Patterns of Resolved Medical Malpractice Cases in the Philippines

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ABSTRACT

Background: Medical malpractice is an act or omission by a health care provider that deviates from accepted standards of professional practice leading to injury to the patient. Tort actions of negligence prevail when a plaintiff establishes in court that: (1) the physician had a duty to the patient referred to as patient-physician relationship; (2) a dereliction or breach of that duty occurred (3) the dereliction of duty resulted in damage to the patient, and (4) the patient was, in fact, damaged (Brown, 1976).

Methods: The study was conducted to describe the patterns of the resolved medical malpractice cases in the Philippines. Transcripts of records of resolved medical malpractice cases were retrieved, analyzed and evaluated by 2 lawyers and the researcher.

Results: Negligence was established as the main cause of litigation among the 6 resolved medical malpractice cases. Eight physicians were found liable while 4 were acquitted. The litigation process was protracted, lasting 13-24 years.

Conclusion: The results of the study serve to provide an overview of medical malpractice cases in the Philippines. It is hoped to increase the awareness of health care providers regarding medical malpractice.

Keywords: medical malpractice, negligence, Philippines

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INTRODUCTION

In most countries, medical practitioners are being threatened by litigation, with the first country to report a medical malpractice suit being the United States in 1794 (Monis, 1971). The concept of Mala Praxis (malpractice) extends back to the beginning of the 18th century. Most historical malpractice cases involve negligence based on certain standards of conduct. In the case of doctors, the conduct is judged according to competence and professionalism consistent with specialized training. Deviations from such standards may be judged negligent (Morris, 1971).

Medical malpractice is defined as an act or omission by a health care provider which deviated from accepted standards of practice in the medical community, causing injury to the patient (Medical Malpractice,2007). This concept is based on the premise that a patient seeks medical consult with the intent of getting the best healthcare possible and a physician is expected to deliver a standard of care. There is an implicit understanding of a patient-physician relationship acceptable to both parties. A breach of this relationship to the point of injury may lead to legal actions.

The most common cause of malpractice is negligence resulting in injury, damage or death. To be found guilty of negligence, the plaintiff must establish in court the criteria for tort or wrongful act. In order for a civil suit to prevail in court, the following conditions should be met: (1) the physician had the duty to the patient or existence of a patient-physician relationship, (2) that there was dereliction or breach of that duty, (3) that the dereliction of duty resulted in damage to the patient, and (4) that the patient was, in fact, damaged (Brown, 1976).

The filing of a litigation claim is guided by regulations, one of which is related to the statute of limitations. This legal term defines the time limit for an individual to initiate a lawsuit, with the length of the statute of limitations depending on the individual's residence. In the Philippines, the prescribed period is two to five years.

There are three social goals of malpractice litigation - to deter unsafe practices, compensate persons injured through negligence, and exact corrective justice (Keeton et al. in Studdert, et al., 2006). The decision to litigate by the relatives is often due to the perceived lack of caring or collaboration in health care delivery (Beckman et al., 1994).

Findings from a US study demonstrated that majority of malpractice suits involved surgical practitioners, with more specialists being sued compared to generalists (Brown, 1976). Another study reported that risk management events were higher among surgeons than non-surgeons (Hickson et al., 2002). In a study identifying defendants from various specialties, majority involved obstetricians, general surgeons, orthopedic surgeons and neurosurgeons (Studdert et al., 2006).

In the Philippines, the first medical malpractice case was filed in 1907 in Davao (SCRA, 1908) followed by a 1957 case in Negros Occidental (SCRA, 1960). In both cases, the accused were unlicensed practitioners. It was only in 1981 that the first case involving licensed medical practitioners was filed in court. Since then, there have been six resolved cases, with the latest in 2007. Hence, while negligence is a common cause of malpractice in the United States, no such pattern has been noted in the Philippines. The researcher is unaware of published studies regarding the prevalence and outcomes of medical malpractice suits in the country. Hence, it would be of interest to explore these patterns of medical malpractice, as the identification of patterns of malpractice suits in the Philippines may provide insights on the litigation risks and consequences that a medical practitioner may face in the course of practice.

METHODS

Study Design and Setting

This was a retrospective descriptive study conducted with the purpose of reviewing resolved malpractice suits filed in the Philippines. Transcripts of resolved cases from Philippine courts from 1907-2007 were reviewed. Resolved malpractice suits were of interest since according to Philippine law, these records were considered to be public records.

