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Forensic Medical Examiners' Role in Resolving Malpractice Claims: Legal and Ethical Obligations

دور الأطباء الشرعيين في مناجزة دعاوى الأخطاء الطبية: الالتزامات القانونية والأخلاقية

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Abstract

In the last few years, the trends of malpractice claims have escalated worldwide. In many judicial systems, forensic medical examiners manage malpractice lawsuits because of their experience in medical, legal, and ethical aspects of healthcare. They analyze medical records to objectively investigate consent-related issues and verify any neglect or deviations from standard medical care. Then, the extent of harm is evaluated in the surviving cases by determining the degree of resulting infirmity. Judicial penalty and compensation depend on the infirmity's percentage. In cases involving patient death, comprehensive post-mortem examinations are performed to explore potential medical errors, death causes, and causal relations between error and the occurrence of death. It is essential to consider that evaluating technical errors necessitates the expert opinions of consultants from the same specialties as the accused physicians. The legal obligation for all forensic medicine experts is to provide objective, unbiased, evidence-based medicolegal reports. The ethical commitments include preserving the confidentiality of data of both patients and accused healthcare providers. Also, forensic medical examiners could actively participate in healthcare education to protect medical staff against future malpractice accusations.

Keywords: Forensic sciences, malpractice claims, forensic medical examiners, infirmities, legal obligations, ethical obligations.

المستخلص

في السنوات الأخيرة، لوحظ تزايد دعاوى الأخطاء الطبية على مستوى العالم. وفي العديد من الأنظمة القضائية، يسهم الأطباء الشرعيون في مناجزة قضايا الأخطاء الطبية، نظراً لخبرتهم في الجوانب الطبية والقانونية والأخلاقية المتعلقة بالرعاية الصحية؛ حيث يقومون بفحص السجلات الطبية والتحقيق بموضوعية في القضايا المتعلقة بالموافقة المستنيرة، والتحقق من وجود أي إهمال أو حيد عن المعايير القياسية للرعاية الطبية، ومن ثم يتم تقييم مدى الضرر من خلال تقييم نسبة العجز الناتج؛ حيث تعتمد العقوبة القضائية والتعويض على قرار الطبيب. أما في الحالات التي ينتج عنها وفاة المريض، فيقوم الطبيب الشرعي بإجراء فحوصات تشريحية شاملة لاستكشاف الأخطاء الطبية المحتملة وأسباب الوفاة والعلاقة السببية بين الخطأ وحدث الوفاة. وقد يتطلب تقييم الأخطاء الفنية أخذ آراء الاستشاريين من نفس تخصصات الأطباء المشكو في حقهم. وفي هذا الصدد يكون الالتزام القانوني لخبراء الطب الشرعي هو تقديم تقارير موضوعية وغير متحيزة وقائمة على الأدلة والبراهين العلمية. بينما تشمل الالتزامات الأخلاقية الحفاظ على سرية بيانات كل من المرضى والمشكو في حقهم من مقدمي الرعاية الصحية. كما يمكن للأطباء الشرعيين أن يشاركوا بفاعلية في تدريب مقدمي الرعاية الصحية على كيفية الوقاية من الوقوع في الأخطاء الطبية وحماية الفرق الطبية من تلك الاتهامات.

الكلمات المفتاحية: علوم الأدلة الجنائية، دعاوى الأخطاء الطبية، الأطباء الشرعيون، العجز، الالتزامات القانونية، الالتزامات الأخلاقية.



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1. Introduction

Medical malpractice denotes negligence or failure to meet the expected standard of medical care, which results in patient harm. Thus, medical malpractice-related issues arouse the attention of patients and healthcare providers. In the last decade, there has been an increasing trend of medical malpractice claims worldwide [1-4]. An exponential increase in malpractice lawsuits burdens the legal systems in different countries [5, 6]. It is essential to consider that each malpractice claim has medical and legal aspects. Therefore, forensic medical examiners play a substantial role in resolving malpractice lawsuits in many judicial systems because of their medical and legal experiences in this context [7, 8].

