**Medical Responsibility
(Malpractice**)

**المسؤولية الطبية**

**الاهمال الطبي**

**Learning Objectives**

* ***Define scientific terms***
* ***Know how to basically prove a malpractice claim***
* ***Classify different types of malpractice***
* ***Be aware of basis of its evaluation***
* ***Be familiar with examples of different types of malpractice***
* ***List legal advises for prophylaxis against malpractice***

**When a medical practitioner undertakes the care of a patient, he enters into implied contract to treat the patient with reasonable skill and care.**

**العقد الاجتماعي للطبيب و المهني أن تقدم للمريض الخدمة المعقولة و الاهتمام المعقول أو أفضل ما عندك من علم أو اهتمام**

So

التزام

**There is a *commitment* by the physician to do his best of knowledge and skills for the benefit of the patient.**

**(التزام بين الطبيب و المريض لتقديم الأفضل)**

***Malpractice***

***Malpractice* (malpraxis) is defined as the absence of a reasonable degree of skill and attention on the part of the attending practitioner whereby the health of the patient is endangered.**

**الاهمال الذي يسبب ضرر للمريض**

***Negligence unproductive of damage will not give the right to an action, but negligence causing damage will do.* If there is any doubt of *negligence*, the patient can sue the physician for malpractice.**

الاهمال

**في حال اثبات الاهمال الطبي يمكن للمريض أن يلجأ للقضاء ضد الطبيب و يتهمه بالاهمال الطبي**

**Sue: يلجأ للقضاء**

***Negligence* may be defined as the omission to do something which a reasonable man would do, or doing something which a reasonable man would not do( act of omission or commission ) .**

**omission :إهمال غير مقصود**

**متعمد**

**-العقوبة تبدأ من أخذ تعويض من الطبيب لغاية سحب رخصة العمل و لغاية السجن**

**ماذا يعني متعمد ؟
-يعني ان لطبيب لم يطبق القواعد المتفق عليها**

**When a patient can prove that he has suffered harm as a result of a physician’s failure to provide a reasonable standard of care, which any ordinary physician in his position would take, he has the right to receive *financial compensation*.**

 فإنه يرفع دعوة (physion failure)إذا استطاع المريض إثبات أنَه تعرَض لأذى نتيجة

**Most legal actions for negligence are within the *civil law*, few undergo *criminal prosecution* of the physician for example:**

إجهاض

 **1)Illegal abortion.**

 **2)Death of a patient resulting from gross ignorance or negligence of the physician.**

**في حال أن أحد الأطباء قام بإجهاض لمرأة و تعرَضت لأذى يحق اللجوء للقضاء لكلا الطرفين و لا يحق لكلاهما الاعتراض لأن هذا الفعل (الاجهاض) ممنوع قانونيًا**

أغلب قضايا الإهمال تحل وديًا طالما ما تعرض المريض لأذى شديد إلا في حالتين :

**There are 3 basic considerations in proving malpractice:**

**كيف يمكن اثبات الخطأ الطبي:**

*1-* ***A mistake has occurred by the physician***

***2- A damage or harm happened to the patient.***

**إذا لم يحصل للمريض إذى و كان الفعل اجرامي وتم كشف الاهمال يتم اللجوء الى القضاء و إن لم تتم الشكوى من المريض أو لو مات المريض و لم يشتكي احد**

***3- There is a causative relation between the mistake done by the physician and the harm that occurred to the patient****.*

(mistake from surgem) -إذا نسي الجراح فوطة (قطعة قماش) في بطن المريض
 (damage to patient) -فوطة (قطعة قماش) بعد بضعة أيام احدثت ضرر
- العلاقة بينهما وجود فوطة (قطعة قماش) في بطن المريض

Towel = فوطة

 **Types of malpractice**

**خطأ بإجراءات الطبيب و مهاراته و أنه لم يستطع اتباع القواعدة المحددة سواء في التشخيص أو العلاج**

***Technical faults:***

**When the physician does not follow the scientific basic rules in his profession for diagnosis and treatment. These may be major or minor faults.**

***Objective mistakes:***

**When a surgeon forgets any object inside a surgical wound e.g. Towel, instrument…etc. all objective mistakes are major malpractice.**

**(minor fault) -إعطاء المريض جرعة خطأ
-تأخر الطبيب بالتشخيص أو خطأ بالتشخيص
metastasis-إذا حدث نتيجة ذلك مثلا ورم و استفحل و عمل (ورم خبيث)
majorهنا يصبح**

 **The basis of evaluating the malpractice**

**ما هي القواعد التي سيقيم بها القضاء الاذى الذي حدث للمريض؟**

**1- The professional level of the physician.**

**البداية بتقرير من الطبيب الشرعي**

***A general practitioner cannot be considered negligent just because a specialist might have served a patient better.***

**2- The severity of the case.**

**3- The time and place of the act.**

**امكانيات المكان تَحْكم**

***The act is compared with the attitude taken by an ordinary physician with the same standard, qualification, experience, and circumstances.***

**تقييم و مقارنة مستوى الطبيب مع طبيب آخر بنفس الظروف و المستوى العلمي و المستشفى و الامكانيات و سؤال الطبيب الآخر عن الحل الممكن إذا كان مكان الطبيب المتهم بالخطأ**

**The basis of evaluating the malpractice**

**4- A medical injury may have been caused by any one or more of the medical personnel who have treated the patient.**

**5- The thing speaks for itself” e.g.**

* + **Foreign bodies and slipping instruments in surgical procedures**
	+ **Burns from heating modalities**
	+ **Injury to a portion of the patient’s body outside the field of treatment**

 **Malpractice in diagnosis:**

**تأخير التشخيص مشكلة كبيرة**

**To reach a proper diagnosis the physician should:**

* **Take a careful history**
* **Examine his patient thoroughly**
* **Ask for investigations (whether laboratory or radiological)**

استشارة

* **Consult colleagues or professors if he is not sure of a diagnosis**

**Otherwise he may fall under *malpractice* if he misses a diagnosis due to ignorance by the basic scientific knowledge**.

