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Medical Errors and Negligence in Cases Versus Medical Professionals

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Introduction

The term "medical error" (medical malpractice) is a medical rather than a legal term in Bulgaria [1]. It has a different and broader content, leading to considerable practical difficulties. Recently, in society and in law it suggests that the term "medical error" is an aggregate concept, which denotes mostly cases of negligent crime of medical professionals [5]. More severe group are intentional offenses in relation to medical practice: criminal abortions illegal, non-providing medical assistance, the repeat of secret, issuing false medical documents, illegal treatment, violation of anti-epidemic rules and regulations for use of drugs or toxic substances.

According to Bulgarian criminal law, negligence is the mildest form of guilt after intention [3]. Crimes for professional negligence are sentenced when they resulted in death or injury – art. 123 and 134 of the Penal Code[1] [2]. Negligent guilt is negligence (neglect) or conceit, which include ignorance of the medical science.

[1] Article 123 (1) of the Penal Code: "Whoever causes another's death due to ignorance or negligent performance of work or other legally regulated activity, representing a source of increased danger shall be punished with imprisonment of up to 5 years. (2) Any person who negligently causes another's death through actions belonging to a profession or activity in the preceding paragraph, it shall not be entitled to exercise, be punished with imprisonment from 1 to 5 years. (3) If, in the preceding paragraphs offender was intoxicated or if it caused death of more than one person, the punishment is imprisonment from 3 to 8 years, and in especially serious cases - imprisonment from 5 to 15 years. (4) If the perpetrator after the act has done everything depending on him to rescue the victim, the punishment shall be: 1 and 2 – imprisonment of up to 3 years under par. 3 - imprisonment of up to five years, and in especially serious cases – imprisonment of up to 3 to 10 years); Art. 134 (1) of the Penal Code: Whoever causes another severe or medium bodily injury due to ignorance or due to negligent performance of work or other legally regulated activity, representing a source of increased danger shall be punished: 1. by imprisonment of up to 3 years for severe bodily harm and 2. with imprisonment of up to two years or probation for a medium bodily injury, (2) The same punishment shall be imposed on those who negligently cause another severe or medium bodily injury through the actions belonging to a profession or activity in the preceding paragraph that he is not entitled to exercise. (3) If, in the preceding paragraphs

In almost all cases where there was injury of a living person or death, victims or their relatives complain to the Prosecution (or the Prosecution acts on its own initiative) and pre-trial investigation starts. A compulsory element is the institution of collective medicolegal investigation (expertise) involving forensic medical specialists and other medical specialists according to the specifics of the case.

Materials and Methods

The objectives of this study were cases versus medical professionals. The expertise was required to establish: what specific improper actions or inactions of the medical staff took place, what should be done but was not performed, what was the occurring prejudicial result, the existence of a causal link between medical acts/omissions and the prejudicial results; to make comparison between medical records and testimony for to show where and why there were contradictions and how reliable were they from a medical standpoint; to analyze the behavior of any medical professional who was relevant to this case, etc.

An analysis of 280 cases versus medical professionals for the last seven years in North-East Bulgaria was made.

Results and Discussion

The most common omissions and errors leading to adverse results may be summarized as:

1. Much more often than a wrong action, there was inaction of the medic, i.e. doctors have not made the necessary diagnostic and therapeutic actions **in time and adequately**. In most cases the doctor has made part of the necessary examinations and tests, but has not done everything possible (at the current level of development of medical science and according to the specific situation) for a full diagnosis and differential diagnosis. These omissions usually led to improper diagnosis, which resulted in inadequate behavior or adverse treatment or death. In surgery and obstetrics, the delay usually led to death of the patient or newborn child.

2. Conventional and repetitive medical activity and thinking rather than creative and individual approach to each patient. The lack of complex diagnostics which was a consequence of narrow specialization in modern medicine, leads ultimately to insufficient, untimely or inappropriate professional behavior towards the patient. There was no unifying doctor to analyze all done by individual counseling professionals from all examinations to decide on actual and correct diagnosis, management and treatment. Favorable factor for this result was the absence of accurate and detailed records - more frequently by private practitioners.

3. Sometimes there was insufficient analysis of all the facts – e.g., not seeking an explanation for leukocytosis or other tests that suggested a pathological process. There was underestimated the poor general condition or not searched an explanation for it in dynamics; the single result was interpreted incorrectly and out of the context of all data.