In malpractice cases, the plaintiff presents evidence of medical negligence while the defense tries to prove that key elements of malpractice are missing. The affirmative defense admits all relevant medical documents and scientific literature that justify the accused party's actions. This allows the accused party to demonstrate that they acted according to the standards of their profession and refute the plaintiff's claim [9].

2. Legal and ethical responsibility of healthcare providers

Legally, medical personnel are responsible for providing care that complies with the quality standards of healthcare services. The standards of healthcare are the expected actions from medical personnel with similar qualifications, managing cases in similar circumstances. Any deviation from the standard care resulting in patient harm is considered medical malpractice [10].

The medical personnel are responsible for issuing correct results for laboratory and radiological investigations [11]. Also, achieving the desired results is the responsibility of physicians involved in elective esthetic procedures [12]. Other than these specialties, the medical personnel's responsibility is to exert efforts and provide adequate medical care. Thus, patient harm, including death, is not considered malpractice as long as the physicians provide optimum care, including anticipating and managing possible complications. In such situations, the patient harm is either the progress of the original disease or a well-known complication of medical intervention [13, 14].

From an ethical perspective, healthcare providers should valorize patient autonomy in all aspects of medical practice. Autonomy is the patients' right to decide on receiving particular medical services. Obtaining valid consent is the application of the autonomy principle in healthcare. The consent represents a contract regulating the patient-doctor relationship; it ensures that the medical services meet the patient's best interest. Also, valid consent is primarily required to prevent medical battery lawsuits against healthcare professionals. Thus, written informed consent is critically essential before any risky procedures, including surgical interventions [15, 16].

Autonomous medical decisions are based on adequate disclosure, voluntariness, and mental competency. Disclosure involves informing patients of all relevant medical data, including diagnosis, treatment options, possible risks, and expected benefits of the intended procedure. Physicians should use simple language that allows the patient to understand the medical information. Every



competent adult patient has the right to be fully informed about their medical condition. However, disclosing a bad diagnosis or prognosis can be very difficult, especially if the patient's family requests that the information be withheld. In these cases, physicians must follow guidelines for disclosing bad news that consider the psychological impacts on the patients [17, 18]. Voluntariness is the essential element of autonomous decision-making and valid consent. Voluntariness means that the patients make medical decisions without pressure, fraud, or coercion. In addition, the patient should have mental competency that ensures that medical decisions are in the patient's best interest [19, 20].

3. Key elements of medical malpractice

The approval of malpractice liability includes the fulfillment of four main pillars, as follows:

1. Duty of care: The physicians owe their patients the duty of care once the patient-doctor relationship is established. The duty of care encompasses multiple medical tasks, including history taking, examination, investigation, treatment, and follow-up [21].
2. Breaching of duty of care: Failure to provide care according to well-established medical standards. Breach of duty, or medical error, is a core element of medical malpractice. Medical errors could be defined as failing to perform planned actions as intended while providing medical care. Medical error could occur at any patient management step, including diagnosis, treatment, or follow-up. Also, violation of the roles of the local medicolegal system is considered a sort of medical error [22]. Medical errors do not include intentional

harmful actions or performing unauthorized medical practices such as torture, illegal organ donation, criminal abortion, and female genital mutilation; these actions are best described as medical crimes [23, 24].

3. Damage: The patient's harm is the adverse outcomes, including death, permanent infirmity, psychological distress, unnecessary suffering, and extra financial burdens. The patient's death or lifelong disabilities stand behind most of the raised malpractice lawsuits [9].
4. Causal relationship between medical error and damage: To fulfill the criteria of malpractice, adverse outcomes must be linked to the medical error. In other words, it must be clear that the medical error caused the patient harm [9].

