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Medical Negligence in the Therapeutic Setting (Hospital) from a Sociological Perspective

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Abstract:
The sociological study of the interaction between doctor and patient involves the study of the interaction between two different cultures. Both the doctor and the patient have different perceptions of the illness, the patient's perceptions being shaped by general cultural and social understandings of the illness, while the doctor's perceptions are shaped by professional training and therapeutic experience in the medical field. This interaction occurs through the physician's role as a primary actor in the therapeutic process and his or her relationship with the patient as a secondary actor, completing this reciprocal relationship. Throughout this therapeutic process, the patient may be exposed to medical negligence, including diagnostic errors, especially those that occur in the operating room, resulting in the deterioration of the patient's health and possibly even death as a consequence of the physician's negligence in fulfilling his role and monitoring the case with the required medical responsibility.
Keywords: Medical negligence, therapeutic framework, hospital.

Introduction:

Medical errors are a global phenomenon experienced by all countries, including those with advanced healthcare systems. World Health Organization reports have confirmed that at least five people die every minute due to unsafe healthcare" (Shamsa Turki Almuhaid, 2021, p. 260). The occurrence of an error by a physician is considered more significant than errors in other professions because physicians deal with both the physical and spiritual aspects of patients, involving matters of life and death. Thus, negligence in the role of doctor leads to medical errors and damage to the patient's health or organs. There are various forms of medical negligence, such as not allowing the patient to comfortably express their symptoms and feelings, scheduling a distant date for surgery when the situation requires urgency, and especially errors that occur in the operating room due to negligence and lack of attention and precaution. Therefore, the provision of comprehensive medical care within a therapeutic framework requires the involvement of several socio-cultural and economic variables. These include the effectiveness of the doctor-patient relationship and the medical team-patient relationship, the patient's responsiveness to the doctor's instructions and treatments, the sophistication of the medical equipment, the efficiency of the medical team, the availability of financial resources for tests, radiology and the purchase of medicines, and the role of the patient's family in completing the treatment pathway.

The concept of a doctor:

According to Al-Shirazi, a doctor is defined as "someone who has knowledge of the structure of the body, the nature of diseases, the symptoms that occur in them, their causes, symptoms and signs, the beneficial medicines for them and the alternatives in their absence, as well as the appropriate methods for obtaining them and the ways to treat them, considering diseases and medicines equal in quantity but different in quality" (Mustafa Ahmed Bakheet Abdel Rabo, 2022, p. 356).

The researcher further defines a doctor as "a person who has acquired a share of culture and education, who has a social status, and who has an intimate knowledge of the environmental problems that surround him in terms of health and disease. They understand the role of the doctor in maintaining health and improving the health status of individuals in the community, physically, mentally, psychologically and socially" (Mustafa Ahmed Bakheet Abdel Rabo, 2022, p. 356).

The concept of medical negligence:

Before we look at the meaning of medical negligence, let us first understand the meaning of negligence.

The linguistic definition of negligence: Negligence is derived from the word "ahmala", which means to leave something without care. It is equivalent to not giving something the attention it deserves (Jawad Ahmed Kazem Al-Bahadli, 2017, p. 54).

The conceptual definition of negligence: It refers to the lack of discipline, non-compliance and indifference (same reference, p. 44).

Medical negligence in Algerian criminal law: The Algerian legislator has discussed medical manslaughter and medical injury in the penal code in general. This is stipulated in Article 288 of the Penal Code, which

states that anyone who causes accidental death through recklessness, lack of caution, negligence or failure to comply with regulations... is guilty of medical negligence. Similarly, Article 289 states that if injury, illness or total inability to work for a period of three months results from recklessness or lack of caution... (Fadhil Al-Ish, 2008, Penal Code and Anti-Corruption, p. 89).

Medical Negligence in Islamic Law: The Hadith of the Prophet Muhammad, peace be upon him, states: "Whoever practices medicine without having sufficient knowledge of it beforehand is responsible" (Mustafa Ashraf, Mustafa Al-Kouni, 2009, p. 77). This hadith specifies the responsibility of the doctor. Imam Al-Shafi'i also clarified that the physician's negligence or failure to follow scientific principles constitutes liability. However, if the doctor adheres to the scientific principles of his profession and the patient still suffers harm, the doctor is not liable. In this regard, the Maliki school of thought holds that the physician's negligence or failure in treating the patient, resulting in the patient's death, obligates the physician to pay compensation, even if there was no intentional wrongdoing. According to the Maliki school, intent to kill is not a prerequisite for liability. Therefore, someone who intentionally deprives another of food and drink is liable for damages, even if the intention was to cause torture and not the resulting death. Similarly, if a mother intentionally withholds breast milk from her child, resulting in the child's death, compensation is required (Mustafa Ahmed Bakheet Abdel Rabo, 2022, same reference, p. 313).

