Malpraxis in Psychiatry

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Abstract

Given the increasing complexity of the modern health care environment and the increasing number of patients, reducing medical errors is a priority task for health as well as for policy and medical decision-makers.

Forensic psychiatry as subspecialty of clinical psychiatry is guided by principles being used in cases with psychiatric, forensic and legal implications. In both psychiatry and any other medical specialty, malpractice may occur. The paper attempts to identify the risk factors of incorrect psychiatric diagnosis and professional misconduct in the exercise of the medical act generating harm to the patient. Knowing the risk factors inevitably leads to their avoidance.

Keywords: Psychiatry; Professional Error; Risk Factors.

1. Risk Factors

Forensic psychiatry is a medical specialty based on the detailed knowledge of relevant legislation, criminal and civil justice systems, mental health systems, and the relationship between mental disorder, antisocial behavior and delinquency.

Legal medicine psychiatry covers areas such as:

- evaluation and treatment of criminals with mental disorders;
- investigating the complex relationships between psychic affection and criminal behavior;
- collaborating with criminal justice agencies for patient psychological support and protection of civil society.

Forensic psychiatry operates in a certain legal and social context, undergoes constant evolution and is subject to wider societal influences / tendencies (eg attitude towards criminals, their exclusion or rehabilitation).

Laws are rules created by humans and guiding human behavior. This means that certain concepts of responsibility or mental competence are normative rather than clinical issues and differ from one country to another, sometimes significant.

The ethical issues faced by forensic psychiatrists are similar in all cultures and depend on the specific legal system and the delivery of medical services in each country.

Psychiatric malpractice has a fairly low share, but the existence of these cases is an alarm signal. Identifying risk factors for psychiatric medical errors is a first step in avoiding them (Niveau & Welle, 2018; Reuveni et. al., 2017). Analyzing cases of psychiatric malpractice has led to the establishment of three categories of error sources for the diagnosis, the patient, and the limits of paraclinical examinations:

- Risk factors that are of interest to the diagnostician are represented by: their superficiality, their lack of attention to some illness signs and symptoms, the ignorance or the non-identification of rare diseases or the occurrence of extremely rare complications in the evolution of some diseases as well as the lack of collaboration between doctors belonging to other specialties.
- If the patient is recalcitrant, non-cooperative, it is difficult to conduct anamnesis or clinical examination, for example intoxicated people, under the influence of drugs or narcotics, psychiatric patients with delusional psychotic episodes. Another error-generating situation is represented by children under 1-year old, when anamnesis is impossible, and in children under 3 years, when it is extremely difficult.
- Risk factors related to the limits of paraclinical examinations are represented by insufficient equipment of medical institutions, lack of access of patients to paraclinical examinations with high costs, such as MRI, technical limits of paraclinical explorations (Niveau & Welle, 2018; Mela et. al., 2016).

2. Medical Responsibility

The legal framework in our country protects the patients in relation to the treating physicians, the latter having the obligation to communicate to the patients, in written form, the diagnosis, the treatment, existing alternative treatments, the risks of performing or failing the recommended treatment (New Penal Code, 2011; Ciubara et. al., 2015; Ciubara et. al., 2018).

Over time, medical accountability has been justified by several theories, some of which are briefly described below.

Rigorous theory criminalizes the physician's work after its results. This theory originates in sacerdotal medicine, where failure to obey the holy books led to the punishment of the doctor in case of failure, sometimes even to death (according to the law of talion), and perpetuated until late in our day. This theory would punish the failure and not the physician's behavior. Rigorous theory has not resisted criticism due to the following negative consequences: the rigorous criminalization of medical conditions would affect the patient's relationship and the patient's trust relationship with the doctor, causing the doctor to circumvent the heavy cases and "cover the papers" (instead of being useful to the patient) for fear of excessive responsibility; rigorous medical criminalization depersonalizes the doctor-patient relationship, the doctor being concerned about the purely technical aspect of his acts, neglecting the ethical and affective aspect of the doctor-patient relationship; rigorous criminalization would ameliorate the physician's initiative in the interest of the patient, accepting the risks in his or her interest, especially in difficult and serious cases, by the fear of accountability; such an incrimination generates a real "legal" overclaim, with negative consequences primarily for the patient's interest.

Immune theory believes that as long as the doctor is in good faith and does not mean to harm the patient, they must not be subject to responsibility, enjoying "judicial immunity".

Considering the social character of medicine, that involves responsibility, the immune theory is burdened with negative consequences.

The theory of medical accountability based on error is today the root of medical responsibility. This theory laid the foundation for the doctor's responsibility for failing to offer the patient the most appropriate means of healthcare by launching the famous "health care medicine"; in other words, the doctor may be responsible for the means made available to the patient, but as long as they are correct and the disease is inflamed to failure, the doctor cannot be held guilty of it (Popescu, 2005).

3. Causal Link

For the existence and engagement of civil liability for tort/medical malpractice, it is necessary that there is a causal link between the prejudicial act and the damage. The damage caused in this case must be the consequence of the illicit act and the causal link is a necessary and mandatory condition for attracting civil liability. The causal link is an essential criterion according to which the extent of the reparation due to the victim is determined.