According to the pillars mentioned above, not all medical errors are considered malpractice [14]. For instance, if a surgeon promptly repairs an accidentally injured vessel during surgery, it is not considered medical malpractice. Similarly, if a patient suffers harm without medical errors, such as complications of their underlying medical condition, it cannot be considered malpractice. Also, the lack of a causal relation between medical errors and harm leads to full acquittals. For example, if a physician prescribed drugs contraindicated during pregnancy and abortion occurred shortly after intake of these drugs. This case is not considered medical malpractice if the abortion is the inevitable fate of the pregnancy, regardless of drug intake, due to the presence of congenital anomalies that are incompatible with life, such as vesicular mole and anencephaly.



4. Role of forensic medical examiners in resolving malpractice claims

Resolving malpractice claims typically included multiple medical and legal processes. The legal systems are the authorities that investigate medical malpractice lawsuits. In this context, medical experts could be consulted to provide relevant medical opinions regarding error, harm, and causal relationships between them [25].

Forensic medical examiners contributed to resolving malpractice claims in different legal systems; however, limited published data outlined the extent of their contribution [26]. Most published research points to the crucial role of forensic medical examiners in conducting the required autopsies in malpractice claims that include patients' deaths [27-30]. Nevertheless, limited studies denoted the handling of forensic medical examiners to the full spectrum of medical malpractice claims and judging the presence or absence of medicolegal liabilities [7, 25].

Providing justice opinions regarding medical malpractice lawsuits necessitates the formulation of comprehensive oversight. Therefore, forensic medical examiners were provided with relevant medical documents before managing malpractice claims. They could also ask for the required missing data.

The first step in resolving a malpractice claim is verification of the occurrence of medical error. Forensic medical examiners revise medical reports carefully, interview patients or their relatives, and conduct thorough examinations. Resolving malpractice claims have a vast range of difficulties. Apparent errors can easily be verified; these frank errors are described as "Res Ipsa Loquitur", a

Latin terminology that means "The things speak for themselves," such as operation on the wrong side or forgetting surgical instruments inside the surgical wounds [31]. On the other hand, judging some technical errors might require consultations from the same specialties as the accused healthcare providers to verify compliance with the medical standard of care [6, 32]. Resolving some malpractice claims is challenging, particularly lawsuits involving healthcare providers from different specialties, such as perioperative deaths.

4.1. Malpractice-related permanent disabilities

Permanent disabilities or infirmities significantly impact the quality of life. Disabilities can result from diseases, injuries, or medical errors. Medicolegal evaluation of disability includes determining its nature, extent, and impact on personal activities. Disability is evaluated when the maximal medical improvement (MMI) is achieved with no expected cure in the future [33, 34]. To date, each legal system has its schedule for determining the degree of disability without international standards in this context. Some legal systems delegate committees of independent physicians to rate disabilities; meanwhile, in other legal systems, managing the cases of infirmities is the exclusive duty of forensic medical examiners [7, 25].

In malpractice claims, the forensic medical examiner could be requested to assess the disability and verify the causal relationship between medical error and the examined disability [25]. Forensic medicine experts should decide whether the disability resulted from medical negligence or is the natural consequence of the original disease or trauma. This critical decision should be based on



medical records, clinical examination, and reliable medical references.

4.2. Malpractice-related deaths

A postmortem examination is an essential task of forensic medical examiners. Autopsies are requested by legal authorities to resolve lawsuits, including medical malpractice allegations [30, 35]. A postmortem report focuses on whether the alleged medical error results in patient death and if the death was preventable. Also, it could provide insight into whether the probability of survival would be more significant in the absence of duty breaching. Often, autopsies introduce evidential information that governs justice decisions in malpractice lawsuits [27, 28, 36, 37]. Thus, autopsies should be mandatory in all malpractice allegations. However, the global decline in autopsy rates limits their usefulness in resolving medical liability cases.

It's important to remember that the absence of malpractice evidence in postmortem examination does not exclude medical malpractice. For example, anesthesia-related deaths might yield negative autopsy results. In these cases, forensic medical examiners should mention in their reports that autopsy findings are inconclusive [27-29].

