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Standard of Care of Medical General Practitioners

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THE HEALTH OF ITS CITIZENS is of major concern to the State. It is one of the vital assets of a nation that demands all possible protection that the law can bestow. Deliberate or careless harm to it should evoke immediate action by the medical and legal professions.

At early common law, any person who wished to do so could practice medicine. The right and privilege to practice medicine now is regulated by statute in all jurisdictions. It is generally provided that, before undertaking the practice of medicine, one must secure a license from a designated board.[1] Certain educational and moral qualifications are required of applicants, although the right of a physician to follow his profession is a property right of which he may not be deprived arbitrarily. The State may, in the exercise of its police power, regulate such practice and provide for revocation of the right on grounds provided by the statute.[2]

The problem of medical malpractice claims today has become very severe. The number of such claims soon may reach a dangerous point, as is evidenced by the progressive increase in premiums for medical liability insurance coverage. As a result of this situation, the number of carriers interested in this field of coverage has steadily declined. The likelihood of being sued for malpractice is now so great that the practicing physician, be he specialist or general practitioner, recognizes that it constitutes a definite occupational hazard.[3]

The number of liability suits, compared between specialists and general practitioners, demonstrates that the increase in claims holds true throughout the entire profession. It is clear that there is no great difference in liability of the general practitioner and the specialist. If one would break down these two general groups into two specific groups for each; namely, dividing specialists into those who are certified by one of the American Boards and those who are not certified by a Board, and dividing

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1 Regan, Doctor and Patient and the Law (3rd ed., C. V. M. Publ. Co. St. Louis 1956).

2 Friedman, The General Practitioner and the Law, 87 Medical Times (2) (1959).

3 Sadusk, Analysis of Professional Factors in Medical Practice Claims, 161 J. A. M. A. 442 (1956).

the general practitioners into those who are members of the American Academy of General Practice and those who are not, no difference between groups is demonstrated.[4]

Breakdown of G. P. into members and non-members of A. A. G. P.,[5] and of Specialists into Certified and Non-certified Specialists, shows the following data:

	Membership %	Incidents %	Actions filed %	Indemnity Expense %
Non-A. A. G. P.	27.0	32.8	31.4	27.2
A. A. G. P.	17.0	21.6	16.4	21.5
Non-Cert. Spec.	24.0	15.2	15.6	26.7
Cert. Spec.	31.4	30.4	36.5	24.6
Totals	100.0	100.0	100.0	100.0

The physician's duty arises, as a matter of law, out of the relationship of physician-patient. This involves a *duty* ("legal duty," as defined by Black's Dictionary) which is "an obligation arising from contract of the parties or the operation of the law. That which the law requires to be done or foreborne to a determinate person or the public at large, correlative to a vested and co-extensive right in such persons or the public, and the breach of which constitutes negligence." This requires that the physician undertaking this duty must exercise that reasonable and ordinary degree of learning and skill commonly possessed by reputable physicians practicing in the same or like localities in similar situations. It also requires of the physician the exercise of his best judgment at all times. The physician impliedly contracts and represents that he possesses (and the law makes it his duty to possess) the ordinary skill and learning commonly possessed by like physicians in general practice in the same locality. He is bound to exercise ordinary care and diligence in the application of his skill and knowledge in order to accomplish the purposes for which he contracted. He must act towards the patient with good faith, even though he knows that the patient does not have the understanding or the knowledge, education or mental capacity to understand the problems of his medical diagnosis and therapy. The general rule is that it is incumbent upon the physician properly to inform himself of the condition of his patient, so that he may intelligently exercise the skill of his calling.[6]

If a physician has brought the requisite degree of skill and

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[4] Id.

[5] American Academy of General Practice.

[6] Staloch v. Holm, 111 N. W. 264 (Minn., 1907); Edwards v. Uland, 131 N. E. 242 (Ind. App., 1921); McGraw v. Kerr, 128 P. 873 (Colo. App., 1912); Moscicki v. Shor, 163 A. 343 (Pa. Super., 1932); Baldor & First Palma Celin Hosp. Corp. Inc. v. J. T. Rogers, 81 S. 2d 660 (Fla., 1954).

care to a case, he is not liable for failure to cure or for bad results that may follow.[7]

There is no liability for an honest error of judgment. Medicine is not an exact science. Physicians are permitted a wide range in the reasonable exercise of their judgment and discretion. In many instances of general practice, there can be no fixed rule by which to determine the duty of the physician. He must use his own best judgment, derived from the circumstances of the illness and patient, and act accordingly. By reason of this fact the law will not hold a physician guilty of negligence as long as he exercises his best judgment, even though that judgment may prove erroneous in a given case, unless it can be shown that the course pursued was clearly against the course recognized as correct by the profession generally.[8]

The physician's implied agreement with his patient does not guarantee a good result. The physician promises, by implication, to use the skill and learning of the average physician, to exercise reasonable care, and to exert his best judgment in the effort to bring about a good result.[9]

The duties of the doctor may be divided into (1) ethical and (2) legal. Aside from the requirement of compliance with the law of license to practice, the accepted rule is that a doctor must possess that reasonable degree of learning, care, and skill defined above. The "care and skill" are general in scope, but rigid application without regard to specific or special conditions or particular circumstances could lead to hardship and injustice. The law takes into account such matters as differences in various schools or systems of medicine, the state of medical acumen and knowledge, the established mode of practice, the locality, and conditions of practice.