In specialized practice, the necessity of establishing a specific causal link for each situation was stated, the existence of a general causal relationship not being sufficient to attract civil liability.

The causal link, the condition of civil liability, is missing when the damage is caused exclusively by: force majeure, fortuitous case, the deed of a third person or the victim'sdeed (Vida-Simiti, 2013).

The causes that exclude the existence of causation are force majeure, by force case, third party deed and victim's deed. Force majeure implies, in fact, an unforeseeable, external and unrelenting event that objectively and without any fault on the part of the author impedes the execution of the obligation (e.g., earthquake, flood). The forcible case, in accordance with the provisions of Art. 643 par. 2 let. a of Law 95/2006: "medical personnel are not responsible for the damages and damages incurred in the exercise of the profession when it is due to nosocomial infections, adverse effects, complications and generally accepted risks of the methods of investigation and treatment, or the hidden defects of the sanitary materials , equipment and medical devices, medical and sanitary materials used, this leads to the exoneration of medical personnel. The action of the third person assumes that if a member of the medical team fails, the whole team cannot be sanctioned for his/her illicit deed. It also applies to the situation where the third party is not involved in the medical act."

If the doctor prescribes a drug that can become toxic in certain doses, but the dosage of the medicine is correct, but the caregiver, although warned by the doctor about the drug's dangerous effects, mistakes in administering these doses beyond the prescribed limits, the doctor will not be held liable for the harmful effect of the drug.

The act of the victim involves the creation of the victim's behavior in the event, and in this situation the medical responsibility is removed (New Penal Code, 2011; Vida-Simiti, 2013; Vida-Simiti, 2010).

In psychiatric forensic expertise, literature discusses a series of "conflicts" or "dilemmas" that may arise as a result of:

- the possibility of psychiatry to provide information to the judiciary;
- the suspicion of psychiatrists to divert the values of justice to the patient;
- the suspicion of psychiatrists to serve the interests of justice at the expense of the patient, deviating from the principles of medical ethics;
- the pressure exerted on the psychiatrist by the judiciary.

The causes of these "conflicts" or "dilemmas" may be medical, organizational or legal. Medical causes involve the reconstitution of a previous psychiatric status (sometimes it cannot be reconstituted or psychiatrists hold different views), the need for vast medical knowledge,

controversial diagnoses (frequent in psychiatry), the limits of psychiatric assessment, the organic substrate of a mental illness.

The organizational causes concern the training of specialists in the field (psychiatry, forensic psychiatric expertise), the conditions in which the psychiatric examination is performed, the paraclinical investigation of the psychiatric patient, the collaboration with doctors of other specialties.

Causes of lack of medical accountability: failures, professional failures in unfortunate cases generated by illness or complications such as: insufficient scientific evidence in the process of diagnosis, a very particular evolution of the disease which made impossible the diagnosis, the state of necessity, fortuitous case.

- Doubtful cases of fault as well as errors and risks at the fragile limit with the mistake, will benefit of applying the "in dubito non obligated" principle.
- Undoubtful cases of guilty liability through negligence, ease, imprudence, ignorance, in which the result speaks for itself "res ipsa loquitur"; such as: forget tools and compresses in the abdomen, to perform medical activity while drunk, therapeutic burns, etc.

Medical competence becomes "a form of honesty." The effects of incompetence are major in emergencies, and it becomes imputable whenever the physician is not adequately informed, exceeds its competence or skips what he should do in the interest of the patient.

Perfect consciousness to his professional obligations. The most competent doctors make as many mistakes as the incompetent if they are not conscious of their professional obligations.

Prudence - Today, when the therapeutic arsenal is so loaded, it is imperative that the "primum non nocere" principle be achieved through the doctor's prudence, a balance between skepticism and optimism becomes absolutely necessary.

Devotion to professional obligations. It is most appreciated by the patient and goes from the request of common acts to the abnegation of special acts. Devotion obliges the doctor to always put the patient's interests before the his reputation (Buicu et. al. 2017).

Professional responsibility - A good doctor does not think about his responsibility at the time of an action but gives it totally. Doctor's responsibility is a destiny that nobody and nothing can remove it.

Medical accountability without mistake is an ideal for both physicians and patients, but requires a strong health care system combined with a social protection system that only wealthy states can afford.

The system of repairing the patient's injury through insurance is advantageous for the doctor, the patient, for justice, and is widely applied in civilized states.

Medical responsibility is valuable for protecting the patient's interests, increasing the quality of the medical act, and for the preventio of judicial follow-up and medical negligence (Chimorgiachis et. al., 2007).

Legal causes are the rapid change of legislation and norms (if the psychiatrist needs to know the legislative changes in the field), if a doctor of another specialty (e.g., family medicine) can perform a psychiatric examination etc. (Xu et. al., 2013).

4. Conclusions

Psychiatry is a specialty of medicine with some features in the diagnosis and treatment of psychiatric disorders; these particularities expose psychiatric specialists to the risk of professional error. Their knowledge inevitably leads to their avoidance. The legal framework governing psychiatric activity varies from country to country; the mobility of psychiatric specialists requires that they know the legislative framework of the country in which they work in order to reduce the risk of professional misconduct.

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