Narrative Review
Central Eur J Paed 2019;15(2):155-160
DOI 10.5457/p2005-114.247

Legal Responsibility of Doctors in Pediatric Practice

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Received: April 30, 2019
Accepted: August 1, 2019

Key Words: Medical Negligence ▪ Legal Responsibility ▪ Pediatricians.

The aim of this article is to analyze the problem of legal responsibility for medical negligence in general with a special focus on pediatrics, as well as to address the possible ways of avoiding medical malpractice. In some European countries, including Serbia and all ex-republics of the Former Yugoslavia, medical malpractice is regulated by the Criminal Code where health care workers may be held legally responsible for errors in diagnostics and treating processes. According to the Article 251 of the Serbian Criminal Code, a medical doctor who applies an *obviously inappropriate means or methods of treatment*, *does not apply appropriate hygienic measures* or in *any other way generally obviously irresponsibly acts*, may be sentenced to prison lasting between 3 months and 3 years if medical negligence caused worsening of patient's health status is confirmed. If deterioration of the patient's condition includes severe health impairment, medical doctor may be sentenced to 1 to 8 years in prison, while in cases of fatal outcome a legal verdict stipulates imprisonment from 2 to 12 years. **Conclusion** – Most legal actions for medical negligence in countries with Anglo-Saxon system of law are organized within the common law, while the criminal responsibility is still part of the civil law jurisprudence of some European countries. In order to avoid an accusation for medical negligence, all medical doctors, including pediatricians, must follow principles of modern medical science and practice, and properly keep medical records which are the most important pieces of evidence in court procedures.

Introduction

Medical practice is governed by medical ethics, laws and legal regulations. Medical ethics commands professional behavior of doctors through self-regulation rules. The definition of what is against the law varies from country to country. Medico-legal aspects of physicians' practice mostly encompass errors in work of medical doctors, as well as consequences of these errors with regards to patients' health and treatment outcomes. Medical malpractice is a broad term generally used to describe any ill treatment, lack of treatment, or other departure from the accepted standards of medical care, health care, or safety on the part of a health care provider that caused harm to a patient. Medical malpractice includes: misdiagnosis, improper treatment, failure to treat, delay in treatment, failure to perform appropriate follow-up, prescription errors, etc. All medical fields and branches may be affected, including pediatrics (1, 2).

According to data from France in 2008, the most frequent and severe medical errors

were reported among infants, including diagnostic errors of meningitis, gastroenteritis and pneumonia. Medical errors were most common in the emergency department (58%) (3). In contemporary medico-legal practice in Serbia, the matter of responsibility of medical staff for poor outcome of medical treatment is frequently disputed both from a professional and legal standpoint. Such cases usually draw a great deal of public attention, and they are often treated in media in tremendously sensationalistic manner to a degree that physicians become accused and sentenced by the journalists before the official investigation begins. Furthermore, in such newspaper articles extremely offensive terms are used for doctors and the entire medical service, such as „murderers of patients", „coma of medicine", etc. Cases in which children are affected by medical negligence are especially sensitive and they are often accompanied by an array of particularly insulting comments in media such as: "Doctors were watching a child die". Because of that, the alleged medical errors of pediatricians and child surgeons are exposed to extreme anger and serious criticism from the public. Such comments promote strenghtening of a negative public attitude towards the accused medical doctors and lead to premature conviction before a definite court decision has been made. Over the last years, we have witnessed a few cases in which long-standing and highly successful careers of physicians suddenly went to ruins by such an unprofessional and sensationalistic reporting about fatal accidents associated with anesthetic procedures. Unfortunately, when the investigation and court procedures revealed that the physician in question was not guilty of malpractice, such a piece of information, as a rule, did not come out in public.

The aim of this article is to present various forms of responsibility for errors in medical practice in general, with special focus on pediatrics, to analyze the problem of legal responsibility for medical negligence, as well as to address the possible ways of avoiding it.

Medical Malpractice

In Serbia, being held responsible for medical malpractice (medical errors) may take three forms. First is professional responsibility, assessed by the Serbian Medical Chamber. Second is regulated by the civil law. When a patient can prove that he/she had suffered harmful consequences as a result of failure of health service to provide a reasonable standard of medical care, he/she should receive financial reimbursement. Most legal actions for medical malpractice in countries with Anglo-Saxon legal system are organized within the common law. In the available literature concerning pediatric malpractice claims, most published data touch upon the financial reimbursement, without proper information on criminal litigation (3, 4, 5). In the USA in 2013, the annual percentage of pediatricians facing malpractice claims was 3.1% (7.4% among other physicians) (6).