The concept of health system: Before discussing the definition of the health system, it is important to define the concept of 'system' from a sociological perspective. A system is a collection of interdependent and interconnected elements in such a way that changes in one element lead to changes in the others, resulting in the overall transformation of the system (R. Bourdieu, Salim Haddad, 1986, p. 565).

The health system is therefore part of the general health system of a society. In Algerian society, there are two health systems: the formal health system and the informal health system.

The formal health system includes public hospitals, clinics and private health facilities under the Ministry of Health and Population.

The informal health system includes traditional and folk practices related to health and illness, such as traditional healers and herbalists. These practices are an extension of a historical period that reflects the culture of the family and community in relation to health care methods.

The health system is organised in a hierarchical and pyramidal structure within the broader health system. It consists of treatment centres, medical training centres and research centres, such as the University Hospital Centre (Centre Hospitalo Universitaire, C.H.U). It consists of at least nine (9) specialised departments, including general surgery, internal medicine, paediatrics, obstetrics and gynaecology, ophthalmology, ENT (ear, nose and throat), anaesthesia, radiology and medical laboratories (Mustafa Khiati, 1980, p. 10).

The hospital as a social and therapeutic system: A hospital is a social organisation made up of individuals who interact through social relationships within a therapeutic framework. It is part of the overall social system and is influenced by the cultural pattern of the society. The hospital consists of several departments that cooperate and compete with each other, although competition can sometimes turn into conflict and hinder the unity of work (Hussein Abdulwahid Rishwan, 1988, pp. 279-304).

To understand the hospital as a social and therapeutic system, there are three dimensions that define it:

A. Subordinate normative system: Refers to the implicit and explicit norms that govern the behaviour of hospital members, including the medical team and the patients who visit the hospital. It includes what the doctor should do in terms of appropriate diagnosis and effective medical care, and what he should not do, such as negligence and indifference in patient care.

B. Subordinate practice system: Includes the various practices assigned to the roles within the medical team, including doctors, nurses and nursing staff.

The system of internal relationships: It refers to the interactions between the entire medical team, including doctors and nurses, as well as between the patients themselves. In addition, there is an influence of external elements on the internal relationships within the hospital (Ali Makawi, 1990, pp. 243-247). Viewing the hospital as a social therapeutic system emphasises its focus on patient care from multiple perspectives. Medical care for patients includes four levels: physical, psychological, social and cultural, since the quality of organisation and the prevailing relationships between the treatment team and the patient have a significant impact on the treatment process (Jean Paul Valabrega, 1970, p. 14).

The function of the therapeutic system (hospital): it is a socio-economic institution of great importance in society. It serves as a place for the provision of medical equipment, is subject to the market of supply and demand, serves as a laboratory for medical research and scientific experiments, and contributes to the training of medical students. It is a place where patients, staff and visitors come together. The primary role of the hospital is to provide medical care to patients as a social therapeutic organisation. It is through this role that social definitions of illness and related practices are established, as well as the social system of patient

care, which determines the social status of the individual patient (Claudine Herzlich, 1970, p. 7). In addition, the hospital works to organise the social relations between the patient and the health care provider, as well as between the patients themselves and the medical team. The hospital also determines the formation of social behaviour towards patients and extends services for the interaction of hospital users among the wider social categories of society (Steudler François, 1972, p. 51).

The legal function of the therapeutic system (hospital): The hospital is obliged to provide the services needed by the patient during his stay, especially in carrying out the doctor's instructions regarding these services, such as food, cleanliness, regular administration of medicines, injections and tests, as well as ensuring that the patient is heated if his condition requires it (Mohammed Hussein Mansour, n.d., p.88).

The doctor-patient relationship in the therapeutic system:

Talcott Parsons proposed five elements that illustrate the role of the doctor, as follows:

1. Technical competence: The physician is skilled in the technical application of treatment.
2. The doctor interacts with the patient on a technical-scientific basis rather than on a personal level.
3. Functional specificity: The doctor specialises in a limited field defined by health and illness.
4. Emotional neutrality: The doctor's interaction with the patient is objective and fair.
5. Helping the patient and allaying his fears (Steudler François, previous reference, p. 45).

Conflicts in the doctor's role:

There are several conflicts that doctors face in carrying out their role, which hinder the achievement of positive goals, professional efficiency and optimal performance to provide comfort, reassurance and effective treatment to the patient. The main conflicts include:

- Dealing with a terminally ill patient when there are other patients waiting for their services, leading to a focus on one patient to the neglect of others.
- Difficulties in informing the patient's family about serious illnesses such as cancer and AIDS.
- Inadequacy and scarcity of medical resources, including drugs, medical equipment, hospital cleanliness and bed shortages.
- High demand for medical services due to increased prevalence of disease in society.
- Patient non-compliance with medication or treatment, i.e. lack of cooperation with the doctor (Ali Abdul Razzaq Jalabi et al., 1984, pp. 266-277).