To reach a logical standard for physicians, and especially for that segment of the profession designated as "the general practitioner," various requirements are recognized by the law. Some courts insist that the degree of care and skill shall be commensurate with the advanced state of the science at the time of rendition of the service. This concept of the amount or degree of scientific medicine must be modified to include the knowledge of the patient's education in "lay medicine."[10]

Over the past two decades, the editors of *Reader's Digest, Life, Look, Ladies' Home Journal,* and other magazines have found a particularly active response on the part of readers to articles which deal with medical subjects. Some subjects have been biographical, some organizational, and some technical—in-

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[7] Engelking v. Carlson, 88 P. 2d 695 (Cal. 1939).

[8] Barley v. St. Louis-San Francisco Ry. Co., 296 S. W. 477 (Mo. App., 1927).

[9] Carpenter v. Blake, 75 N. Y. 12 (1878); Hitchcock v. Burgett, 38 Mich. 501 (Mich. 1878).

[10] Gebhard, Historical Relationship Between Scientific and Lay Medicine for Present-day Patient Education. 32 Bull. Inst. History of Med., 46 (Johns Hopkins Univ. 1958).

cluding a heart-lung preparation, artificial pumps for use in certain operations, a better system of blood banks, and proper methods of cardiac resuscitation. Reports are brought to the knowledge of the public concerning the advent of new treatments for those ill with various diseases. These articles, while arousing reader interest, admittedly impose an added burden on the doctor. Many desperately ill patients or their families, who have just read of some treatment, frequently demand it, imposing upon the general practitioners additional requirements of judgment higher than those previously demanded.[11]

A doctor's legal duty is not affected by the fact that the professional services are rendered gratuitously. No physician may justly be charged with malpractice unless, in the service rendered to his patient, he fails to meet the requirements of accepted medical practice, or unless in the diagnosis or treatment of his patient he fails to do something he is obligated to do, or does something he should not do, measured against the accepted standard of practice of his community or like communities. The standard of practice is always determined by what other reputable practitioners would do in like cases and circumstances.

The physician may make an honest mistake in diagnosis, or be guilty of an honest error in judgment. He may use medications or methods of treatment different from those which some of his co-practitioners would have used. He may obtain a bad result instead of a good one. Yet, not one of these things is sufficient to fasten upon him liability for malpractice, except as he does something that should not be done or omit something that should be done.

In addition to being responsible for his own acts or omissions, a physician may also be held responsible for the negligent acts and omissions of others. He is responsible for the acts of his assistants and employees; for their negligence occurring during the course of their employment.

A physician is not required to accept every patient; he may arbitrarily refuse the employment, even if he is the only physician available. He may limit his obligation by undertaking to treat the patient only for a certain ailment or injury, or at a certain place, or for a specified time.[12] The physician's refusal to accept a patient bars the imposition of any duty upon him.[13]

Physicians are required to keep abreast of, and to use modern methods of treatment. In so doing, however, they may not unduly and narrowly restrict their responsibility to the immediate place where they are practicing.[14]

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[11] DeWitt Wallace, Magazine & Book Publication, 167 J. A. M. A. 1390 (1958).

[12] McNamara v. Emmons, 97 P. 2d 503 (Cal. App., 1940).

[13] Butterworth v. Swint, 186 S. E. 770 (Ga. App., 1936); Southern States Life Ins. Co. v. Mildred Lowery, 93 S. 2d 790 (Ala. App., 1957).

[14] Flock v. J. C. Palumbo Fruit Co., 118 P. 2d 707 (Idaho, 1941).

After he once has accepted employment in a case, it is the doctor's duty to continue his services as long as they are necessary. He may not voluntarily abandon his patient; even if personal attention is no longer necessary in the treatment of an injured limb, for example, the physician, if the case requires, must furnish the patient with instructions as to care. His failure to do so may be actionable negligence.[15]

After the relation of physician and patient has been established, unless otherwise limited in the contract of employment, the relation cannot be terminated at the mere will of the physician. It must last until treatment is no longer required or until it is dissolved by assent of parties, or after reasonable notice is given so that the patient may engage another physician's services.[16]

While, ordinarily, whether a physician has exercised the degree of care and skill is established by professional opinion, this is not an invariable rule. There are instances where the facts themselves prove negligence (res ipsa loquitur), and it is unnecessary to have the opinion of persons skilled in the particular science to show unskilled and negligent treatment.[17]

There is a difference between a mere error of judgment and actual negligence in first collecting data essential to reaching a particular conclusion. The physician is liable for failing to inform himself concerning the facts and circumstances.[18]

The problems of the general practitioner range over the entire fields of medicine, surgery, and psychiatry, and must include a working knowledge of the entire allopathic branch of medicine. It is interesting to note that despite the size of the fields with which the G. P. is required to become acquainted, the incidence of malpractice claims against him are no higher than those against the specialist.[19] It is difficult to determine what is the required degree of skill, knowledge, and care that he should ordinarily possess and exercise. He should not be bound to exercise the *highest* degree of skill known to medical science. Historically established in the nineteenth century is the following: "the rule in relation to learning and skill does not require the physician to possess that extraordinary learning and skill which belong only to a few men of rare endowments, but such as is possessed by the average member of the medical profession in good standing." [20]

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[15] Vann v. Harden, 47 S. E. 2d 314 (Va., 1948).