In some settings, large sums may be reimbursed to patients who have experienced medical errors, usually through a special form of insurance. Glerum et al. (7) reported a total of 728 closed claims in pediatric emergency care settings during the 15-year period, from 2001 to 2015. Payments were processed to the claimants in 30% of all cases (220/728), with a total of US $70.3 million (average $319,513) paid to patients or families. In Serbia, this is far from reality due to a poor socioeconomic situation.

Third form is criminal responsibility regulated by the Criminal Code. In some European countries, including Serbia and all ex-republics of the Former Yugoslavia, the state may intervene to bring a criminal prosecution against a physician if the medical negligence was serious. Therefore, Ser-

bia is one of few countries in which health workers may by legally convicted for errors in diagnostic and treating processes. Such errors are included in the term "medical negligence", which assumes situations when the standard of medical care provided to a patient is considered inadequate according to the current principles of medical theory and practice. When a physician or other medical staff do not treat patient with proper quality care, which later results in serious harm or death, they are labelled to have committed medical negligence. To prove the negligence, there must be a "breach" of medical standard of care towards a patient, committed either by an omission (failing to do the right thing) or a commission (doing something wrong).

Contrary to some opinions that all physicians who committed medical errors should be legally convicted, it is crucial to highlight the fact that court conviction in Serbia is reserved only for the extremely serious medical errors, that is, for acts which are in obvious contrast with the currently accepted means and methods of treatment (so-called errors of medical professionals). The Serbian Criminal Code (SCC) stipulates the forms of medical negligence that may be a subject to legal liability in a separate Article no. 251 entitled "Negligent Provision of Medical Aid". According to this Article, a medical doctor who applies an *obviously inappropriate means or methods of treatment*, *does not apply appropriate hygienic measures* or in *any other way generally obviously irresponsibly acts*, may be sentenced to sentenced to imprisonment lasting between 3 months and 3 years.

A typical example of obviously inappropriate means of treatment is administration of penicillin to a person with known allergy to this drug, without verifying this information in medical record, resulting in a fatal anaphylactic shock or transfusion of incompatible blood type. On the other hand, physician's decision to apply a conservative instead of surgical treatment in person with diagnosed perforated appendicits may be classified as an obviously inadequate way of treatment (8).

Failure to take adequate hygienic measures as a form of negligent treatment refers to a poor preparation of surgeon and/or operating field, contrary to the contemporary principles of asepsis and antisepsis. This also refers to the occurrence of intrahospital infections and their clinical presentation (expertise in cases of sepsis in large number of newborns in a maternity ward).

By using the legal formulation „*generally obviously irresponsibly acting*", it is possible to sanction incompatibility in any form and phase of medical activity, and not only in the process of treatment per se (e.g. a decision to immediately discharge a patient with head injury from the hospital without adequate diagnostics and observation, with subsequent development of fatal epidural hemorrhage; leaving surgical instruments or gauze in patient's body after surgery; sloppy medical record keeping etc).

Of particular medico-legal interest and remarkably complicated for forensic expertise are the medical incidents with fatal outcome, when a disease or injury for which the patient was treated was not life-threatening per se, so that a fatal outcome was not expected. A good example for this is a case of a previously healthy 12-year-old girl who sustained a severe hypoxic brain injury during general anesthesia because of orthopedic reposition of a fractured humerus, resulting in persistent vegetative state with fatal outcome two weeks later.

According to the Article 259 of the SCC, entitled "Severe crimes against health of people", a physician who was held responsible for deterioration of patient's health condition, such as severe health impairment or severe injury, may be convicted to jail sentence lasting between 1 and 8 years, while in cases of fatal outcome a legal verdict stipu-

lates imprisonment from 2 to 12 years. In the light of current legal attitude towards errors in medical setting, it may be interesting to mention, for comparison, that a maximum sentence for so-called simple homicide in the Serbian Criminal Code is 15 years of imprisonment. Furthermore, when a court verdict, issuing the imprisonment for medical negligence with severe consequences (Article 259 of the SCC) is finally confirmed, the Serbian Medical Chamber would additionally punish the convicted physician by permanent revocation of their medical license. The first such case occurred in Serbia in 2011, when a pediatric surgeon had his license revoked for a negligent treatment in 1998, while the court verdict was confirmed in 2010.

It should be noted that poor or even fatal outcome of treatment does not necessarily result from errors of medical staff, despite a common allegation of patient's family. In fact, this may be a consequence of a serious nature of disease or trauma for which the patient had been treated, even in cases when the appropriate diagnostic and therapeutic procedures were followed (so called, errors of medicine) - see Additional Material 1. Cases of serious medical errors but without any harmful effect for the patient are not legally processed - see Additional Material 2.