Types of medical negligence:

1. Technical negligence: Doctors enjoy a high social status in society, and patients' reliance on them does not necessarily mean that they are able to perform their role effectively in all cases and for all medical conditions. Many doctors do not allow their patients to openly discuss their health and personal problems, although this is part of the medical examination and necessary (Ali Abdul Razzaq Jalabi et al, p. 286).

2. Technological negligence: The technological advances in medical practice and its complexity have not spared patients from medical errors, especially serious errors that can lead to future disability or serious complications due to incorrect treatment. Even if doctors are qualified and competent, failure to monitor and carefully read medical equipment can lead to errors in accurate diagnosis and consequently treatment. Medical errors usually occur during surgical procedures, such as damaging another organ in the patient's body or forgetting medical equipment. In such cases, medical responsibility is determined (Mohammed Ali Mohammed et al., 1986, pp. 130-148). It should be noted that it is usually difficult for judicial experts to determine medical malpractice unless there is strong evidence. Patients often attribute such situations to fate, and the cost of litigation prevents them from pursuing complaints against the doctor or medical team responsible for the harm and negligence.

The difference between medical errors and medical negligence:

Medical errors occur as a result of negligence. When the rules, standards, caution and care are not observed in the role of the doctor or the medical team as a whole, a physical act occurs that is considered an error, resulting in organ damage, partial or total disability, or even death. The renowned scholar Ayn al-Qiyam categorised medical liability in cases of organ damage into five sections, which are described in detail as follows:

- A qualified doctor who performs his duty correctly, but due to negligence, an organ or life is damaged. In this case, there is no guarantee on his part, either according to Islamic law or from the point of view of the patient.
- An ignorant doctor who begins to treat someone without the necessary knowledge and ends up causing harm. If the victim knew that the doctor was ignorant and had no knowledge and still allowed him to treat them, there is no guarantee. This is supported by the context and strength of the narrative, which suggests that the patient was led to believe that the doctor was competent when he was not. If the patient believed that the doctor was competent and authorised him to treat on the basis of that belief, the doctor is responsible for

the consequences of his actions.
- A qualified doctor who is authorised and competent but makes a mistake which extends to a healthy organ and damages it.
- A qualified doctor who makes an error of judgement in prescribing medication to a patient, resulting in the patient's death. There are two views on this: one is that the patient's blood money should be paid from the public purse, and the other is that it is the responsibility of the doctor himself.
- A skilled and competent physician who neglects or damages a limb or an organ (here "organ" refers to abnormal growths in the body, such as a tumour) of a man, a boy, or an insane person without their consent or the consent of their guardian, or who circumcises a boy without the consent of his guardian and causes harm.According to the Hanbali school of thought, the doctor is liable in this case because the act was unauthorised. However, if the adult or guardian of the boy or the insane person gave permission, the doctor is not liable. It is also possible that the doctor is not liable at all because he is a doer of good and the doers of good have no responsibility. (Mustafa Ashraf, Mustafa Al-Kouni, 2009, previous reference, pp. 82-83). The error that is considered a transgression and for which one is held accountable is one that no practicing physician should commit, but rather one that results from recklessness or blatant ignorance (same reference, p. 83). Thus, the responsibility for medical errors lies with the doctor.

Cases of medical negligence:

mistreatment of patients, administering a high dose of anaesthesia that does not correspond to the patient's age and weight, leaving surgical instruments such as gauze, bandages or tools in the patient's abdomen, diagnostic errors and the resulting treatment errors, prescribing inappropriate medication for the condition. One of the errors that occur due to not following the rules of caution and care when prescribing treatment is the physical error, where the doctor, when writing the prescription for the patient, should consider the aspect of caution, care and vigilance by specifying the dosage and use of the medication, mentioning the patient's name, age and the treating doctor's signature. (Same reference as above, p. 106).

The sociological interpretation of medical negligence in the health care system: Most Western studies focusing on hospitals have adopted a structural-functional perspective, such as those of Talcott Parsons and Renee Fox. Considering that the subject of the article falls within the specialisation of criminal sociology in the study of medical negligence and medical sociology in the study of the treatment system - the hospital - and the role of the doctor as a key party interacting with the patient, any dysfunction in this role and function leads to the deterioration of the patient's health and exposes them to complications resulting from the negligence of the doctor or the medical team as a whole in the treatment system.