5. Legal obligations of forensic medical examiners

Two categories of forensic medicine experts could be engaged in managing malpractice claims. The legal systems officially assign forensic medical examiners to resolve malpractice claims. In addition, independent forensic medicine experts could provide private-based medicolegal services.

Maintaining the impartiality of forensic medical

examiners who judge malpractice claims is difficult. This is because the accused party is often considered a colleague of the same medical profession. Also, sympathy with healthcare providers could be aroused due to the harsh penalties associated with approved negligence, including the imprisonment of physicians. In addition, when famous physicians are accused of medical negligence, investigators might fall into confirmation bias, unconsciously confirming preexisting expectations and underestimating evidence [38]. The independent medicolegal services have additional credibility-related issues. Private-based medicolegal services have financial incentives that might compromise their impartiality. Private forensic medicine experts might be pressured to provide medicolegal opinions that comply with the interests of the clients who hire them [39].

In resolving malpractice lawsuits, the priority should be achieving justice through preserving the rights of patients and healthcare providers. Thus, all experts who participate in malpractice proceedings must provide impartial, objective, unbiased, and evidence-based medicolegal reports [40]. Erroneous medicolegal reports have serious consequences, such as misleading justice and undermining the legal system's credibility. Therefore, the failure of forensic medicine experts to resolve lawsuits is considered malpractice in forensic medicine practice [39].

6. Ethical obligations of the forensic medical examiner

When dealing with malpractice claims, forensic medical examiners are responsible for maintaining the confidentiality of patients and accused healthcare providers. If data related to a malpractice claim is



disclosed without authorization, it is considered a breach of confidentiality that puts the forensic medicine expert at risk of legal action [41].

Forensic medicine experts have ethical obligations toward medical societies. They could actively participate in healthcare education to protect medical staff against future malpractice accusations [42]. Enhancing healthcare providers' awareness regarding their medical responsibilities and malpractice-related issues is essential. Forensic medicine experts must stress the significance of documentation in guarding against malpractice. By maintaining detailed medical records of patient care, it is possible to demonstrate that appropriate care was provided. Additionally, written informed consent, which the patient voluntarily signs after receiving adequate data, significantly protects medical personnel from potential legal liability.

It is noteworthy that analysis of malpractice claims could contribute to improving healthcare quality by avoiding medical errors in the future [43]. Autopsy reports often reveal serious adverse outcomes of medical interventions [27-30]. Therefore, analyzing medicolegal documents related to malpractice claims can help identify risk factors and promote future preventive measures. Also, the autopsy of cases that died under medical treatment helps discover rare conditions, contributing to advances in medical research [44, 45].

7. Conclusion

Forensic medical examiners are involved in resolving malpractice lawsuits. To date, limited data exists regarding their exact contribution to resolving malpractice claims in different countries. Thus, an

international survey in this regard is recommended.

It is essential to differentiate between medical error and malpractice. The main elements must be established to prove medical malpractice. First, the duty linked to doctor-patient must have existed. Second, a breach of duty must occur, meaning the doctor failed to provide the expected standard level of medical care. Third, patients must suffer from adverse sequelae. Finally, this breach of duty must be directly linked to the patient's harm.

Medical negligence should not pass without accountability, particularly if associated with deleterious harm such as infirmity or death. At the same time, medical malpractice lawsuits have profound implications on the defendant's reputation and advancement opportunities. Therefore, forensic medical examiners are legally obligated to provide impartial, evidence-based medicolegal opinion in malpractice claims. The ethical obligations include maintaining the confidentiality of data for both patients and accused healthcare providers. Also, forensic medicine experts could participate in healthcare education to protect medical staff from future malpractice accusations. Additionally, analysis of malpractice claims could improve the quality of healthcare services and contribute to medical research advances.

Conflict of interest

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