



Revista Colombiana de Anestesiología

Colombian Journal of Anesthesiology

www.revcolanest.com.co



Essay/Comment

A Few Questions About Medical Liability

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ARTICLE INFO

Article history:

Received: December 20, 2011

Accepted: March 3, 2012.

Keywords:

Liability, legal
Patient safety
Malpractice
Physicians

ABSTRACT

The doctor-patient relationship is governed by an express agreement in good will, whereby the physician commits all his/her knowledge, skills and clinical judgment to a professional practice. Medical liability is an area that gives rise to a constant debate and calls for the consolidation of consensus. This is a reflection around the article "Expert Reports due to presumptive medical liability in Bogotá". The publication paves the way for a discussion of a relevant topic for the current practice of the medical profession, though as a result of its diverse interpretations such descriptive perspective may turn into the consolidation of a more in depth analytical study. An analytical study could lead to a different understanding about the medical liability in the country, bearing in mind the typical dynamics of the country, Colombia's General Health Care System (SGSSS), the different duties and competencies of every sectors involved and hence their particular liabilities. In most cases, the liability for malpractice could be shared among various actors; it could also be relevant to dwell on the issue of a concentration of liability cases around gynecology and obstetric cases, since this may be related to the processes typically involved in this disciplines in our country.

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Algunos interrogantes sobre la responsabilidad médica

RESUMEN

La relación médico-paciente está regulada por un expreso acuerdo de voluntades, mediante el cual el médico empeña todo su conocimiento, su destreza y su juicio clínico en el desarrollo de su ejercicio profesional. La responsabilidad médica es un campo que continúa generando aspectos de debate y requiere cuanto antes la consolidación de consensos sobre la materia. Esta reflexión se hace en torno al artículo "Informes periciales por presunta responsabilidad médica en Bogotá". La publicación posibilita traer a la discusión un tema actualmente relevante de la profesión, aunque es posible que por su riqueza interpretativa esta mirada descriptiva se

Palabras clave:

Responsabilidad legal
Seguridad del paciente
Mala praxis
Médicos

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transforme en la consolidación de un estudio analítico más profundo. Es posible que un estudio de carácter analítico permita otras comprensiones sobre la responsabilidad médica en el país, teniendo en cuenta las dinámicas propias de la nación, del SGSSS colombiano, de las diferentes tareas y competencias de cada sector involucrado y, con ello, las responsabilidades de todos ellos. Es posible que en la mayoría de los casos la responsabilidad de una mala práctica esté compartida por diferentes actores; también resultaría pertinente profundizar la concentración de casos por responsabilidad en el ámbito ginecológico y obstétrico, puesto que esta dinámica puede estar relacionada con procesos propios de esas disciplinas en nuestro país.

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Before reflecting on the article entitled "Expert Reports on Presumptive Medical Liability in Bogotá", by Támara et al,¹ we must clarify that according to Ruiz,² the doctor-patient relationship is governed by a willing express agreement, whereby the physician commits all his/her knowledge, skills and clinical judgment to a professional practice." Although the national and international jurisprudence has attributed to certain areas of medicine the condition of obligatory results or specific outcomes, medical liability is an area that continues to generate debate and requires immediate consolidation of consensus on the topic.

Medical liability is linked to the binding and legal frameworks and relates to both the provision of services and the protection of fundamental rights, particularly when in most cases, the professional practice is linked to a fundamental and inalienable right to life. Consequently, in the Colombian case, medical liability is not limited to ethics but encroaches on the legal field. Therefore, if the performance of the physician is not consistent with the guidelines established for the particular discipline, the medical liability will be compromised.

The article that is the foundation for this reflection suggests the relevancy of studying liability claims as a key factor to formulate and implement national policies for the safety of the patient who, in the case of Colombia and within the tax regimen, is basically considered a user. This enquiry is driven by the desire of the authors to overcome the absence of this type of research at the national level and thus typify the verdict of the 402 claims for medical liability submitted from 2006 to 2010, that were available to them as members of the at the Forensic Clinic team in Bogotá.

According to the authors, the patient's safety is an issue related to the set of actions around the prevention of injuries caused by a medical professional that in some cases can be considered malpractice. However, the medical error concept is taken from a 1999 North American publication entitled "To err is human," which suggested that the reaction to medical errors should be addressed to the consolidation of better information systems, the promotion of medical education and feedback and implementation of guidelines for clinical practice, that eventually could result in the development of a legislation and regulatory framework for enhanced patient's safety. While the response seems appropriate to the problem, in general there is some concern about the availability of national literature on medical error specifically addressing the domestic context, since potentially this term may have different implications in Colombia than in the United States.

The descriptive study of the authors is aimed at opening the discussion about the results of a computerized statistics based on the material of the above-mentioned cases, according to social-demographic characteristics, the Health Care System (SGSSS), legal considerations and listing the medical and non-medical specialties involved, the diagnosis associated with the claims and the characterization of the cases in terms of medical liability; i.e. complications, iatrogenic, accidents and below the standard medical care. These cases that should receive full attention, are investigated based on percentages that are a poor indication of the medical liability involved since they are linked to other aspects and the is diluted liability through purely administrative considerations finally blaming the user and other factors, including climate change.

The publication puts forward the discussion of a relevant topic for the profession at present, though because of the broad range of interpretations, this descriptive overview may give rise to the consolidation of a more profound analytical study and a national conceptualization that creates awareness about the participation of different areas, including administrative, the users themselves and other related matters, emphasizing the potential for shared medical liability in some cases (records and protection of the clinical records).

According to the report "To err is human," suggesting the existence of barriers to the implementation of legislative recourse that highlights cultural issues, the limitation of resources, the use of information and the lack of scientific research, it would be more appropriate to confirm whether these limitations are applicable in Colombia since other factors may influence this dynamics and could deserve some analysis. Notwithstanding the neglect of the authors refer to the fragmented nature of health care services in Colombia, this is a fact that sets the Colombian case apart with its own and very particular attributes that should be further evaluated.

An analytical study may eventually help to further understand the concept of medical liability in the country, bearing in mind Colombia's particular dynamics, the Colombian Health Care System, the different duties and competencies of each sector involved y their respective liabilities. It could be that in most malpractice cases, the liability is shared among various stakeholders. It would also be appropriate to further investigate why there is a considerable proportion of liability cases in gynecology and obstetrics which could be related to the inherent characteristics of these disciplines in our country.

Finally, there is a need to consider that this is indeed an interesting topic in the modern world. As a result of technological development and communications, it is now easier for health care users to access medical knowledge and to learn about the current standards of care to protect their most valuable asset: health. So, while descriptive studies are the starting point when considering a particular topic, the relevancy of analytical studies becomes urgent.

Funding

Author's own resources.

Conflict of interests

None declared.

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