



Negative Claim of Intentional Medical Error Existence

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Dear Editor-in-Chief

Modern literature denies that medical error is as old as medicine offering proves that it dates back considerably earlier and answering that it is very difficult to meet doctor who would deliberately and intentionally make a mistake and commit crime. By doing so, he breaks professional rules, ethical values, Hippocratic Oath and endangers health and / or life of the patient. Intentional medical error, according to legal interpretation (1) represents the expression of conscientious doctor's treatment contrary to medical profession rules or disregard of medical standards, regulations, procedures and measures. If deliberate medical error is proven and damage to the patient is determined, it is completely natural sanctions prescribed by medical regulations and / or law to be taken against the offender. Intentional medical error is sanctioned in all countries by Criminal Law, but not every gets a court epilogue. Also, doctors and health institutions behavior is regulated by Health Care Law, according to which most delicate cases can be solved within institutions, at the level of profession. Except being paradigm of doctor's treatment contrary to rules of medical profession and gross violation of established norms and standards (2), it is also basis for criminal or other type of liability. Legal systems prescribe that representatives carefully, medically and legally observe cases and avoid mistakes in the assessment that might

charge the doctor. In countries belonging to Anglo-Saxon legal system (United States, Ireland, Great Britain, Canada), medical error is more successfully determined by introducing the term - medical malpractice, which prefers the legal concept of medical responsibility for the harm done to the patient (3). Mistake may happen and everyone aware of principle *errare humanum est* must count on it. It is ungrateful to state that doctor deliberately mistakes and makes the patient suffer. Thus, in Ancient China, in the book Canon of Medicine ("Nuci King"), which is believed, to be the work of Chinese Emperor Xuang Tia, special rule is established: "... the medicine cannot save anyone from death, it can only prolong life, strengthen morale, build up virtue and eradicate vice as deadly enemy of health. Medicine cannot cure many diseases that attack humanity but it seeks to strengthen people and states by providing hygiene advices."(4)

At the end of twentieth century, the idea was born that within medical law the legal norms should be prescribed in order to regulate relations between insured / patients and doctors in a more modern manner. Numerous doctors perceived medical law as a threat pointing out its aggressiveness, involvement in their work and competences, which directly impairs development of medicine in general. Medical error represents violation of prescribed professional and ethical du-



ties, therefore, it's important to determine the facts of its relevance and establish whether it was intentional. From the aspect of universal legal interpretation, every surgical intervention is a specific type of behavior, since doctor consciously attacks the patient's body doing some bodily injury, but with the aim of improving his health status. When the assessment of relevance is done by legal experts in Germany, it is called the duty of traffic (5), and the necessary care (6). Obviously, it cannot be always, and in every case regulated what is considered to be careful, and what carelessly behavior (7). When doctor shows necessary attention, according to German legislation, he cannot be responsible for the failure of committed act or harmful effects. When the assessment is done by lawyers in France, it is perceived as duty of aging, which is the competence of conscious doctor (8). In Anglo-Saxon law, this assessment is carried out based on behavior of competent, well-respected doctor (9). In every legislation, it is all about methodological difference in behavior, since professional error also contains negligence, which is the criterion for assessing the correctness of treatment in each case. In order doctor to be prosecuted and legally responsible for his own mistake, the latter must be determined and eliminate every doubt (*in dubio pro reo*).

The research conducted at Johns Hopkins University School of Medicine showed that medical interventions of all doctors included resulted in 80% of deaths, so, in United States, according to one article medical errors cause death of around 251,000 people (10).

Conflict of interest

The authors declare that there is no conflict of interest.

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