

On Medical Negligence: Law and Jurisprudence

by Atty. Jess Zachael B. Espejo¹

Introduction

The Hippocratic Oath taken by medical practitioners may be expressed as *primum non nocere*, or simply “First, do no harm.” Where a medical doctor or physician does harm to a patient in the former’s capacity as such, he violates this oath. Medical malpractice or, more appropriately, medical negligence, is that type of claim which a victim has available to him or her to redress a wrong committed by a medical professional who has caused bodily harm to or the death of a patient.² To successfully pursue such a claim, a patient must prove that the physician failed either to do something that a reasonably prudent health care provider would have done or did something that a reasonably prudent provider would not have done; and that that failure or action caused injury to the patient.³

Discussion

There are four elements involved in medical negligence cases: duty; breach; injury; and proximate causation.

Duty, in medical malpractice cases, arises when the plaintiff

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² *Garcia-Rueda v. Pascasio*, G.R. No. 118141 (1997); *Spouses Flores v. Spouses Pineda*, G.R. No. 158996 (2008).

³ *Garcia-Rueda v. Pascasio*, G.R. No. 118141 (1997).

employs the services of the physician, thus creating a physician-patient relationship between them. Acceptance by the physician of a patient for treatment in effect creates a representation on the part of the former that he has the needed training and skill possessed by those in the same field and that he will employ the said training, care and skill in treating the patient.⁴ In Reyes v. Sisters of Mercy Hospital⁵, the Court held that,

The practice of medicine is a profession engaged in only by qualified individuals. It is a right earned through years of education, training, and by first obtaining a license from the state through professional board examinations. Such license may, at any time and for cause, be revoked by the government. In addition to state regulation, the conduct of doctors is also strictly governed by the Hippocratic Oath, an ancient code of discipline and ethical rules which doctors have imposed upon themselves in recognition and acceptance of their great responsibility to society. Given these safeguards, there is no need to expressly require of doctors the observance of "extraordinary" diligence. As it is now, the practice of medicine is already conditioned upon the highest degree of diligence. And, as we have already noted, the standard contemplated for doctors is simply the reasonable average merit among ordinarily good physicians. That is reasonable diligence for doctors or, as the Court of Appeals called it, the reasonable 'skill and competence . . . that a physician in the same or similar locality . . . should apply.'

The breach of these professional duties of skill and care, or their improper performance, by a physician whereby the patient is injured in body or in health, constitutes actionable malpractice. To establish breach, two-pronged evidence is required: (1) evidence as to the recognized standards of the medical community in the particular kind of case; and (2) a showing that the physician in question negligently departed from this standard in his treatment. Whether a physician has committed an inexcusable lack of precaution in the treatment of his patient is to be determined according to the standard of care observed

⁴ Spouses Flores v. Spouses Pineda, G.R. No. 158996 (2008).
⁵ G.R. No. 130547 (2000).

by other members of the profession in good standing under similar circumstances bearing in mind the advanced state of the profession at the time of treatment or the present state of medical science. Breach of duty occurs when the physician fails to comply with these professional standards. If injury results to the patient as a result of this breach, the physician is answerable for negligence.⁶

Ordinarily, injury means bodily injury in its generic sense. Hence, it can mean all forms of physical injury and death that result from the negligence of the physician. In other words, for as long as it is established that the bodily integrity of a patient is injured, the element of injury is satisfied. Thus, there is actionable malpractice if (1) the patient's condition becomes worse after treatment; (2) the patient's condition, although previously treatable, becomes untreatable due to the negligence of the physician; (3) the patient suffers unnecessary impairment of his limbs or bodily functions as a result of procedures taken pursuant to a misdiagnosis; (4) the patient is injured after the physician wrongfully prescribes medication that the patient's body cannot tolerate; and (5) other similar cases.

Should injury be limited to bodily injury only? The definition of medical negligence in both Garcia-Rueda v. Pascasio⁷ and Spouses Flores v. Spouses Pineda⁸ contemplate only bodily harm (or death) of a patient. However, the element of injury should not be limited to mere bodily injury. It ought to extend to all forms of injury such as injury to the reputation and conduct on the part of the physician that violates other positive duties that cause injury to the patient. Rule 130, Section 24⁹ of the Rules of Court provides the rule of disqualification that would

