Chapter 6
The Role of Forensic Medicine in Medical Errors

Grigorios Leon
Hellenic Society of Forensic Medicine, Greece

ABSTRACT

This chapter presents the importance of Legal and Forensic Medicine in medical malpractice and explains how autopsies have a crucial role for the evaluation and the prevention of medical errors. Health systems vary from country to country; however, experts are indispensable in each system. In fact, experts' opinions are asked for resolution of specific court cases. Standard of care is often assessed by expert medical witnesses who testify for one of the litigants. The physician who acts as an expert witness is one of the most important figures in malpractice litigation. Therefore, a doctor who is an expert witness has to have certain training and qualifications and to act under common recommendations. The ideal medical expert seems to be the forensic doctor. In the future, a harmonization of practices could be applied in medical liability cases and the guidelines provided by the medico-legal community could constitute a stable base for their evaluation.

INTRODUCTION

Medical malpractice is defined as any act or omission by a physician during treatment of a patient that deviates from accepted norms of practice in the medical community and causes an injury to the patient. Medical malpractice is a specific subset of tort law that deals with professional negligence. "Tort" is the Norman word for "wrong," and tort law is a body of law that creates and provides remedies for civil wrongs that are distinct from contractual duties or criminal wrongs. "Negligence" is generally defined as conduct that falls short of a standard; the most commonly used standard in tort law is that of a so-called "reasonable person". The reasonable person standard is a legal fiction, created so that the law can have a reference standard of reasoned conduct that a person in similar circumstances would adopt, or not in order to protect another person from a foreseeable risk of harm (Bal, 2009a). The objectives of this chapter are to present the autopsy as a tool for the evaluation of lethal cases of medical malpractice, to explain the role of the expert witness and the medical testimony and finally to make a proposal for the role of the Legal and Forensic Medicine in medical liability cases.

BACKGROUND

According to Black's Law Dictionary, medical negligence requires that the plaintiff establishes the following elements:

1. The existence of the physician's duty to the plaintiff, usually based on the pre-existence of the physician-patient relationship;
2. The applicable standard of care and its violation;
3. Damages (a compensable injury); and
4. A causal connection between the violation of the standard of care and the harm complained of, generally defined as "that degree of care which a reasonably prudent person should exercise in same or similar circumstances."

If the defendant's conduct falls outside the standards, then he or she may be found liable for any damages that resulted from his or her conduct (Black's Law Dictionary, 1991).

The plaintiff in a tort claim generally pursues monetary damages, compensatory or punitive (or both), from the defendant. The traditional goals of medical malpractice are to ensure that the injured patient is made whole again, usually through monetary award, or that the relatives of a dead patient receive a moral satisfaction through a compensation and, in all cases, to deter other physicians from similar breaches of duty.

25 more pages are available in the full version of this document, which may be purchased using the "Add to Cart" button on the publisher's webpage: www.igi-global.com/chapter/the-role-of-forensic-medicine-in-medical-errors/176498

Related Content

Bitcoin Prediction Using Multi-Layer Perceptron Regressor, PCA, and Support Vector Regression (SVR): Prediction Using Machine Learning
Aatif Jamshedand Asmita Dixit (2022). *Regulatory Aspects of Artificial Intelligence on Blockchain (pp. 225-236).*
www.irma-international.org/chapter/bitcoin-prediction-using-multi-layer-perceptron-regressor-pca-and-support-vector-regression-svr/287693

Being Green and Social Responsibility: Basic Concepts and Case Studies in Business Excellence
Alan D. Smith (2020). *International Journal of Sustainable Entrepreneurship and Corporate Social Responsibility (pp. 34-54).*
www.irma-international.org/article/being-green-and-social-responsibility/259407

Designing Transmedia Journalism Projects
Kevin Moloney (2019). *Journalism and Ethics: Breakthroughs in Research and Practice (pp. 872-892).*
www.irma-international.org/chapter/designing-transmedia-journalism-projects/226715

A Clear Pathway: The Hazy Line between Collaboration and Collusion
Donna M. Velliaris (2017). *Handbook of Research on Academic Misconduct in Higher Education (pp. 343-365).*
www.irma-international.org/chapter/a-clear-pathway/170105

The Impact of Corporate Social Responsibility on Organisational Citizenship Behaviour, Work Engagement, and Job Embeddedness
Ferman Omar Ismael, Mehmet Yeiltaand Simbarashe Rabson Andrea (2021). *International Journal of Sustainable Entrepreneurship and Corporate Social Responsibility (pp. 19-29).*
www.irma-international.org/article/the-impact-of-corporate-social-responsibility-on-organisational-citizenship-behaviour-work-engagement-and-job-embeddedness/270470