[16] Grace v. Myers, 29 S. E. 2d 553 (N. C., 1944).

[17] Jordan v. Skinner, 60 P. 2d 697 (Wash., 1936); Gross v. Partlow, 68 P. 2d 1034 (Wash., 1937); Crouch v. Wychoff, 107 P. 2d 342 (Wash., 1940); State v. Bennett, 107 P. 2d 344 (Wash., 1940).

[18] Peterson v. Hunt, 84 P. 2d 999 (Wash., 1938); Hodgson v. Bigelow, 7 A. 2d 348 (Pa., 1939); Wilson v. Corbin, 41 N. W. 2d 702 (Iowa, 1950); and see, Oleck, Negligence Forms of Pleading, Sec. 265 (1957 revision).

[19] Sadusk, supra, n. 3.

[20] Pike v. Honsinger, 49 N. E. 760 (N. Y., 1898).

A *general practitioner* has been defined as a man or woman who has received an M. D. degree from a recognized medical school, and who has served an internship in a general hospital, who ministers to the daily illnesses of the whole family, and has the responsibility of caring for a high proportion of the ailments of this country.[21]

From the very nature of the general practitioner's relation to his patients, he may be called upon to undertake the treatment of any condition which the patient presents. As medicine progresses, and with the extensive communications of that progress, he may be held to a very high degree of skill, nearing the standards required of a specialist. Almost any allegations of malpractice which appear in complaints against the specialist may appear in complaints against the general practitioner.

When, in the course of therapy, examination, or interpreting laboratory data, he discovers or should have discovered that the patient's ailments and diagnostic problems are beyond his expected knowledge or technical skill, it is his duty to so advise his patient. If, however, he does attempt to treat or diagnose, under circumstances where other practitioners would advise a specialist, he then is held to the same standard of care as a specialist. "The general practitioner's duty must always be measured in relation to the facts in the particular case. In determining a course of action, he may and should consider such elements as the patient's mental and emotional condition, his known financial situation, and the many other variants which a physician meets in treating human ailments." [22] "A specialist is required to exercise that degree of skill and care ordinarily used by similar specialists in like circumstances having regard to the existing state of knowledge in medicine and surgery, not merely the average skill and care of a general practitioner." [23]

In the meantime, as Ford[24] has pointed out, the prevention of malpractice suits involves the entire field of medicine and depends upon three points: (1) good faith, (2) good records, and (3) common sense. Good faith implies that the physician treat his patient with tact and kindness, that he conceal no known difficulty in diagnosis or treatment, and that he advise consultation freely and early. Good records require that the physician adequately document his medical records of the patients, carefully record untoward happenings, and make a matter of record the treatment given and the advice offered. Common sense implies that the physician should appreciate the vindictiveness of some patients, recognize the hazards connected with the collection of reluctant fees, be aware of the failure of equipment that in turn can produce injury and finally, and use only well-

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[21] Wolf, The Physician's Business, 38 (3rd ed., 1949).

[22] Simone v. Sabo, 231 P. 2d 19 (Cal., 1951).

[23] McGillpin v. Bessmer, 43 N. W. 2d 121 (Iowa, 1950).

[24] Ford, Medical Practice, 243 New Eng. J. of Med. 408 (1950).

established and professionally recognized medications and procedures.

Fundamental elements of the obligations of a physician, whether Specialist or General Practitioner, can be summarized as follows:

1. The physician must possess the degree of skill commonly possessed by other reputable practitioners in the same field of practice in the same locality.

2. He must exercise the degree of care, diligence, and judgment commonly and ordinarily exercised by other reputable members of his profession in similar circumstances.

3. He must keep abreast of progress and follow good practice, common practice, in diagnosis and treatment; he must not experiment without direct written consent of the patient upon whom he is testing a new drug or attempting a new procedure.

4. He must not neglect or abandon his patient; he must proceed diligently and without unnecessary delay.

5. He must give his patient sufficient attention and must utilize the indicated diagnostic aids.

6. He must find or anticipate any condition reasonably determinable or reasonably likely to develop.

7. He must obtain legal consent in order to operate or to perform an autopsy.

8. He must give proper instructions for the care of the patient in his absence, which must be made known to the patient, for the protection of those who have the obligation to continue the care and treatment of the patient during the G. P.'s absence.

9. He must fulfill the terms of a special contract if he makes one.