⁶ *Id.*
⁷ G.R. No. 118141 (1997).
⁸ G.R. No. 158996 (2008).
⁹ Section 24. Disqualification by reason of privileged communication. – The following persons cannot testify as to matters learned in confidence in the following cases: xxx
(c) A person authorized to practice medicine, surgery or obstetrics cannot in a civil case, without the consent of the patient, be examined as to any advice or treatment given by him or any information which he may have acquired in attending such patient in a professional capacity, which information was necessary to enable him to act in capacity, and which would blacken the reputation of the patient;

render a physician incapable of giving testimony regarding the medical records or information of his patient. Once this rule is violated and the patient is injured, such that his reputation is blackened or besmirched, the violation gives rise to an actionable tort. In fact, this is one of the grounds for disciplining a physician found in Section 24¹⁰ of Republic Act 2382¹¹ for it also constitutes a violation of Article 2 Section 6¹² of the Code of Ethics approved by the Philippine Medical Association. Section 3 (n)¹³ of Republic Act No. 8504¹⁴ defines the confidential relationship that exists between the medical practitioner and the patient and Section 33¹⁵ provides the penalty for this specific breach of confidence. Furthermore, criminal liability also attaches in certain cases.¹⁶

¹⁰ Section 24. Grounds for reprimand, suspension or revocation of registration certificate. Any of the following shall be sufficient ground for reprimanding a physician, or for suspending or revoking a certificate of registration as physician: (1) Conviction by a court of competent jurisdiction of any criminal offense involving moral turpitude; (2) Immoral or dishonorable conduct; (3) Insanity; (4) Fraud in the acquisition of the certificate of registration; (5) Gross negligence, ignorance or incompetence in the practice of his or her profession resulting in an injury to or death of the patient; (6) Addiction to alcoholic beverages or to any habit forming drug rendering him or her incompetent to practice his or her profession, or to any form of gambling; (7) False or extravagant or unethical advertisements wherein other things than his name, profession, limitation of practice, clinic hours, office and home address, are mentioned; (8) Performance of or aiding in any criminal abortion; (9) Knowingly issuing any false medical certificate; (10) Issuing any statement or spreading any news or rumor which is derogatory to the character and reputation of another physician without justifiable motive; (11) Aiding or acting as a dummy of an unqualified or unregistered person to practice medicine; (12) Violation of any provision of the Code of Ethics as approved by the Philippine Medical Association.

Refusal of a physician to attend a patient in danger of death is not a sufficient ground for revocation or suspension of his registration certificate if there is a risk to the physician's life.

¹¹ Republic Act No. 2382, "Medical Act of 1959".

¹² Article 2, Section 6 of the said Code of Ethics provides that the physician should hold sacred and highly confidential whatever may be discovered or learned pertinent to the patient even after death, except when required in the promotion of justice, safety and public health.

¹³ Section 3(n) "Medical Confidentiality" refers to the relationship of trust and confidence created or existing between a patient or a person with HIV and his attending physician, consulting medical specialist, nurse, medical technologist and all other health workers or personnel involved in any counseling, testing or professional care of the former; it also applies to any person who, in any official capacity, has acquired or may have acquired such confidential information.

¹⁴ Republic Act No. 8504, "Philippine AIDS Prevention and Control Act of 1998".

¹⁵ Sec. 33. Penalties for violations of confidentiality. Any violation of medical confidentiality as provided in Secs. 30 and 32 of this Act shall suffer the penalty of imprisonment for six (6) months to four (4) years, without prejudice to administrative sanctions such as fines and suspension or revocation of the violator's license to practice his/her profession, as well as the cancellation or withdrawal of the license to operate any business entity and the accreditation of hospitals, laboratories or clinics.

¹⁶ (1) Bodily injury and death due to the negligence of the physician; (2) Bodily injury and death

Another element in medical negligence cases is causation which is divided into two inquiries: (1) whether the doctor's actions in fact caused the harm to the patient and (2) whether these were the proximate cause of the patient's injury. In Garcia-Rueda v. Pascasio,¹⁷ the court explains,

... a causal connection is discernible from the occurrence of the victim's death after the negligent act of the anesthesiologist in administering the anesthesia, a fact which, if confirmed, should warrant the filing of the appropriate criminal case. ... It appears that the cause of the death of the victim could have been averted had the proper drug been applied to cope with the symptoms of malignant hyperthermia. Also, we cannot ignore the fact that an antidote was readily available to counteract whatever deleterious effect the anesthesia might produce.

