



3WCII

Preserving Mental Well-Being amidst a Litigious Society: The Way Forward for Muslim Medical Professionals

**PROF DR PUTERI NEMIE JAHN KASSIM
AHMAD IBRAHIM KULLIYYAH OF LAWS
IIUM**

Introduction

- ❑ The practice of medicine is currently beset with a myriad of challenges.
- ❑ As patients become more and more knowledgeable about their rights in medical practice, they developed higher expectations and subsequently, becoming more litigious in nature.
- ❑ Medical errors and untoward consequences in medical practice are no longer tolerated and tend to trigger medical negligence claims in the court of law.

Changing Trends

Rapid Growth of Technology

- Advent of Internet and Social Networks
- Patients become more literate and knowledgeable
- Very questioning

Commercialisation & Privatisation

- When they pay for services – at times ‘Over Optimistic’ and ‘Perfectionist’
- Healthcare Services requires Excellence – Higher Accountability

IMPLICATIONS

Higher Expectations

- Patients tend to be '**Over Optimistic**' and at times '**Perfectionist**'
- Healthcare Services are expected to be Excellent
- No longer Tolerant to Substandard Services

Litigation Prone Society

- Demanding for Higher Accountability
- Demanding Justice through the Court Law
- '**The Name, Blame and Shame**' Culture



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Cases on medical negligence on the rise, Health Ministry's data shows



Wednesday, September 18th, 2019 at , News



Safety failure will also lead to loss of trust in health systems and in governments, says minister

by ALIFAH ZAINUDDIN/ pic by TMR FILE

THE number of errors and accidents at both government and private hospitals has increased in recent years despite efforts by the administrators of these healthcare centres to improve treatment safety.

Health Ministry's official figures showed that between 2016 and 2018, the number of incidents involving wrong surgery, unintended retention of foreign objects (URFOs), transfusion and medication errors and patient falls have nearly doubled in both public and private hospitals.

Over the three-year period, the number of wrong surgeries has increased from six cases to 11, while URFOs went up from 27 cases to 32 cases. Transfusion errors rose from 40 cases to 47 cases, while medication errors jumped from 3,104 cases to 3,741 cases.

Patient falls recorded the highest increase, with those involving adult patients rose from 2,374 cases to 3,547 cases and those involving children increased from 441 cases to 696 cases.

"There are many other issues, but these are the top six issues which contribute to patient harm. It is important

MEDICAL NEGLIGENCE CASES are IN THE LIMELIGHT BECAUSE ...



Cases are Highly Publicised in Social Media

16 - The Star - Thursday , 05 March 2015

Brain damaged girl awarded RM3mil

By M. MAGESWARI
images@thestar.com.my

KUALA LUMPUR: A four-year-old girl has obtained an RM3mil award in a consent judgment with the Government and 77 others for negligence over her brain damage.

Sofea Az-Zaha Zamzairi, who suffered cerebral palsy due to the brain damage, jointly sued the parties through her parents in the civil dispute. Her parents Zamzairi Mohd Jaws and Murni Sahubudin had said that the Government and others, mostly doctors who assisted the birth of their child and care after delivery, were negligent.

They said Sofea could not have an independent life and would need care and assistance from experts for rehabilitation and treatment.

In the statement of claims filed on June 24, 2013, Murni said she gave birth to Sofea at the Serdang Hospital on Sept 8, 2010.

They said they sued the parties for negligence as a result of them not taking proper care and not providing

Murni said she also sued the parties for breach of their contractual duty in the management of her pregnancy and birth of her child.

In the statement of defence filed on July 30, 2013, the Government and other defendants denied negligence and breach of contractual duty.

High Court judge Justice John Louis Othman recorded the consent judgment after the parties reached an agreement on the quantum of damages.

astro AWANI

Updated: May 11, 2015 17:43 (MYT)

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Medical negligence: Court awards girl, 9, RM2.78 million

Bernama | Updated: June 06, 2014
(First published on: June 06, 2014 19:07 MYT)

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KUALA LUMPUR: A nine-year-old girl was awarded RM2.78 million in damages by the High Court here today, in a suit against the

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Court awards almost RM1.7m in damages to Myanmar refugee in negligence suit

Tuesday, 28 Jan 2020 08:29 PM MYT



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Teen in botched circumcision gets RM150k in out-of-court deal

NATION

Tuesday, 23 Jul 2019

10:10 AM MYT



KUALA LUMPUR (Bernama): A 19-year-old youth, who lost the head of his penis in a botched circumcision procedure when he was 10, received RM150,000 in an out-of-court settlement.