Variation in receipt of medical care and its relationship to medical negligence: There are objective and subjective factors that contribute to variations in the receipt of medical care. Sociological studies that have examined the health care system, particularly hospitals, have emphasised that the type of medical care received by patients varies due to cultural, economic and social factors within society. A study by Majida Al-Sayed Hafez Abdel Rahman (1980) showed that a patient's economic level determines the quality of food and medication they receive during their hospital stay. In addition, Mohammed Reda Belmokhtar's study found inequality in the distribution of treatment between different social groups within health institutions. This inequality takes two forms: the first is influenced by subjective factors, such as mutual interests and the use of intermediaries by staff to bypass the official system and obtain preferential treatment. The second form is the provision of minimal treatment to patients who cannot use intermediaries or engage in mutual interests. Another study by Mohammed Reda Belmokhtar and Kamal Ayadi showed how regional affiliation, favouritism and blood ties between patients and doctors in a hospital can determine the social relationship between them. This relationship is different for patients who do not have favouritism, blood ties or regional ties with the medical staff. In addition, the patient's profession plays an important role in shaping this social relationship, with subjective factors having a greater influence than the patient's medical condition. This can contribute to medical negligence, as patients who have intermediaries and favouritism have the opportunity to receive better medical follow-up and treatment, while patients who lack such connections within the hospital may have their cases neglected and receive minimal care from the attending physician and medical team . It is important to note that there are also objective factors, independent of personal preferences, that influence the type of medical care received.These factors include the nature of the medical condition, as mild illnesses and minor symptoms may not require active intervention, whereas urgent medical cases require immediate and effective intervention.

The role of the medical social worker in the care of victims of medical negligence:

The medical social worker is the professional in charge of all medical social services within the health institutions or even in the external environment, with the aim of achieving social change and contributing to the medical and rehabilitation team in rehabilitating patients, adapting them and facilitating their social

integration. They work to improve their health conditions (Shalhoub, N., Al-Asadi, F., & Al-Nafie, F., 2023, p. 455). In addition, researcher Shamsah Turki Al-Muhaid described the medical social worker as a professional who is personally prepared to work in the medical field and who practices within a multidisciplinary team consisting of doctors, nurses and the patients themselves. They focus on the social dimensions of patients, assist the medical institution in achieving its goals, provide guidance and support to patients and their families, participate in treatment planning, and contribute to the development and delivery of training and education programmes (Shamsah Turki Al-Muhaid, previous reference, p. 264).

The researcher also defined the medical social worker as the medical error case manager, who is the medical social worker who works in the hospital environment and is qualified to provide the necessary services to patients who are victims of medical errors. This includes assisting them in accessing all necessary social, medical and other services, while carrying out follow-up and coordination between the treating medical team and the hospital administration and, if necessary, externally, in order to provide the necessary care for the benefit of victims of medical errors (same reference, p. 265).

Victims of medical errors: These are individuals who have been injured or killed as a result of a specific disease, shock, accident or medical error in hospitals, health centres or medical clinics, whether inpatient or outpatient. Victims can include injuries, total or partial disability, or death. The researcher defined victims of medical errors as patients who have experienced a medical error while being treated in hospital, whether it was intentional or due to negligence and lack of proper care and follow-up. This could result in disability, deformity or complications that require additional treatment and the provision of medical and social support to overcome the effects of the error and mitigate its negative impact on their health and overall social life (page 266). Therefore, the involvement of the medical social worker in the care and follow-up of victims of medical errors and the provision of support to them and their families will undoubtedly contribute to minimising the harm caused by the error and ensuring that the patient's rights are restored. It also helps healthcare professionals, including doctors and the medical team as a whole, to be more aware of their responsibilities and to exercise greater caution, particularly in complex surgical procedures. By reporting medical errors, the medical social worker implicitly emphasises the need to take all necessary precautions to care for patients and monitor their condition, guided by professional ethics and medical liability in this regard. The effectiveness and success of medical care is achieved through the convergence of several roles:

The role of the patient in seeking treatment as soon as symptoms appear and not waiting for their condition to deteriorate, which can complicate the illness and hinder a rapid recovery; the role of the physician and the medical team, including nurses, in complementing the role of the treating physician by monitoring the patient’s condition and providing all necessary equipment and medication; and the complementary role of the patient’s family, which includes relieving the patient’s burden and alleviating their suffering by providing comfort, psychological support and social care.

Conclusion:

Our focus on medical negligence does not diminish our recognition of the important role and social status of doctors in society. The challenges faced by physicians and the medical team in the face of a high burden of disease in the community, especially when there is a malfunction or absence of medical technology, drugs and equipment, can hinder their role in the overall health care system. However, this does not mean that the importance of the physician taking all necessary measures and precautions to diagnose, monitor and treat the patient, especially during surgical procedures, with precision and focus, without neglecting any symptoms or complications, should be neglected or disregarded.

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