Generally, to prove that a physician has done a negligent act or that he has deviated from the standard medical procedure, proof rests on expert medical testimony. Only physicians and surgeons of skill and experience are competent to testify as to whether a patient has been treated or operated upon with a reasonable degree of skill and care. In Cruz v. Court of Appeals¹⁸, the court expounds on the significance of expert medical testimony.

For whether a physician or surgeon has exercised the requisite degree of skill and care in the treatment of his patient is, in the generality of cases, a matter of expert opinion. The deference of courts to the expert opinion of qualified physicians stems from its realization that the latter possess unusual technical skills which laymen in most instances are incapable of intelligently evaluating. Expert testimony should have been offered to prove that the circumstances cited by the courts below are constitutive of conduct falling below the standard of care employed by other physicians in good standing when performing the same operation. It must be remembered that when the qualifications of a physician are admitted, as in the instant case, there is

due to the willful act of the physician; (3) Offending against the chastity of a patient; (4) Injury to the reputation of the patient through a breach of confidentiality; (5) Injury to the reputation of the patient through a breach of confidentiality in HIV cases.

¹⁷ G.R. No. 118141 (1997).

¹⁸ G.R. No. 122445 (1997).

an inevitable presumption that in proper cases he takes the necessary precaution and employs the best of his knowledge and skill in attending to his clients, unless the contrary is sufficiently established. This presumption is rebuttable by expert opinion, which is so sadly lacking in the case at bench.

As intimated in the case of Lucas v. Tũaño,¹⁹ the purpose of expert testimony enables the courts to determine the proper standards to compare the diligence employed by the defendant.

It seems basic that what constitutes proper medical treatment is a medical question that should have been presented to experts. If no standard is established through expert medical witnesses, then courts have no standard by which to gauge the basic issue of breach thereof by the physician or surgeon. The RTC and Court of Appeals, and even this Court, could not be expected to determine on its own what medical technique should have been utilized for a certain disease or injury. Absent expert medical opinion, the courts would be dangerously engaging in speculations.

Doctors are protected by a special rule of law. They are not guarantors of care. They do not even warrant a good result. They are not insurers against mishaps or unusual consequences. They are not liable for honest mistakes of judgment. All things being equal, the physician enjoys the benefit of assumption, which means that he does not have to present evidence to prove that he was not negligent if the plaintiff failed to establish his negligence.

When the qualifications of a physician are admitted, there is an inevitable presumption that in proper cases, he takes the necessary precaution and employs the best of his knowledge and skill in attending to his clients, unless the contrary is sufficiently established.²⁰

Doctrine of *Res Ipsa Loquitur*

This burden of proof shifts once the doctrine of *res ipsa loquitur*

¹⁹ G.R. No. 178763 (2009).

²⁰ *Lucas vs. Tũaño*, G.R. No. 178763 (2009).

applies in a particular case when the circumstances attendant upon the harm are themselves of such a character as to justify an inference of negligence as the cause of that harm. However, the application of *res ipsa loquitur* in medical negligence cases presents a question of law since it is a judicial function to determine whether a certain set of circumstances does, as a matter of law, permit a given inference. When the doctrine is appropriate, all that the patient must do is prove a nexus between the particular act or omission complained of and the injury sustained while under the custody and management of the defendant without need to produce expert medical testimony to establish the standard of care. Resort to *res ipsa loquitur* is allowed because there is no other way, under usual and ordinary conditions, by which the patient can obtain redress for injury suffered by him.

Thus, courts of other jurisdictions have applied the doctrine in the following situations: leaving of a foreign object in the body of the patient after an operation; injuries sustained on a healthy part of the body which was not under, or in the area, of treatment; removal of the wrong part of the body when another part was intended; knocking out a tooth while a patient's jaw was under anesthetic for the removal of his tonsils; and loss of an eye while the patient plaintiff was under the influence of anesthetic, during or following an operation for appendicitis, among others.

Nevertheless, despite the fact that the scope of *res ipsa loquitur* has been measurably enlarged, it does not automatically apply to all cases of medical negligence as to mechanically shift the burden of proof to the defendant to show that he is not guilty of the ascribed negligence.

Res ipsa loquitur is not a rigid or ordinary doctrine to be perfunctorily used but a rule to be cautiously applied, depending upon the circumstances of each case. It is generally restricted to situations in malpractice cases where a layman is able to say, as a matter of common knowledge and observation, that the consequences of professional care were not as such as would ordinarily have followed if due care had been exercised.