Description of Study Procedure

An initial consultation with a justice from the Court of Appeals regarding the process of gathering documents pertaining medical malpractice cases was done. Upon access to the documents, two lawyers were invited to assist in the retrieval and evaluation of the documents. The lawyers were asked to review the transcript of court records and record their comments on the resolved cases, with focus on the cause of the litigation and the resolutions of each case. These annotated documents were then reviewed by the researcher for the purpose of the study.

Ethical approval for the study was secured from the University of the East Ramon Magsaysay Memorial Medical Center, Inc.

Results and Discussion

For the past 100 years (1907-2007), only eight resolved medical malpractice cases were recorded in the Philippines. The reviewed transcript of records of the resolved cases showed that the most frequent reason for filing a suit was negligence.

The first case (GR 86890) was filed in 1981 against a surgeon and an anesthesiologist for negligence due to failure to monitor the patient during the post-operative stage. The next case (GR 11841) in 1984 likewise involved a surgeon and an anesthesiologist who were convicted of negligence due to failure to avert the deleterious effects of an anesthetic. The third case (GR 126467) was reported in 1984, with the surgeon and obstetrician-gynecologist being sued for failing to remove foreign bodies before closure of the abdomen. In 1986, the fourth case (GR 124354) concerning a surgeon and an anesthesiologist was decided for the plaintiff who sued the physicians for the injury resulting to the demise of the patient.

GR 130547 was the fifth case, which was filed in 1987. Unlike the previous cases, physicians practicing non-surgical specialties (internal medicine) were involved due to carelessness in ordering a laboratory procedure and prescribing a medication. The physicians were eventually acquitted.

The last case (GR 122445) reviewed was reported in 1991. The plaintiff sued an anesthesiologist and obstetrician-gynecologist for negligence due to failure to perform necessary preoperative procedures such as medical risk assessment, resulting in the death of the patient. In this case, the court decided to acquit the anesthesiologist but found the obstetrician-gynecologist civilly liable.

Of the six resolved cases involving 12 physicians, eight were convicted for civil liabilities or both civil and criminal liabilities, and four were acquitted. Among those found guilty, four were surgeons, three were anesthesiologists, and one was an obstetrician-gynecologist. The four acquitted doctors were two internists, one obstetrician-gynecologist, and one anesthesiologist.

Negligence was found in the six resolved medical malpractice cases - i.e. failure to perform the standard procedure, with most cases pertaining to negligence prior, during, and after surgical procedures.

In the case of GR 122445, the practitioner failed to request for pre-operative laboratory parameters and baseline procedures required for the assessment of a patient[5] s operative risk. In the case, it was determined that the failure to secure baseline medical parameters was a negligent act resulting to the death of a patient.

Other cases involved negligence during the operative procedure and cases of *res ipsa loquitur.* For example, in a procedure to remove a ureteral stone, the patient developed malignant hyperthermia due to the anesthetic, which the physicians failed to reverse, leading to the death of a patient.

Another instance involved an obstetrician-gynecologist and a surgeon. Two surgical procedures (partial bowel resection followed by a total abdominal hysterectomy) were done, with the obstetrician-gynecologist leaving the operating room prior to closure of the abdomen.

Shortly after this, the surgeon was informed of missing sponges, and despite failure to locate these, he decided to close the abdomen. On a succeeding visit, the patient complained of pelvic pain to both the surgeon and obstetrician-gynecologist who attributed this to wound healing. Several months later, the patient developed a vaginal infection and fistula due to the sponges left behind. While review of the documents was not able to establish who was responsible for leaving the sponges, the case fell under the doctrines of captain of the ship and *res ipsa loquitur,* as the sponges found were enough proof to establish the negligence of the surgeon involved.

Another case of negligence falling under the doctrine of *res ipsa loquitur* was noted in a patient suffering from abdominal discomfort. An initial diagnosis of gallstones required the patient to be admitted for a cholecystectomy; however, the procedure was delayed for three hours as the surgeon was in another hospital. During the operation, the anesthesiologist had difficulties in intubation, and the service of another anesthesiologist was obtained. Despite eventual successful intubation, the patient became comatose and remained so for four months before eventually expiring. The case was decided against the doctors for the injury which needed no further proof.

Negligence after the operative procedure was seen in the case of physicians who were convicted for failing to monitor and correct the adverse effects of anesthesia. In this particular case, it was noted that the physicians failed to monitor post-operative vital signs necessary for the detection of adverse effects of the anesthesia. Furthermore, the patient was transferred out of the recovery room and into a regular room despite not being fully awake, which was contrary to standard protocol. The patient fell into a comatose state and eventually expired.