The teenager's counsel, Mohamad Zainuddin Abu Bakar, said the medical assistant attached to the Kuala Lipis hospital, who was the first defendant in the suit heard in the High Court, agreed to compensate a sum of RM150,000 to his client.



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Husband awarded over RM735k for wife's death by negligence at Hospital KL

NATION

Monday, 06 Aug 2018

2:53 PM MYT

By MAIZATUL NAZLINA



KUALA LUMPUR: The husband of the former assistant director of Hospital Kuala Lumpur (HKL) has been awarded RM735,596 in damages for the death by negligence of his wife four years ago - at HKL itself.

Datuk Stanley Isaacs, the former head of prosecution at the Attorney-General's Chambers, was awarded RM500,000 in aggravated damages and RM140,000 in general

High Amount of Damages / Monetary Compensation

Medical Negligence Claims ...not just limited to Compensatory Damages under the rule of *Restitutio in integrum*

But also presently include...

EXEMPLARY DAMAGES

AGGRAVATED DAMAGES

WOMAN LOSES BREAST AT M'SIAN HOSPITAL, TO SUE DOCTOR, GOVT FOR RM20MIL

Social | April 20, 2017 by | 0 Comments



A woman has filed a medical negligence suit against a Serdang Hospital doctor claiming that a botched procedure had caused the loss of her left breast.

The suit was by Pertemahwadi Isac through her lawyer Arunan Selvaraj at the Kuala Lumpur High Court today, against the cardiothoracic specialist Dr Abdul Muiz Jasid and the Malaysian government.

Malaysian housewife sues government specialist for RM20mil over negligence

Vi-Jean Khoo, 24 Apr 2017



Under Muiz's advice, Pertemahwadi underwent a Vacuum Assisted Closure (VAC) treatment. However, as the infection from the wound had spread, she was referred to the Breast Specialist Department and advised to have the infected part of her breast removed. Due to the extent of the infection, she had to undergo two surgeries to remove her entire left breast.

Incident caused patient emotional suffering

Following the incident, Pertemahwadi claimed that she has lost confidence in the treatment, attention and patient care provided by Serdang Hospital. She added that she has been suffering emotionally and facing mental distress, causing her to be unable to carry out her household duties since February last year.

She is currently seeking RM20 million in general and aggravated damages, along with RM223,486 in special and other reliefs deemed fit by the court.

According to lead counsel Datuk Dr Arunan Selvaraj, Pertemahwadi was asked to sign a letter, promising that she will not take legal action against the hospital. However, she refused to sign the letter and decided to proceed with the civil claim as the hospital failed to provide an explanation for the incident.

"We have no choice but to come to court to seek justice," he said.

"We don't want this to happen to other women." **MIMS**

Dr Hari Krishnan & Anor v Megat Noor Ishak & Tun Hussein Onn Hosp [2017]

- Federal Court Judgment
- “Aggravated damages can be and have been awarded as a separate head of damage in tort. For example, aggravated damages are frequently awarded in defamation cases for injury to a person’s reputation. **There is no reason to exclude this kind of damages from medical negligence cases,** which involve real injury to a person’s body.”

Effects of Court Litigation on Mental Well-being of the Medical Profession

Lawsuit have stirred
anxieties

Detrimental effect of
reputation and practice

Insinuate
faulty
judgment and
guilt

Self-esteem
jeopardised
overnight

Viewing
patients as
future
adversaries

Name, Shame and Blame

❑ The threat of litigation compels the doctor to view his patient as a **future adversary** in a courtroom proceeding.

❑ “For 7 years it went on, months of sitting in court **listening to what a terrible person you are**, no one recovers from that. It is on your mind every day, every minute. It changed the whole way I practiced. **The empathy I had, that I was known for, just wasn't there anymore. Every patient was a potential law suit.**” - *Canadian retired doctor*

Silversides, A. “Fault/no fault: bearing the brunt of medical mishaps, CMAJ News, August 12, 2008, 179(4).

