in serious harm from actions that could be considered to be incompetent or grossly negligent. Due to the greater availability of practice guidelines to guide the courts, doctors should always consider the implications and justification for deviations from accepted practices, should the patient suffer harm. Doctors in training should be aware that they are expected to seek advice and assistance where they lack experience in order to preserve public safety. Adequacy of note keeping to help defend any claims is vital. (Bryden, n.d.)

“If people understood that doctors weren't divine, perhaps the odor of malpractice might diminish.”(Richard Selzer²)

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² Richard Selzer is a surgeon and author. He was born and raised in Troy, New York, United States. His father was Julius Selzer, M.D. a general practitioner who practiced from the ground floor of the family home at Fifth Avenue in Troy.

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