4. A typical was so called “Friday syndrome” (so named by us). These were cases in which patients with uncertain diagnosis and in serious condition were admitted in the

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offender was intoxicated or if it caused damage to more than one person, the punishment is imprisonment up to 5 years for severe bodily harm and imprisonment of up to three years for medium bodily injury. (4) If the perpetrator after the act has done everything within it to assist the victim, this is taken into account as a mitigating factor for sentencing purposes.

last working day before the weekend or before a series of holidays. And there was no supervising doctor on duty every day but doctors in rotation. Later the criminal liability is determined by the poor outcome – most often the patient's death. Very often there was an insufficient collaboration both between doctors and other medical professionals – nurses, midwives and others.

5. Often there were no clear and precise internal rules and regulations in the clinic or in the whole hospital. This blurs the responsibility of the individual health professional. National medical standards of medical specialties not always offer clear and precise algorithms for work, especially in emergency situations.

6. Denial of medical care – it rarely occurred, but things are clearly defined by law. For emergency assistance it is not necessary a direction from a GP, and it doesn't matter if the patients have a health insurance or not.

7. Very often there was no collaboration between physicians whom the patient attended in primary care. So there were objective reasons – the patients themselves gave insufficient information, they visited various doctors taking different therapies, often lack documentation of these stages and it was controversial. As a result, assessing the next doctor is inaccurate, incomplete and sometimes incorrect.

8. In pre-hospital care due to lack of direction-sheets or other reasons GPs did not send the patient to consultant, did not appoint imaging and other tests in full or did not interpret them correctly and the correct diagnosis was delayed sometimes fatally.

9. Very common complaint from patients and their families was the lack of attention, disinterest and indifference of the doctors. These were often only an emotional perception, but the patients are entitled to have complete and understandable information presented concerning their condition, treatment and prognosis.

10. In the smaller district hospitals there was a lack of diagnostic capabilities – necessary equipment (imaging, clinical laboratory etc.), lack of skilled specialists, no presence of blood banking and more. For such reasons several mothers and newborns died. Ministry of Health was recommended to close these hospitals. Through these cases was carried out the preventive role of the medicolegal investigation of malpractice.

11. Medicolegal investigation established and specified general methodological deficiences in the organization of health care: between outpatient and inpatient care, among foster-emergency surgeries and various clinics in the hospital, between hospitals in one city etc.

12. Medicolegal investigation indicates a need for stronger internal control in each hospital by increasing the number of autopsies performed, therapeutic and supervisory committees and clinical-anatomical conferences. This will strengthen the preventive role in all health care, i.e. doctors should learn from the mistakes of their colleagues.

13. The lack of accurate and complete medical records was considered as non performed or incorrect medical act.

14. There is some conflict of interest between hospitals and the National Health Insurance Fund. For the Fund is only important documentary implementation of clinical "path" rather than the quality of medical care. This somewhat limited the doctors and they are forced to enter objectively incorrect data in reporting documents (medical records).

Serious problem in cases versus medics was the selection of experts for a collective medicolegal investigation because of the reluctance of doctors-clinicians to participate in such investigations. The authors of a study by International Institute of Healthcare and Health Insurance [5] in their conclusions also unanimously recognized that "the outcome of the trial for medical affairs depends entirely on expert witnesses."

All the analyzed cases were against health care workers but only 2 cases were against dentists and have completed by termination for lack of proof. About 85% of

the cases were terminated in the trial phase in the absence of misconduct of medical professionals because of not discovering the errors and omissions due to failure to determine the responsible medical person or for lack of a direct causal link between doctors'actions/inactions and death. About 10% of cases led to indictment and prosecution (trial proceedings) of the case. Sentences in medical cases were suspended (for 2-8 months), a fine – up to 1000 levs (500 Euro), and worst – withdrawal of the right to practice the medical profession for a period of 1 to 6 months.

Medical errors could be avoided (or at least part of them) only if they were analyzed and studied by medical professionals themselves. Therefore, doctors should become acquainted with forensic expertise, to draw conclusions, incl. for organizational shortcomings in healthcare, which play a significant role in some cases. We were establishing repeatedly that relatives with the passage of time somehow "accept" the loss of their deceased close person, but can never forgive the doctor's behavior, which was far from deontological (ethical) standards. Charity as a reality and as a concept almost disappeared from modern medical practice in stressful and difficult routine.

Conclusion

The fight against illegal medical actions can and should be conducted in various ways, including analysis of the errors and negligence. It is necessary to comply with clear and precise rules, reflected in national standards of various medical specialties as well as procedures and internal order of hospitals and clinics. Only in this way we could personify medical activities and responsibilities of medics.

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