These cases indicate common practices resulting to negligence, including (1) failure to perform pre-operative laboratory procedures, (2) failure to correct adverse effect of anesthetics, (3) *res ipsa loquitur*, and (4) failure to monitor patients post-operatively.

A pattern observed is the long duration of litigation. The length of time before case resolution is striking, especially when compared to other countries — i.e. litigation lasted for an average of 20 years longer than the mean duration of 10 years in the United States. Aside from the case overload in Philippine trial courts, another contributor to the duration of litigation was the filing of multiple appeals by both the plaintiff and defendants.

For example, the first decision of the case of a patient who underwent bowel resection and hysterectomy was rendered after nine years. A petition for review was filed at the Court of Appeals which affirmed this after three years. Another appeal was elevated to the Supreme Court which rendered a decision after eleven years. It took 24 years before the case was resolved.

In the case of failed intubation, the lower court rendered a conviction of the physicians. An appeal was filed with the Court of Appeals which reversed the decision after 13 years. The family of the patient filed a motion for reconsideration which was denied by the Court of Appeals, and the case was elevated to the Supreme Court which after another three years decided on a conviction. The process spanned 16 years.

In contrast to the previous cases, amicable settlements accounted for the shorter durations of the other malpractice cases. For example, the case of malignant hyperthermia filed in 1997 required 10 years of fact-finding, followed by an amicable settlement.

During the litigation process, all parties involved suffer from psychological distress and financial strain. The large impact of litigation on these aspects of the physicians' lives lead them to prefer the option of amicable settlement whenever possible. For example, two of the physicians found guilty opted for amicable settlement for undisclosed amounts. For other cases, civil liabilities settled varied across the cases reviewed, ranging from Php90,000.00 to Php3,552,000.00.

Damages awarded to the plaintiffs varied depending on the patient's age, earning capacity, health status, and profession. For the cases which were reviewed, the damages to be paid by the defendants were computed by the court.

In contrast to Western countries, the Philippines has a low rate of medical malpractice suits. This may be attributed by patients' perceptions of their physicians as authoritarian healers doing no harm. The collecti vist nature of the Filipino society, characterized by *pakikisama*, also dictates that relationships with others, especially those who are perceived to have a higher position in society (such as physicians), are to be valued. Hence, the filing of a lawsuit against a medical practitioner would only cause relational disruption while failing to bring their loved ones back. Finally, as correlated with their perceptions of physicians as authoritarian figures, Filipino patients may have minimal information regarding their rights as patients.

A similarity between the malpractice suits in the Philippines and Western countries is the predominance of surgical specialties involved. In the study, a clear majority of the cases reviewed were concerned with surgical procedures, such as appendectomy, total abdominal hysterectomy, removal of ureteral stone, removal of gallbladder, and bowel resection. The over-representation of surgical specialties is a pattern that has been observed in the United States. In a study done by the Commission on Medical Malpractice under the Secretary of Health Education and Welfare in the United States, more than 90% involved practitioners of various surgical specialties.

In sum, the study identified negligence as the main pattern of malpractice suits in the Philippines, both as omission of and commission against the standards of medical practice. Most cases involved negligence that occurred before, during and after an operative procedure. Medical practitioners should be encouraged to observe proper medical conduct adhering to the norms of the medical profession. Information provision,

particularly in the form of full disclosure, is necessary. Careful patient assessment should be done and informed consent should be secured prior to any procedure/treatment. Finally, medical practitioners should keep clear records of their patient interactions should they be needed in court.

Limitations

This study was a retrospective review of court documents available; hence, information gathered was limited. Furthermore, no interviews with the defendants or plaintiffs were conducted, which could have had an impact on data quality. Finally, the limited number of medical malpractice cases in the Philippines led to a small sample size.

Conclusions and Implications

This study sought to explore the patterns of medical malpractice in the country based on all available resolved cases in Philippine history. Identified patterns included negligence as the primary reason for a malpractice suit, the over-representation of surgical procedures in the cases reviewed, and the lengthy nature of litigation.

It is hoped that this study can serve as a reminder for medical practitioners to practice well within the bounds of their profession and to remain constantly aware that negligence may have adverse effects on their patients, to the point of warranting malpractice suits. Awareness of possible litigation from dissatisfied or injured patients and their families will hopefully heighten the vigilance of health professionals in following accepted standards of medical practice.

Due to the small number of resolved medical malpractice suits in the Philippines, the data which was provided for analysis was likewise limited. Future recommendations include studies assessing the impact of litigation and its long duration to the plaintiff and defendants, continuing studies on the pending malpractice suits filed in the country, and cross-cultural studies on medical malpractice suits, including perspectives from other Asian countries.

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