المسؤولية الجنائية أو القانونية

***Liability* may be proved when the physician fails to diagnose a condition which would have been diagnosed by a competent practitioner**.

**-any defect in the report in hospital and occur problem to the patient -<physican my accuse in ignorance and Malpractic
يقع الطبيب تحت طائلة القانون**

 **Malpractice in diagnosis**

**Sometimes missed diagnosis or mistake in reaching exact diagnosis is due to**

* + - **Inexperience**

No skill

 **the disease being in its early stage.**

 **Mistakes of treatment:**

**The physician is free in choosing the method of treating his patient as long as he is using *scientific basis agreed upon by physicians.* The physician is sued for malpractice of treatment in the following conditions:**

اذا كان المريض لديه حساسية من دواء معين
أو زيادة الجرعة

* ***If he prescribed a******wrong drug***
* ***If he was not accurate in the dose of the drug in relation to the patient’s age, sensitivity or body build.***

**Surgical mistakes:**

***Surgery needs skill and concentration. Responsibility of the surgeon lies in the following stages:***

1. **Writing the first admission sheet and diagnosis of the case**
	1. **Stage of preparing for operation (examine, ask for specific investigations, be sure of fitness of patient for operation)**
2. **An informed consent (entailing the diagnosis, surgical procedure, anesthesia and expected complications) is signed by the patient except in emergencies**

A surgen is responsible for attitude of medical staff only

**Surgical mistakes:**

1. **A surgical *report* should be filled including every detail, and any problem at the time of the operation should be mentioned**

 **5. The surgeon should do an operation *only* in his specialty**

 **6. He is responsible for *sterilization* of the surgical wound**

**7- *In operations* the surgeon is responsible for the actions of his team while acting under his immediate supervision (nurses and assistants).**

**8- Responsibility of the hospital authorities lies in the *selection of nurses***

**9- The responsibility for *anesthesia* belongs to the anesthetist not the surgeon.**

***Examples of surgical malpractice:***

* **operating on the wrong patient**
* **operating on the wrong side: limb, organ…etc.**
* **leaving swabs or instruments in the surgical wound**

Cutting of artery is surgeon’s wrong but his work after that is judged (يحكم عليه )

***Examples of orthopedic malpractice:***

* **Missed fractures**
* **Tissue damage from over tight plaster**

طبيب توليد

***Examples of obstetrician malpractice:***

* **Criminal abortion and complicated therapeutic abortion**
* **Birth injuries**
* **Brain damage of newborn due to hypoxia from prolonged labor**
* **Hysterectomy without being sure of the diagnosis( pregnancy in an old women diagnosed as a mass in the uterus and doing hysterectomy)**

**Anesthetic malpractice:**

**The anesthetist is responsible for:** ***preoperative preparation of the patient, anesthesia during the operation, and follow up in recovery****.*

***Examples of malpractice include****:*

* **Brain damage from allowing hypoxia to occur**
* **Neurological damage from spinal or epidural injections**
* **Incorrect or excessive anesthetic agent**
* **Allowing awareness of pain during anesthesia**

* 1. ***Never guarantee a cure***
	2. ***Get the patient’s informed consent for all procedures (at least all surgical procedures)***
	3. ***When in doubt ask for consultations (consultation protects the patient and protects yourself).***
	4. ***Do not criticize another practitioner***
	5. ***Do not fail to provide maximum care in the selection of assistants***
	6. ***Do not base an important diagnosis on a clinical impression, use available diagnostic aids***

التقارير هي الشهود التي لاتموت

The correct report is physciain’s dielinerance

 **Legal advises for malpraxis prophylaxis**

* 1. ***Keep up with the advances of medicine. However do not be too advanced and do not experiment on patients***
	2. ***Do not, in absence of emergency, perform any surgery without an informed consent***
	3. ***Good housekeeping: keep good medical records, full and accurate. Keep results of all tests performed on the patient.***

***Records are “witnesses whose memories never die”. In the defense of malpractice suits, bad records hurt as much as good records help.***

***Problems in* MALPRACTICE**

**An anesthesiologist ran out of oxygen before the operation was completed, causing the patient to suffer a fatal cardiac arrest.**

***Is this a case of malpractice or negligence?***

***What are the responsibilities of the anesthetist?***

***Do you think this case should be presented in a civil or criminal court?***

***What are the possible forms of punishment that the doctor would undergo?***

***Is this a case of malpractice or negligence?***

***………****both negligence and a major form of anesthetic malpractice………………………………………………….*

***What are the responsibilities of the anesthetist?***

***-The anesthetist is responsible for:***

***-Preoperative preparation of the patient,***

***-Anesthesia during the operation,***

***-Follow up in recovery***

***Do you think this case should be presented in a civil or criminal court? Why?***

***……criminal court, this is considered an objective mistake which proves gross ignorance and negligence on part of the anesthetist as he should have checked his instruments before operation……………………………….***

***What are the possible forms of punishment that the doctor would undergo?***

***………criminal prosecution usually means a jail sentence (which could be carried out or not) and erasure from the medical syndicate***

***Is this a case of malpractice?***

 ***…………yes………………………………………………..***

***If so, what is the type of malpractice in this case?***

 ***…………anesthetic malpractice***

***Should the patient receive financial compensation?***

 ***…………yes………………………………………………..***

***Knowing that this patient was a well known athlete; would this make any difference in the value of compensation?***

 ***………more compensation***