A distinction must be made between the failure to secure results, and the occurrence of something more unusual and not ordinarily found if

the service or treatment rendered followed the usual procedure of those skilled in that particular practice. It must be conceded that the doctrine of *res ipsa loquitur* can have no application in a suit against a physician or surgeon that involves the merits of a diagnosis or of a scientific treatment. The physician or surgeon is not required at his peril to explain why any particular diagnosis was not correct, or why any particular scientific treatment did not produce the desired result. Thus, *res ipsa loquitur* is not available in a malpractice suit if the only showing is that the desired result of an operation or treatment was not accomplished. The real question, therefore, is whether in the process of the operation any extraordinary incident or unusual event outside of the routine performance occurred which is beyond the regular scope of customary professional activity in such operations, which, if unexplained would themselves reasonably speak to the average man as the negligent cause or causes of the untoward consequence. If there were such extraneous interventions, the doctrine of *res ipsa loquitur* may be utilized and the defendant is called upon to explain the matter, by evidence of exculpation, if he could.

Liability of physicians vis-a-vis the Hospitals and Heads

In Ramos v. Court of Appeals²¹, the Supreme Court ruled that for the purpose of allocating liability in medical negligence cases, there is deemed to exist an employer-employee relationship between the hospital and the physicians-consultants. However, on motion for reconsideration²², the Supreme Court reversed its earlier pronouncement and ruled that, using the four-fold test, there could not be any such relationship between the hospital and the doctors.

Does this operate as a complete reversal of the doctrine enunciated in the previous case? No, because after the ruling on the motion for reconsideration, the Supreme Court again reiterated the earlier doctrine in the 2007 case of Professional Services, Inc. v. N. & E. Agana²³, to wit:

While in theory a hospital as a juridical entity cannot practice

²¹ G.R. No. 124354 (1999).

²² G.R. No. 124354 (2002).

²³ G.R. No. 126297 (2007).

medicine, in reality it utilizes doctors, surgeons and medical practitioners in the conduct of its business of facilitating medical and surgical treatment. Within that reality, three legal relationships crisscross: (1) between the hospital and the doctor practicing within its premises; (2) between the hospital and the patient being treated or examined within its premises and (3) between the patient and the doctor. The exact nature of each relationship determines the basis and extent of the liability of the hospital for the negligence of the doctor.

In Nograles, et al. v. Capitol Medical Center, et al²⁴ citing Ramos v Court of Appeals, supra, the Court explains,

In other words, private hospitals, hire, fire, and exercise real control over their attending and visiting "consultant" staff. While "consultants" are not, technically employees, a point which respondent hospital asserts in denying all responsibility for the patient's condition, the control exercised, the hiring, and the right to terminate consultants all fulfill the important hallmarks of an employer-employee relationship, with the exception of the payment of wages. In assessing whether such a relationship in fact exists, the control test is determining. Accordingly, on the basis of the foregoing, we rule that for the purpose of allocating responsibility in medical negligence cases, an employer-employee relationship in effect exists between hospitals and their attending and visiting physicians. This being the case, the question now arises as to whether or not respondent hospital is solidarily liable with respondent doctors for petitioner's condition.

Doctrine of Apparent Authority

In general, a hospital is not liable for the negligence of an independent contractor-physician. There is, however, an exception to this principle. The hospital may be liable if the physician is the "ostensible" agent of the hospital. This exception is also known as the doctrine of apparent authority. The doctrine of apparent authority is a species of the doctrine of estoppel. Article 1431 of the Civil Code provides that "[t]hrough

²⁴ G.R. No. 142625 (2006).

estoppel, an admission or representation¹ is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon." Estoppel rests on this rule: "Whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it."

There are two factors that determine the application of this doctrine: (1) focuses on the hospital's manifestations and is sometimes described as an inquiry whether the hospital acted in a manner which would lead a reasonable person to conclude that the individual who was alleged to be negligent was an employee or agent of the hospital. In this regard, the hospital need not make express representations to the patient that the treating physician is an employee of the hospital; rather a representation may be general and implied; and (2) focuses on the patient's reliance. It is sometimes characterized as an inquiry on whether the plaintiff acted in reliance upon the conduct of the hospital or its agent, consistent with ordinary care and prudence.

Conclusion

Hence, to make hospitals vicariously liable, the patient must establish the power of control of the hospital over the physician; or establish apparent authority to render the hospital estopped from denying its connection to the physician; or establish that the hospital failed to properly supervise the members of its medical staff or that it failed to discharge its duty to make a reasonable effort to monitor and oversee the treatment prescribed and administered by the physicians practicing in its premises.