Negligent Medical Procedure

From a legal standpoint, the essential prerequisite for legal responsibility is committing an obviously inappropriate i.e. negligent medical procedure that caused deterioration of patient's health status. In such cases, medical negligence must be claimed beyond reasonable doubt, and it must be confirmed that worsening of patient's health condition was directly caused by the inappropriate medical procedures excluding all other possible causes of this deterioration. The only way to decide on whether a physician's practice was truly negligent is by peer judgment. Medical facts are placed before professional experts (physicians) in the corresponding specialty to examine whether the defendant physician acted in accordance with the medical standards.

A decision (judgment) on whether or not the physician in question indeed committed a criminal offense of irreversible damage to patients is brought by the court. However, decision is mostly based on forensic expertise. The prerequisite for rendering a fair court judgment is medical expertise carried out in timely and adequate manner, and that primarily depends on the proper selection of an expert (9). The expert is appointed by chief of the court procedure (a prosecutor or a judge), who requests the expertise. Adequate judgement also depends on medical experts who need to critically assess their ability to participate in the expertise. The goal is to identify physicians who are most competent in the corresponding medical field for each individual case, and it is the opinion of the author that these can easily be recognized within professional institutions.

Recommendations For Good Medical Practice

To minimize the risk of medical errors and to avoid an accusation for medical malpractice, some useful recommendations for medical doctors are the following: First, always follow principles of modern medical science and practice. This may not always be an easy task, since in many medical areas there are no generally accepted doctrines on diagnosis and treatment. Second, proper keeping of medical records – in court procedures proper medical records are the most reliable and acceptable proof of the validity of physicians' work. Third, in cases of fatal outcome suspected to be caused by alleged medical negligence, the physician in question must request a medico-legal autopsy as a certain method for confirming or refuting medical errors.

Conclusion

Most legal actions for medical negligence in countries with Anglo-Saxon legal system are organized within the common law. On the other hand, legal responsibility with possible prison sentence of physicians up to 12 years is still part of the civil law jurisprudence in some European countries, including Serbia. Therefore, in order to avoid an accusation for medical negligence, all medical doctors, including pediatricians, must follow principles of modern medical science and practice and properly keep medical records which are the most important pieces of evidence in court procedures.

Conflict of Interest: The author declares that he has no conflict of interest.

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Additional Material 1

Example: A 1-year-old previously healthy male infant developed a fever (40˚C) on the evening on June 9, 2003. The parents went to a local outpatient clinic, and the physician directed them to the Institute for Mother and Child Health Care. The attending physician at the Institute performed a complete and thorough physical examination, chest X-ray and laboratory analyses. All the findings were annotated in the medical record: the patient was conscious, body temperature 38.5°**C**, normal vital signs, pharyngeal hyperemia, auscultatory slightly high-pitched breath sound, normal heart, abdominal and neurological findings, neither meningeal signs nor skin changes were found; normal chest X-ray; leukocyte count 6800 with 66% lymphocytes and 30% granulocytes. Antipyretic and analgesic were prescribed, and the child was discharged with a recommendation for control examination next morning, as well as recommendation to come back if any deterioration occurrs. The parents came back home at 2.30 a.m. and the infant's temperature went down after the use of analgesic. The infant fell asleep, and was sleeping until 6.00 a.m., when a sudden worsening was noticed, along with development of dyspnea and cyanosis. He was rushed to the local outpatient clinic, and after that to the Children's Hospital, where he was admitted at 8.05 a.m. without vital signs, so the physician confirmed death

after a 30-minute long resuscitation. Therefore, the infant died about 10 hours after the onset of the first signs and symptoms of a disease. Autopsy findings were as follows: normally developed infant, signs of the applied resuscitation, general congestion, brain edema; multiple petechial and partly larger skin hemorrhages and diffuse bilateral adrenal hemorrhages. Microscopically the incipient meningitis was found. The post-mortem bacteriological analysis was negative. Based on the abovementioned clinical data, as well as post-mortem diagnostic procedures, diagnosis of Waterhouse-Friderichsen's syndrome was determined. In this case, a fatal outcome occurred irrespective of entirely appropriate medical procedure, due to severe and unpredictable infectious disease, with a fulminant clinical course which lasted 10 hours between the onset of fever as the first clinical presentation and fatal outcome. In addition, two days after his death, his older brother was admitted to hospital, and was treated for two months for brain abscess. Bacteriological testing of cerebrospinal fluid came negative, while *Neisseria meningitidis* was isolated in blood.

Additional Material 2

Example: A 19-old girl was examined by a general practitioner because of sore throat and was sent to an ear-nose-throat specialist. In a medical record the physician first noted that she was allergic to penicillin, and after that "Tonsillopharyngitis acuta" was diagnosed. She was prescribed Augmentin (penicillin). Fortunately, a pharmacist, who was her neighbour, was familiar with the fact that the girl was allergic to penicillin, thus, he did not issue the prescribed drug. Therefore, this extremely serious medical error did not turn into criminal offense, since the patient did not take the harmful drug, and no ill effect occurred.