Effects of Lawsuits on Mental well-being

Medical practitioner may be confronted with the overwhelming emotional burden of feeling alone, helpless, and isolated leading to depression

The effects of lawsuits can also be expressed in multiple symptoms which include sleeplessness, anger, frustration, humiliation, headaches, difficulty in concentrating, loss of self-confidence, indecisiveness, anxiety, despondency

Following the mixed emotions and emotional turmoil, the medical practitioner may subsequently feel unduly responsible or guilty and genuine sorrow for the injured persons.

Embracing Islamic Medical Ethics as a Way Forward

Muslim Medical Professionals

- Needs to develop with societal demands and gain the trust of patient and society. Islamic ethics instructs human beings that, in addition to being virtuous, they must contribute to the moral health of society.

Surah al Imran, verse 110, Allah swt stated to the effect: “You are the best of peoples, evolved for mankind, enjoining what is right, forbidding what is wrong and believing in Allah.”

In order to execute these obligations, Muslims generally and medical practitioners specifically need to possess good characters and attributes.

Embracing Islamic Medical Ethics

- ❑ Nizami Arudi describes the qualities of a Muslim medical practitioner in the following terms: “The medical practitioner should be of **tender disposition and wise in nature**. He cannot be of tender disposition if he fails to recognise the nobility of human soul nor can he be of wise nature unless he is acquainted with logic and strengthened by Allah’s aid. Further, if he is not of wise nature, he will not arrive at a correct understanding of any ailment”

Accountability

Muslim medical practitioners must always remember that they **will be accountable for all their actions** as Allah swt is all seeing. Nevertheless, any form of good deeds they provide for mankind will be immensely rewarded not just in this world, in the form of monetary compensation and gratitude, but also as immeasurable rewards in the Hereafter. As stated by Allah swt in Sura al Isra', verse 9: **"Verily this Qur'an does guide to that which is most right (or stable) and gives the glad tidings to the believers who work deeds of righteousness, that they shall have a magnificent reward"**

Knowledge and Skill

Muslim medical practitioners are expected to possess the required skills and knowledge to cure the sick. Islam expects the highest standard of care to be given by any profession including the medical profession. The general rule is that the medical practitioner must exercise care according to the standards of reasonable competent medical men practicing in his field. If the medical practitioner treats a person without the required knowledge and qualification, he may become liable under the principle of strict liability (mas'liyyah mutlaqah). Under this principle, compensation can be given to the patient without him having to prove any wrongdoing on the person who offers the treatment. This principle of strict liability under Islamic law is based on the hadith: "Whosoever treats people without knowledge of medicine before that, becomes liable."

Knowledge and Skill

The importance of being equipped with knowledge is in line with the hadith of the Prophet Muhammad pbuh which stated that "Allah likes when anyone does a work, to do it with perfection". A holistic medical practitioner will always safeguard the profession of medicine and abide by the divine principles in the Holy Qur'an and the Sunnah of the Prophet Muhammad pbuh. In doing this, the medical practitioner will live a satisfied life and will always be trusted by the members of the community

Honesty

The medical profession should be practiced with efficiency and honesty and the medical practitioner needs to constantly observe good conduct and fine character in both his acts and behavior. The manual guide for medical practitioners in Saudi Arabia stated that: "The ethics of morals of profession mainly stem from the teachings of Islam which call for nobility of character, perfection of performance and fear of God in every act. The Prophet Muhammad said: "I have been sent to call for and complement high moral standards"

Should not be arrogant

One of the most important traits in the practice of medicine is to be humble and not arrogant which has been clearly stated in the Holy Quran that “swell not your cheek (for pride) at men. Nor walk in insolence through the earth: For Allah loves not any arrogant boaster. Having such attitude will eventually defuse the spur of litigation as most of the time patients want to have good communication with the medical practitioners to know what had happened in their medical treatment. Allah swt stated to the effect “Undoubtedly Allah knows what they conceal and what they reveal. Verily He loves not the arrogant”

Conclusion

As medical care and treatment is important to protect human life, medical practitioners should execute their duties with greatest care and skill for the best interest of their patients. They should remember that their services to mankind are not only rewarded in this world, in the form of monetary compensation and gratitude, but also in the Hereafter.



Thank You

nemie@iium.edu.my